

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on waste

COM(2005) 667 final — 2005/0281 (COD)

(2006/C 309/12)

On 24 February 2006, the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 May 2006. The rapporteur was Mr Buffetaut.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July), the European Economic and Social Committee adopted the following opinion by 114 votes with four abstentions.

1. Conclusions

1.1 The EESC endorses the Commission's desire to modernise, simplify and adapt the laws governing waste. It approves, in particular, the initiative in presenting the thematic strategy on the prevention and recycling of waste and the spirit of the strategy. It is essential to support the desire to ensure that the legislation in question is applied equally and on a general basis, in order to prevent distortions as regards the environment, public health and competition in the market for waste products. With a view to avoiding the lodging of appeals and the initiation of legal proceedings, the EESC stresses the importance of setting out clear and precise definitions and annexes to the proposal for a Directive. It does, however, regret that the provisions in respect of the prevention of waste lack ambition. The EESC draws attention to the fact that a prerequisite for any desire to achieve real sustainable development is the existence of an effective policy of preventing and reclaiming waste, bearing in mind the growing scarcity and increasing cost of raw materials; the EESC does, however, urge that instruments be developed at EU level in order to ensure that the goals which have been set can be achieved in both qualitative and quantitative terms. In this regard the proposal for a Directive displays real weakness. Furthermore, the Commission appears to believe that relaxing the procedures for obtaining permits to run processing installations will encourage recycling. This approach is misguided and will result in negative environmental consequences and health risks. Furthermore, it does not comply with the principles of the Aarhus Convention regarding public access to information on waste. Indeed, the permit comprises technical elements linked to environmental protection; it is a public document and is accompanied by requirements as to information and monitoring. It is in no way an obstacle to the development of processing or recycling but on the contrary provides the necessary guarantees, with the administrative bodies monitoring due respect for standards and the implementation of the best available techniques.

1.2 The introduction of the life-cycle concept into waste policy is also, in the EESC's view, a wholly appropriate course of action, as is the approach aimed at bringing about a reduction in the volume of waste sent for landfill, reclaiming compost and energy, promoting clean recycling and preventing waste.

1.3 As regards the proposal for a Directive, the EESC considers that too absolute an affirmation of the desire to respect the principle of subsidiarity runs the risk of being in

contradiction with the desire to have legislation which is applied on a general and harmonised basis throughout the EU.

1.4 The EESC urges that the integration/repeal of the Directive on hazardous waste does not result in inferior regulation and inferior public health protection. The EESC considers that, as drafted at present, the text fails to provide adequate guarantees. At the very least, it should be specified that hazardous waste mixtures and permit exemptions are not authorised for this type of waste. It is the classification as 'hazardous' or 'non-hazardous' that governs the particular precautions and obligations for the transportation and treatment of waste. Any oversimplification in this field cannot be seen as a step forward for environmental protection.

1.5 The EESC stresses that the type of recycling which should be encouraged is that which does not have a damaging impact on the environment and which really does make it possible to reclaim materials.

1.6 The EESC really doubts whether the comitology process is an apposite means of defining a number of specific criteria for clarifying when certain waste ceases to be waste.

1.7 In the EESC's view, a number of definitions continue to give rise to uncertainty (such as the definitions of 'producer' and 'recovery'). Definitions should be provided in the case of the following terms: 'reclamation of materials' leading to the 'recycling of materials', on the one hand, (with the possibility for certain flows to be no longer classified as waste), and 'energy recovery', on the other hand (without the possibility of no longer being classified as waste). This would ensure that the incineration directive is uniformly applied to all waste heat recovered by incineration or co-incineration. With regard to waste incineration, high energy recovery yields should be encouraged in order for operations to qualify as 'recovery'; however, it is surprising that such a provision is applied only to incineration and not to other means of energy recovery. In this case, the incineration of waste should be regarded as a recovery operation only if it achieves a high level of energy efficiency.

1.8 The EESC strongly regrets that no proposals are made with regard to the introduction of standardised financial instruments throughout the EU.

1.9 The EESC deplores the fact that the proposal for a Directive fails to set out any obligations in respect of working conditions and health protection measures for employees in this sector.

