Proposal for Revision of Waste Framework Directive (COM(2005)667)
Comments from Eurits

Introduction

Eurits was established in 1994 to represent the specialist hazardous waste incineration sector in the EU. It currently has 20 member companies across the EU and represents over 90% of the specialist high-temperature incineration capacity in Europe.

Eurits exists to promote best sustainable environmental practice in the field of specialised hazardous waste incineration. By making representations on behalf of this sector, Eurits aims to contribute to developing legislation and other associated measures that will hopefully lead to improvements in environmental legislation. Eurits also aims to increase transparency about the technical, environmental and safety aspects of specialist high temperature incinerators, in order to secure greater public confidence in and acceptance of the sector.

The specialist hazardous-waste incineration sector in the EU currently operates to very high standards. This is a result of the strict European legislation, which is based on the precautionary principle, demanding the highest environmental standards to protect the environment against known and, as yet, unproven risks. The role of such companies, in dealing with very dangerous wastes, is of the utmost importance in ensuring a safe and functioning internal market and society.

Given its expertise, Eurits has been following the debate on the proposed revisions to the Waste Framework Directive closely and has participated throughout the consultation process. These further comments relate specifically to the proposal adopted by the European Commission on 21 December 2005 to revise the Waste Framework Directive.

General comments

Eurits acknowledges that the Commission's goal is to clarify and simplify EU legislation but this must not be achieved at the expense of environmental protection. We nevertheless recognise that recent ECJ cases have led to a confused situation, particularly in relation to what constitutes recovery or disposal. However, we believe that the current proposal could still fail to deal with a very real current problem: the practice of ***sham recovery.*** The lack of consistent rules on R1/D10 has led, we believe, to the widespread practice of sham recovery, whereby transboundary shipments of waste are dealt with administratively under the cover of recovery but are finally treated as disposal, enabling local waste management plans to be circumvented.

The European Parliament tried very hard to tackle this major blot on Europe's environmental record through the provisions of the Waste Shipment Regulation by proposing a total ban on the transboundary shipment of waste to so-called "interim operations", which are not adequately defined in existing legislation. The Parliament was only partially successful in this attempt and so it is vital that the revised WFD ensures that this practice cannot continue. Clear definitions must therefore form a vital part of the revisions to the Directive.

Role of Hazardous Waste incineration sector

Increasing emphasis is being placed on the need to prevent and recycle waste. Eurits supports this approach and recognises that these two aspects of waste management should be prioritised in the waste hierarchy. However, from its specialist perspective, Eurits also recognises the importance of encompassing the whole waste management and treatment chain in any sustainable policy and this must include all aspects of energy recovery and also disposal. Eurits also believes that all waste policies should be consistent and that their aim should be the reduction, as far as is possible, of any negative environmental impact of waste management and disposal. In drawing attention to the issue of disposal, we are emphasising, again from the perspective of operators of plants who have to deal with wastes where there is an ultimate need for total destruction of the organic content of hazardous waste and the irreversible transformation and removal of other hazardous components out of the environmental cycle, the importance of recognising the role of incineration in any sustainable waste management policy. The necessity for decontamination, and the specific role that high temperature dedicated waste incineration can play, is recognised in the Stockholm Convention on Persistent Organic Pollutants.

It is increasingly being recognised that the existing waste hierarchy ignores this important element in the process and that without the decontamination role of the sector, a proper market in recycling cannot function. We therefore propose a new entry in the waste hierarchy of **decontamination**. Waste can only be classified as suitable for recycling once the items have been decontaminated of any hazardous/dangerous components and the introduction of a decontamination step must be recognised as being an essential part of the recycling/recovery process. The Commission recognises that reducing the environmental impact of waste is an important issue and we propose that the waste hierarchy set out in the Swedish Waste Strategy could be adopted:

1. Prevention or reduction of waste production and particularly hazardous substances

2. Decontamination of hazardous and special wastes from the environmental cycle

3. Use of the waste as a resource in as efficient as manner as possible

4. Disposal in a safe manner

Eurits believes that classifying high temperature incinerators as completely recovery or completely disposal is not a satisfactory solution as it is clear that high temperature incinerators can fulfil both functions at the same time. Eurits suggests that the simplest method for defining if a waste treatment operation is recovery or disposal would be to relate it to the characteristics of the waste. For a hazardous waste incinerator typically you could define two types of waste: highly contaminated and high calorific value or highly contaminated but low calorific value. It is clear that to destroy the second type of waste (highly contaminated, low CV) requires fuel and

that, if possible, the use of waste solvents to replace fossil fuels is an environmentally preferable solution. In this case the destruction of the low CV waste should continue to be a disposal operation, but the combustion of the high CV waste should be classified as recovery.

Recycling should not be seen as being in competition with incineration as options for waste management: we believe that they are complementary and both have an important role in any sustainable waste management policy.

The recognition that municipal waste incineration can qualify for recovery status if a certain energy efficiency is attained is an important step in the right direction. It can equally be argued that hazardous waste incinerators are also energy efficient and could, in a similar way, qualify for energy recovery. Eurits does, however, recognise that in the case of hazardous waste incinerators, there is another important dimension to its work: the total destruction of the organic content of hazardous wastes and the irreversible transformation and removal of other hazardous components. Without this very significant role being recognised, there is a danger that this sector will be ignored in the new waste legislation. This can only lead to the risk that distortions of competition will continue.

Use of subsidiarity principle

Eurits opposes the use of the subsidiarity principle in waste legislation on the grounds that it will lead to further confusion and increased distortions. If the Commission is to achieve its goal of a proper market in waste and recycling, common standards have to be applied across the EU – these cannot be left to Member States to interpret as they see fit. Common standards must encompass emission limit values, definitions and taxes. Without this, the market will never be able to function effectively.

Repeal of Hazardous waste and incorporation into WFD

When responding to the consultation on integrating the Hazardous Waste Directive into the new Waste Framework Directive, Eurits emphasised that none of the stringent provisions of that Directive should be lost. However, this is precisely what has happened in the draft Waste Framework Directive which does not incorporate all the necessary protections, covering collection, transport, safety, protection of workers that were regarded as essential in the original Hazardous Waste Directive. It also further blurs the distinction between recovery and disposal. As a result, there is a very real danger that the special characteristics of hazardous waste will not be recognised and inappropriate treatment options will be used.

In the circumstances, we believe that the Hazardous Waste Directive should be updated and retained as a separate piece of legislation; this is, after all, the solution that has already been adopted for other special sectors as demonstrated, for example, by the WEEE Directive. It is deeply worrying that toxic waste, which is the most harmful to human health and the environment, is not recognised as requiring special treatment. At the very least, the provisions in the new Directive should be strengthened. As we have said elsewhere, hazardousness does not automatically diminish just because a waste goes to a particular facility. The hazardous characteristics of all wastes must continue to be recognised and dealt with appropriately.

The European Commission has already recognized (in Recital 4 of Directive 91/689/ECC) that hazardous waste requires a more rigorous and supplementary regulation to take into

consideration the particular nature of this type of waste. The new approach is not consistent with the approach taken previously in the Hazardous Waste Directive and it **must be replicated in the new legislation that is going to be the foundation of waste legislation for the next twenty to thirty years.**

Recovery vs Disposal

Eurits believes that the content of annexes I and II does not help to clarify the difference between the two concepts and that it is very difficult to improve them. One of the main reasons is the fact that the list is more than 25 years old and in meantime never revised or adapted at the evolution in the waste management sector. Eurits has the impression that currently this inflexible list will remain one of the basics elements of the EU waste legislation as long as no initiatives are taken at OECD level. A preferred solution would be to introduce the Basel and OECD regulations through separate legislation and allow the EU to implement an alternative up-to-date appraoch for use within the EU, flexible enough to follow the evolution of the waste management sector.