2. Introduction

2.1 The policy on waste is one of the EU's oldest environmental policies since the current framework directive dates from 1975. Over a period of thirty years, however, the general economic and social context, practices, technologies, national and local policies and public awareness of the problem of waste have all changed considerably. EU legislation on waste, which had changed little in the period since 1975, started to develop at an accelerated pace in the 1990's, which witnessed the modification of the framework Directive in 1991, followed by the adoption of a series of Directives on processing procedures and the management of certain waste flows.

2.2 The current legislation has been subjected to the test of time; gaps and cases of a lack of precision have emerged, court proceedings and rulings have highlighted difficulties of interpretation and legislative complexity, brought about, in part, by the fragmentation of legislation in different texts which refer to each other.

2.3 At the same time, a real 'waste business' has come into being. The management and recycling of waste have become fully fledged economic sectors enjoying a high level of growth and having a turnover estimated at over EUR 100 billion for EU-25.

2.4 The EU has also been enlarged and will be further enlarged. The situation facing the new EU Member States with regard to waste is rather difficult because, inter alia, of the importance of landfills. The European Commission therefore, naturally enough, wishes to make a fresh appraisal of the question of waste whilst, however, not rejecting the spirit of the current legislation by subjecting it to a root and branch overhaul.

2.5 The European Commission has therefore recently published a Communication on a thematic strategy on the prevention and recycling of waste ⁽¹⁾ and presented a new proposal for a Directive on waste ⁽²⁾; the former document sets out the Commission's political guidelines and general philosophy, whilst the latter translates these measures into concrete legislation.

3. A new policy

3.1 The Commission's appraisal which underlies the thematic strategy is based on the observation that, whilst considerable progress has been made in the last thirty years in tackling the problem of waste, the volume of waste continues to increase, the level of recycling and recovery is inadequate and the corresponding markets are finding it hard to develop. It should also be pointed out in this context that, in addition to the specific texts relating to waste, the IPPC Directives have clearly played a positive role.

3.2 Furthermore, the treatment of waste does, to a certain extent, contribute to environmental problems and give rise to economic costs.

3.3 EU legislation lacks precision in a number of points and this gives rise to disputes and divergences in application of the law from one country to another.

3.4 How is municipal waste disposed of at the present time? The best statistics which are available concern municipal waste, which accounts for some 14 % of the total volume of waste produced. The statistics in respect of municipal waste are as follows: 49 % is sent to landfill, 18 % is incinerated and 33 % is recycled and composted. The situation differs enormously between those Member States in which 90 % of waste is sent to landfill and those in which this method of disposal is used for only 10 % of waste. Similar differences are, incidentally, noted in the case of other categories of waste.

3.5 From an overall perspective, the EU is therefore facing a situation in which, despite clear progress, the overall volumes of waste are increasing and the total amount sent to landfill is not being reduced, or barely being reduced, despite the increased use of recycling and incineration. As regards the prevention of waste, it may be said that the policies which have been pursued have not brought tangible results.

3.6 It is therefore clear that the goals of the policy currently being pursued in the EU — namely to limit waste and to promote the reutilisation, recycling and recovery of waste in order to reduce its negative impact on the environment and to help bring about more productive use of resources — have lost none of their validity but what is needed is to make the means of achieving these goals more effective.

3.7 With a view to achieving this aim, the Commission proposes a number of courses of action ranging from legislation, to reflection on the form which waste policy should take and the very concept of this policy, the improvement of information and the definition of common standards. The Commission therefore proposes, as part of its strategy for preventing and recycling waste:

- evolving towards a recycling society which avoids the production of waste, wherever possible, and which fully exploits the material and energy resources contained in waste;
- stressing the need for the legislation to be implemented on a general basis in order to prevent differences in the interpretation and the enforcement of laws and to ensure that the goals defined in the existing legislation are achieved in good time by the Member States;
- simplifying and modernising the current legislation;
- introducing the concept of life cycles into waste policy in such a way as to ensure that its potential contribution to reducing the environmental impact of the utilisation of resources is taken into account;
- implementing a more ambitious and more effective waste-prevention policy;
- improving the provision of information and the dissemination of knowledge in the field of waste prevention;
- developing common reference standards in order to regulate the European recycling market;
- fleshing out the recycling policy.

⁽¹⁾ COM(2005) 666 final.

⁽²⁾ COM(2005) 667 final.

3.8 The Commission expects that the proposed changes in the legislation and the concept of waste policy will bring about a drop in the volume of waste sent for landfill, improved reclamation of compost and energy derived from waste and qualitative and quantitative improvements in recycling. It is therefore hoped that a greater volume of waste will be recovered, that the 'waste hierarchy' will thus be stepped up and that waste policy will consequently help to bring about a more effective utilisation of resources.

How have the goals set out in the thematic strategy been initially translated into legislation?

4. The proposal for a Directive on waste: a change rather than a root and branch overhaul

4.1 Article 1 of the proposal sets out the objectives pursued by the Commission. These objectives are twofold and interdependent:

- to lay down 'measures with a view to reducing the overall environmental impacts, related to the use of resources, of the generation and management of waste';
- set out, for the same reasons and for each Member State, the priority objective of taking measures for the prevention or reduction of waste production and its harmfulness, and secondly, 'for the recovery of waste by means of re-use, recycling and other recovery operations'.

4.2 With a view to achieving this goal, the Commission takes the view that there is no need for a root and branch overhaul of the existing legislative framework; modifications should rather be made in order to improve the current legal framework and to close the existing gaps. The proposal for a Directive represents only one aspect of the implementation of the strategy; other proposals, deriving from this one, will be issued at a later stage. European policy on waste is, at all events, of necessity based on the principle of subsidiarity. In order to ensure that measures are effective, there is a need for a series of actions to be taken, from EU level to municipal level, the level at which, in practice, much work is carried out. The Commission takes the view that respect for the principle of subsidiarity in no way implies having a lower level of ambition in the environmental field.

4.3 The proposal for a Directive therefore takes the form of a revision of Directive 75/442/EEC. Under the proposal, the Directive on hazardous waste (91/689/EEC) is integrated into the framework Directive and therefore, at the same time, repealed. The Directive on waste oils (75/439/EEC) is likewise repealed, whilst integrating the specific collection obligation into the Waste Framework Directive.

4.4 The main amendments to the Waste Framework Directive are as follows:

- the introduction of an environmental objective;
- the clarification of the notions of recovery and disposal;
- the clarification of the conditions for the mixing of hazardous waste;
- the introduction of a procedure to clarify when a waste ceases to be a waste for selected waste streams;

- the introduction of minimum standards or a procedure to establish minimum standards for a number of waste management operations;

- the introduction of a requirement to develop national waste prevention programmes.

4.5 The question which arises, therefore, is whether the proposed legislative modifications would make it possible to achieve the overall objectives set out in the strategy and to make good the current inadequacies and lack of precision.

5. General comments on the proposal for a Directive on waste

5.1 This new proposal for a Directive has long been expected. For all the parties concerned — the EU Member States, NGOs, the general public and professionals — this proposal should form the basis of EU environmental policy on waste management. It is with this aim in view that the ESC has been asked to give its views on the proposal. It was expected that the new text would bring improvements to the current situation, taking account of experience gained since 1991, the weaknesses in the previous provisions and the strategy to be adopted in the EU with regard to sustainable development. This strategy presupposes the introduction of a policy in respect of the management, reclamation, recycling and recovery of waste products, in view of the growing scarcity of raw materials and energy resources.

5.2 The current legislation has often been criticised for lacking in precision and clarity (especially with regard to the annexes and the definitions). Furthermore, the failure to achieve uniform implementation of the Directives and Regulations in the various EU Member States and the differing approaches adopted by the individual Member States have also frequently been deplored. The revision of the Regulation on the cross-border shipment of waste has recently highlighted the problems arising as a result of this situation.

5.3 What interpretation and analysis can the EESC make of the proposed changes to the framework Directive? There are grounds for wondering whether the level of ambition displayed by the Commission has not slipped somewhat since the publication in 2003 of its communication entitled 'Towards a thematic strategy on the prevention and recycling of waste' ⁽³⁾. The approach adopted in respect of the subsidiarity principle appears to be rather minimalist and may result in divergences in respect of the implementation of the legislation. Furthermore, the proposal for a Directive under review fails to address the action which the economic and social stakeholders may take in this context.