Specific comments on the proposed text:

We have a number of specific comments on the text. These are dealt with by Article number. There are some inconsistencies in the numbering of the English version of the text, on which we have not commented, as we assume that these have already been picked up.

Article Number	**Comment / Proposed amendment**
Chapter 1 – subject matter, scope and definitions	
Article 1: **Subject matter**	Introduce a new clause between 'for the prevention…' and 'for the recovery…' as follows: *"secondly, for the destruction and irreversible transformation and removal of hazardous components from hazardous and other specific wastes using BAT out of the environmental cycle*". Eurits believes that the approach being taken in Sweden recognises that hazardous components exist and need to be safely removed and destroyed from the environment using appropriate techniques. Only if these wastes are separately treated from other wastes can material recycling be done in a sustainable way. Add following wording: "…*and, thirdly, for the recovery of waste by means of re-use, material recycling and other recovery options, such as energy recovery*." "*and, fourthly, sound disposal for wastes that cannot be recovered or recycled."* The reason for the inclusion of final disposal is that this should be a Waste Framework Directive that covers all waste management options.
	First sentence, remove *"related to the use of resources"* The priority of the WFD should be to reduce the environmental impact of the generation and management of waste. Any reference to resource use should be dealt with separately.
	Second paragraph, add "*hazardousness*" to "*harmfulness*" to emphasise that some wastes are very dangerous and to introduce a link to the hazardous characteristics H1- H14.

Article 2: **Scope**	1(d) should be changed to "*waste waters, with the exception of waste in liquid waste, which are collected and discharged to a surface collection network or a waste-water treatment plant which is covered by a specific licence*". It is only where the waste water is collected under a specific licence or discharged to a waste-water treatment plant that any exclusion should apply.
Article 3: **Definitions**	Important definitions, including that of "recovery", are missing. Eurits recognises that the definitions of recovery and disposal are in articles 5 and 6, however for consistency and clarity we believe that the Commission should produce a complete set of definitions.
	3(b) The definition of producer should only include anyone whose activities produce waste. The activities of those who carry out "pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste" should be defined separately as an "operator". *3(b) "Producer means anyone whose activities produce waste"* *3 (new) "Operator: means anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;"*
	3(e) The definition of 'collector' should be included in this Article in addition to the existing definition of "collection". We suggest the following wording: *"collector" : means anyone whose activity is the transfer of a waste from the producer to the treatment installation*
	3(g): this definition should be strengthened to say the "actual conversion into products or components etc". It is our strong conviction that recovery, recycling and actual conversion are separate concepts and that there should be a distinction between energy recovery and material recovery. In this way, in addition to the decontamination service referred to in the introduction, our members would be recognised as providing a useful service of "disposal with energy recovery". The elements of the process would be: recovery/decontamination, resulting in residue waste streams that would then be sent for re-use or final disposal.

	Alternative: - add 'material' to recycling - add definition of energy recovery - What is the difference between recycling and material recovery???
Article 4: **List of wastes**	The current European Waste Catalogues already lay out such a list of wastes and in Eurits' view would comply with the requirements of this article. Why does a further list need to be established?
Chapter II: Recovery and Disposal	
Article 5: **Recovery**	We believe that this Article should be split into 2 new sections, covering: 1. Material recovery 2. Energy recovery This would develop the distinction between something that is capable of full re-use/ material recycling and a process in which energy can be recovered.
Article 5(1):	Eurits is concerned that the final decisions on whether an operation is classified as recovery will be delegated to the Member States [with operations listed under Annex II as a minimum]. In our opinion this could lead to large variations in definitions between Member States which will almost inevitably lead to court cases being referred to the ECJ – not least on the grounds of distortion of competition. This revision provides a good opportunity to add "interim operations" to the recovery list, eg sorting when more than 75 % of the waste is afterwards recycled. The Commission should list treatment techniques for which recovery criteria will be developed.
Article 5(2):	We believe that the provision should be made stronger and that "may" should be replaced by "shall". Also, if efficiency criteria are to be introduced then criteria should be developed for all waste management options which treat a similar waste eg if criteria are defined for dedicated waste incinerators then they should also be defined for co-incinerators.