5.4 Simplification of legislation:

5.4.1 It is proposed that the Directive on hazardous waste be integrated into the framework Directive. In this context it is essential to ensure that hazardous waste will be subject to much stricter measures than those applicable to other waste materials, particularly since the Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) will, at the same time, have to be applied to all substances which are placed on the market. The Directive on waste oils, for its part, will be quite simply repealed since, in practice, the environmental benefit of these provisions had not been demonstrated, as regards the processing of these oils. The provisions covering their collection will, however, remain in place.

⁽³⁾ COM(2003) 301 final.

5.4.2 Attention may also be drawn to the fact that, since the setting out of criteria defining the degree of danger, the Commission has still not yet come up with the requisite back-up documents: standardised tests and concentration thresholds for ensuring that the waste material listed is properly exploited.

5.4.3 The proposed exemptions in respect of waste recovery appear to be risky and they should be questioned in a number of sectors. We all remember the incidents involving contamination by hazardous waste of natural substances used in the preparation of animal feed. Such incidents could become widespread if traceability and the requisite measures for monitoring the proper management of waste were to be abandoned. The Commission should consider whether the proposed exemptions (see Chapter V, Subsection 2 — Exemptions) do not run counter to the provisions of the Aarhus Convention on public access to information and participation in decision-making on the processing of waste.

6. Specific comments

6.1 Improved definitions

6.1.1 The Directive currently in force failed to provide good definitions of a number of points. The number of cases brought before the European Court of Justice provides convincing evidence of this fact. Does the new text bring improvements in this regard? There are grounds for doubt in some respects.

6.1.2 The definition of 'producer', which has been taken over from the previous text ⁽⁴⁾, should be amended. How can it be accepted that persons whose activities result in a change in the nature of waste become the new 'producer' of such waste? Such a person is simply a 'handler of waste' and must, in this capacity, form part of the traceability chain. Otherwise, this leaves the way open to the 'downgrading' of waste and dilution of the responsibility of the real producer of the waste. Furthermore, as a minimum requirement, reference should be made to the concept of the 'extended producer responsibility' (EPR) (in respect of products placed on the market).

6.1.3 In the cross-border Regulation ⁽⁵⁾ designed to maintain exports, the Commission insisted on referring to 'interim operations', which it failed to define, just as it failed to define the term 'dealers and brokers' which is also used in this same Regulation.

6.1.4 The term 'recycling' is defined, but the definition of the term 'reclamation', in the sense of 'recovery' is not clear. Definitions should be provided of the terms 'reclamation of materials' leading to the 'recycling of materials', on the one hand, and 'energy recovery', on the other hand. In the first-mentioned case, the end of the treatment cycle may result in the substance concerned no longer being classified as 'waste'; this is not applicable in the case of energy recovery. Energy recovery from waste is governed by the Waste Incineration Directive, as regards the environmental protection aspects of the process. In cases where substances are no longer classified as 'waste', the environmental protection rules would no longer apply to them.

⁽⁴⁾ Council Directive 91/156/EEC of 18.3.1991 amending Council Directive 75/442/EEC on waste.

⁽⁵⁾ Council Regulation (EEC) No 259/93 of 1.2.1993 on the supervision and control of shipments of waste within, into and out of the European Community.

6.2 Aim of the Directive

6.2.1 The aim of the Directive is, and must continue to be, to protect the environment and public health.

6.2.2 The Commission has a general tendency to attach considerable importance to the opening-up of the market, which constitutes only one aspect of waste policy.

6.2.3 The EESC considers that there is a need to unequivocally resolve the issue of how to define a regulatory framework which would make it possible for market mechanisms to direct waste management towards bringing about an improvement in the environment, by developing the concepts of 'eco-efficiency' and 'eco-management' in respect of EU productive activities and services. Waste management is indeed a regulated market, the primary objectives of which are to protect the environment and public health and to preserve resources; account is therefore taken of economic, social and environmental impacts. Protection of the environment is a key element which promotes the creation of jobs and competitiveness, whilst at the same time creating scope for innovation and the establishment of new markets. There are grounds for questioning whether subsidiarity represents the ideal approach in this context. Furthermore, it is symptomatic that, in its communication on the thematic strategy, the Commission agrees that a number of recycling operations may be damaging to the environment. It nonetheless proposes that the Member States ensure that recovery operations are carried out in respect of all waste. It should therefore be stipulated that what should be encouraged by means of common requirements spelled out at EU level is a clean recycling market.