Article 6(2):	Article 6.2 seems to exclude any possibility of an incinerator ever being classified as R1 even if energy efficiency criteria in Annex II are met because of the reference to the primary purpose of the operation.
Article 6(3):	This process should be used to define efficiency standards for interim operations. Eurits proposes that sorting facilities where less than 75% of the waste is subsequently recycled or facilities that blend waste without removing the hazardous constituents should be added to the Disposal list.
Article 7	Eurits supports this Article
Article 8	Eurits believes that this Article is seriously flawed because there is no definition of a "collector" (as opposed to collection). This means that brokers and dealers are not covered in the Directive, which could result in waste "disappearing". Hence the importance of adding "collector" to the definitions in Article 3.
Article 9	The English version of the proposed directive is acceptable, however the French version is less clear as it suggests that the waste management company could be required to bear some of the costs for treating the waste – this may be a linguistic issue. This article is slightly redundant as under normal circumstances the market [not the Member State] will dictate the apportioning of costs to the appropriate party. It may be the Commission's intention that this article applies when there has been an error or an incident, in which case this should be made more explicit.
Article 10	On the face of it, this article concerning the establishment of an "integrated and adequate network of disposal installations" is one of the most important articles in the proposed Directive. However, Eurits is concerned that this could become an administrative way of solving the "Nimby" syndrome. As a minimum, the Article should also include installations for the destruction and irreversible transformation of hazardous components.
Chapter III – End of Waste	
Article 11(1)	We believe that this Article should be much clearer and stronger. For the sake of clarity that the Article should begin "*For a waste to cease to be a waste it must…"*

	The Article should go on to stipulate that the waste must have: "*completed a re-use , recycling or material recovery operation"*
	Also, if energy recovery is to be allowed for certain installations and processes, the term recovery is potentially misleading in this context as there could equally be a disposal operation where energy is recovered. As indicated above, Article 6.2 seems to prevent any option for an incinerator to ever be R1 even if energy efficiency criteria are met.
	We believe that "reclassify" is too weak and that the appropriate word is "redefine". However, this raises the question as to who has the power to reclassify or redefine the waste.
	In addition, Eurits believes that three points should be added: "(c) the option is not used to circumvent existing waste legislation eg environmental criteria set out in the incineration and landfill directives" "(d) the option cannot be used to reclassify a waste (treated or not) for energy recovery" "(e) the wastes that can be redefined under certain circumstances as a secondary product should be on an approved list attached as an Annex. When a waste is not on this list then it can not be redefined." It is crucial that the process to set out the definitions for end of waste for the different waste streams fully recognises the potential risks of abuse of the systems. We believe that the Commission should include a framework to establish in more detail: • the list of waste streams that will be considered • the criteria for re-classification as products/secondary materials
	Finally, there needs to be a link to REACH as the Commission needs to clarify whether or not a waste ceasing to be a waste must meet the REACH requirements when it is put back on to the market.
Chapter 4 – Hazardous waste	
Article 12	We believe that the second paragraph is highly misleading as the holder of the waste should not be the deciding factor in assessing whether something is hazardous – it is the waste itself.

	The hazardous portion of household waste should always be considered hazardous – this should either be separately collected or sorted following collection. This article should apply to industrial waste as well as household waste.
	We believe that all substances that are mixed with hazardous waste should be regarded as hazardous and covered by this Directive and not just Animal By-Products – see European Waste Catalogue.
Article 13	We believe that the current hazardous waste list should be maintained and that the 'normal' periodic revision exercises are carried out.
Articles 14 and 15	Should they not appear earlier in the Directive in relation to Article 4?
Article 16	The title for this article should be changed to "mixing and blending" not "separation". It should be pointed out that there is no environmental benefit from mixing and blending. There should be a further Article on "separation" (or additional detail on the separation process) – see comment on paragraph 2 below.
Article 16(1)	Eurits does not agree with the proposed text of this article on the following grounds: - Both the Landfill Directive and the Waste Shipments Regulation prohibit the 'dilution of waste' - This issue has been discussed in several BREFs without reaching any conclusions – the new Waste Directive is the ideal framework in which to provide this much-needed clarification. Eurits proposes that one of the following definitions should be used: Option 1: *"The dilution of waste is the mixing (or blending) with other wastes or any other product, in order to change the characteristics and/or the concentration of certain contaminants which are present, so that the composition of the mixed waste complies with the criteria of a certain waste treatment method, which is not permitted for one of the constituent waste streams. It is clear that mixing and blending, not with the aim of dilution, is a regular and accepted waste management pre-treatment option."*

	Option 2 – based on the Flemish legislation: "*It is forbidden to mix a waste with one or more other materials with the aim to lower the concentration of one or more components which are present in the waste, in order to:* • *use a disposal method for the diluted waste which is not allowed for the non-diluted waste;* • *recover the diluted waste in the case the non-diluted waste should be disposed of;* • *re-use the diluted waste as or transform in to a secondary raw material, if the non-diluted waste is not suitable for this purpose.*" Option 3 – based on the Swiss Technical Ordinance on Waste (Technische Verordnung über Abfälle), article 10: *"Holders of waste shall not mix it with other waste nor with additives if this is primarily intended to reduce the pollutant level of the waste by dilution, in order to meet regulations concerning supply, recovering or depositing."* POPs example: it is forbidden to mix/blend/dilute a POP containing waste above the treatment threshold with a non-POP containing waste in order to lower the POP content of the diluted waste to below the threshold and to avoid the requirement to destroy or irreversibly transform the PO containing waste.
Article 16(2)	This Article is not sufficiently clear. The BREF on waste treatment only described mixing in detail and not separation and so further explanation is required in the WFD.
Articles 17 and 18	Eurits supports these articles.
Chapter V – permits or registration	
Articles 19 to 24	Eurits believes that there should be no exemptions from the permitting process. Permits are a guarantee for a transparent and level playing field; having no permits means no transparency and creates the possibility of low-quality solutions being adopted. The acquisition of a permit is not a problem in the timing of a project or financing of an investment when the procedure is adapted to the environmental risks of a waste treatment solution. Europe needs guidelines for efficient permitting more than exemptions. Specifically, Article 24 defines that exemptions from the need for a permit for a treatment plant shall, in the case of hazardous waste, only be possible if the waste is going to be recovery. Our members have pointed out the illogicality of this position as the same standard of treatment should

	be used when dealing with hazardous waste. This Article could again lead to lower environmental standards and a reduction in control of hazardous waste.
Chapter VI – waste management	
Articles 26 to 31	No specific comments
Chapter VII – inspections and records (*needs renumbering***)**	
Articles 32 and 33	Eurits has long argued that input/ouput balances should be produced for each waste treatment operation so that the waste can be fully traced. This is especially important in the case of interim operations but is vital in ensuring that all hazardous components are dealt with properly and are not mixed and sent to a low-quality process. The record-keeping processes should be strengthened. All of the record-keeping requirements should be accompanied by an obligation on Member States to perform a greater number of inspections and checks on the record-keeping.
Chapter 8 – final provisions	
Articles 34-40	No specific comments
ANNEX II – Recovery Operations	
Separation of processes	As argued above, Eurits believes that there should be two definitions of "recovery": 1. material recovery 2. energy recovery This Annex should be split between these two processes
R1 energy Formula	The current approach is so limited in scope that it does not solve the real problems of distorted competition between treatment techniques - the formula is currently limited to municipal waste,. As we have argued above, equal treatment of facilities should be specifically recognised in this Directive. There are examples of both incinerators and co-incinerators where low and high energy performance exists.

	We believe that the energy efficiency should be 0.5 for all installations, given that 0.6-0.65 is outside of the range agreed in the Waste Incineration BREF. 0.5 is achievable with the application of BAT and as it is 2/3 of the BAT range still presents a challenge to plant operators.

Eurits
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