6.2.4 The Commission also 'forgets' to affirm in the 'waste hierarchy' — as it also did in the previous text — that, under the right conditions, the disposal of waste may be beneficial to the environment, even though it retains the operational provisions designed to achieve this goal. As a result, the new text is less clear in this regard than the earlier text.

6.2.4.1 The Waste Framework Directive must continue to provide the basis for an effective and appropriate management of waste in all sectors. The way in which the Framework Directive is to be implemented — and thus the means to be employed for strengthening the recycling strategy — have yet to be defined.

6.2.5 As a possible line of approach, the Commission had proposed the establishment of financial instruments for the purpose of supporting and promoting the effective management of waste and the recycling and recovery of waste. The introduction of such instruments at EU level could indeed have been encouraged, on condition that a uniform approach was adopted. Nothing has been proposed in this regard because of the difficulty of securing unanimity on such a proposal at the Council. Opting to put forward no proposals on this matter is doubtless a realistic approach but it nonetheless points to a degree of timidity on the part of the Commission, which could have proposed the development of an open method of coordination.

6.3 Hazardous waste

6.3.1 The issue of the integration/repeal of the Hazardous Waste Directive has already been tackled, as regards the actual principle involved, in the general comments set out above.

6.3.2 It is curious to note that the article dealing with the separation of hazardous waste refers only to cases where such waste is 'mixed'.

6.3.3 Hazardous waste has to be regulated by robust legislation and a robust system of traceability; this need is more pressing in the case of hazardous waste than it is in the case of any other waste. The provisions which are introduced must clearly rule out the possibility that such waste is diluted in the environment. Furthermore, steps should be taken to ensure that the integration/repeal of the Hazardous Waste Directive does not reduce the level of public health protection. It could at least be clearly stipulated that, by definition, any 'mixture which includes hazardous waste' will itself be regarded as hazardous, except in cases where the mixture in question brings about real chemical detoxification. All forms of dilution must be outlawed.

6.4 Network of disposal installations

6.4.1 The draft Directive under review proposes that the EU Member States cooperate with each other in order to establish a network of disposal installations. How can a call be made for investments to be carried out in this field if the Member States are unable to introduce the requisite tools for ensuring that these installations do not continue to operate at below capacity? Operators could indeed 'export' waste in order to have recovery operations carried out in another country. It is therefore essential that the rules governing this field are particularly precise and do not have any perverse effects.

6.4.2 The proximity principle should be studied and explained, using the principle of self-sufficiency as the reference criterion. These two principles are to be treated as inseparable if waste management is to be sustainable.

6.5 Prevention

6.5.1 The draft Directive places no obligations upon the Member States with regard to the social aspects of prevention, i.e. the need to take account of the possible impact on working conditions and the health of workers and to introduce meaningful information campaigns. Waste prevention is also a civic behaviour issue. Two possible lines of approach should also be pursued: the qualitative approach and the quantitative approach since, from an economic standpoint, the former approach, whilst clearly being less doctrinaire than the latter, nonetheless, leads to progress and efficiency.

6.6 Annexes

6.6.1 Few changes have been made, with the exception of the adoption of an energy efficiency approach solely in the case of incinerators processing household waste. Rather curiously, no proposals have been set out in respect of the obligations to be met by 'co-incineration plants'. Furthermore, the incineration of household waste can only be regarded as a recovery operation in cases where it achieves a high level of energy efficiency. Although certain waste products cannot be reclaimed, steps should, however, be taken to avoid a situation in which rudimentary incineration plants, marked by inefficiency in the recovery of useful energy, are able to benefit from the recovery provisions. Incineration would then become the easy solution, which could lead to the exporting of waste, an outcome which we should, on the contrary, be seeking to avoid.

Brussels, 5 July 2006.

The president
of the European Economic and Social Committee
Anne-Marie SIGMUND
