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A PROPOSAL TO CLARIFY THE APPLICATION OF THE EU WASTE DEFINITION WITH REGARD TO RECOVERED PAPER

A PROPOSAL FOR A CLARIFICATION

Scope

The purpose of the clarification is to assist the determination when waste ceases to be waste, and in particular, when used paper and paper products collected for material recycling cease to be waste and become secondary raw material. The aim of the proposal is thus not to change the existing definition of waste but to clarify its application when it comes to extraction of secondary raw materials, and recovered paper in particular.

Objective of the clarification

Community policy on the environment shall aim at a high level of protection of human health and environment. When it comes to paper, one tool to achieve this is to promote the higher levels of recycling. The European paper industry and used paper collectors and recovered paper merchants, through the European Declaration on Paper Recovery, have committed themselves to increasing the recycling rate of paper and board. The European Union and the industry have thus the joint aim of improving paper recycling and consequently, unnecessary burdens paper recycling may encounter should be eliminated.

Form of the clarification

Ultimately, it is up to the Commission to decide on an appropriate form of the clarification. It seems, however, possible to make the clarification without amending the body of Directive 75/442/EEC (as amended by 96/350/EEC). This could be done, for example, by introducing a new entry in Annex II B of the Directive titled “Recovery operations”.

A new and general entry and a specific addendum concerning recovered paper (or any other material for which criteria are separately agreed upon) would build on the existing provisions and concepts of the Directive (Art 3.1(b)(i) in particular). It would not create a limitation/derogation to the aims of the Directive but be in line with them. Finally, it would set a practice other materials could follow in principle, but would not lead to an automatic solution they could exploit.

The wording of a new entry could, for example, be the following:

R14 – Waste recovery operations mentioned in entries R1 to R13 or any other process with a view to extracting secondary raw materials. Specific requirements for each type of secondary raw materials are listed in an addendum.

Requirements for recovered paper to be considered as secondary raw material

The addendum specifying the criteria recovered paper must meet in order to be considered as secondary raw material could be the following:

Used paper collected for material recycling loses its waste character to become secondary raw material from the moment all the following four criteria are fulfilled:

1. *it is classified according to the qualities established in the European Standard EN 643 "European list of standard grades of recovered paper and board";*
2. *the final destination is material recycling, e.g. a paper mill;*
3. *commercial contracts guarantee material recycling as a final destination;*
4. *the level of impurities (non-paper components according to the EN 643) does not exceed 5%.*

In addition to the specific criteria set above, the non-hazardous character of recovered paper is to be taken into account too: According to the European Waste Catalogue (2001/118/EC) paper and cardboard packaging (15 01 01)[1] as well as separately collected paper and cardboard (20 01 01) from municipal wastes (household waste and similar commercial, industrial and institutional waste) including separately collected fractions are considered as non-hazardous.

Conformity assessment procedure

In order to invoke the clarification and to secure the necessary transparency, economic operators shall keep relevant documents relating to the conformity assessment available for inspection by the competent authority for a period of five years after selling/utilisation of the recovered paper in question. The documentation to be presented upon request by the competent authority should be sufficient to demonstrate the fulfilment of the four criteria described under "requirements for recovered paper to be considered as secondary raw materials".

Used paper collectors[2] shall be prepared to document the source and amount of used paper they collect, as well as the nature/composition (according to the recovered paper grades established in EN 643) and destiny of recovered paper they process.

Recovered paper merchants/traders shall be prepared to document the source, amount and composition (according to the recovered paper grades established in the EN 643) of recovered paper they trade.

Users of recovered paper (e.g. paper mills[3]) shall be prepared to document the source, amount and composition (according to the recovered paper grades established in EN 643) of recovered paper they utilise for production of new products.

Companies with a quality or environment management system (ISO, EMAS, or equivalent) covering the issues mentioned above shall be presumed to comply with the above requirements related to the conformity assessment.

The documenting of the source, amount, composition and destiny of used/recovered paper will only relate to the bulk of used/recovered paper and not to each item separately.

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[1] Paper and board packaging must also comply with the requirements set in the Packaging and Packaging Waste Directive (94/62/EC) when it comes to concentration levels of heavy metals present in packaging (Article 11).

[2] Economic operators responsible for collection, sorting and classification of used paper are officially certified/recognised.

[3] Paper mills are subject to IPPC requirements, which means that notwithstanding the raw material, production processes must meet certain criteria.

EXPLANATORY MEMORANDUM

Interests of the industry and authorities are congruent – less used paper to landfills through improved recycling

- With a high level of environmental protection as a goal, the Community environment policies should promote paper recycling and eliminate unnecessary burdens it may confront.
- The European Declaration on Paper Recovery (November 2000) signed jointly by the European paper industries and used paper collectors and recovered paper merchants sets a target rate of 56% to be achieved by 2005 for paper recycling in Europe. This very demanding target shows the commitment of the industry to paper recycling.
- By establishing a demand for recovered paper the paper industry creates an incentive for used paper collectors and recovered paper merchants to improve and increase their collection and processing activities.
- The paper industry wants to have the best possible raw material and know precisely the content; so it is in the interest of the industry that the quality standards are followed.

The need for a clarification of the waste definition in the case of recovered paper is well established

Since the adoption of the current waste definition, there have been numerous requests on the Commission to progress the waste/non-waste distinction, including statements by the Council[i] [ii], the European Parliament[iii], all stakeholders in the Recycling Chain[iv], and the industry[v] [vi]. In addition, Member States have on several occasions sought guidance and clarification on when waste ceases to be so. The Commission itself has also recognised the need for a better waste/non-waste distinction on a number of occasions[vii].

The EU Commission and the Technical Adaptation Committee on Waste (TAC) have been working since September 1998 in order to clarify the EU waste definition and more specifically aim towards a better waste/non-waste distinction. During these discussions, the Commission and the TAC members have favoured a case-by-case approach, as a global solution covering all types of waste was considered impossible. In December 1999 the Commission/TAC decided to focus on two well-defined and relevant cases: waste paper and metal scrap.

Examples of the problems faced by economic operators due to the existing and unclear situation

It is broadly recognised that paper and board become waste when they stop executing their original functions. However, it is far from clear how long material once categorised as waste should remain under that status - especially when it is used as a raw material. It is quite obvious that there is no environmental justification to categorise used paper and board – when recovered as proposed above and having recycling as a destination - as waste.

The Directive 75/442/EC clearly refers to secondary raw materials, which are extracted by recovery operations (Article 3,1 (b) (i)). However, without clear definitions on when waste ceases to be waste, competent authorities apply the precautionary principle and consider all the listed materials as waste in spite of the introductory note of the EU waste list, which states that the materials listed are not always waste. Furthermore, generally all the establishments carrying out recovery operations as defined above in the proposal are considered as subjects to waste permit requirements even though the Member States have a possibility to exempt establishments or undertakings that carry out waste recovery from the permit requirements (Article 11).

Currently, interpretations of the Directive differ from country to country and area to area. Below, some examples of the additional and unjustified requirements causing administrative and economic consequences are listed:

- Paper mills have, for example, been requested:
  - to be registered as waste treatment installations, subject to waste permit requirements,
  - to give a specific guarantee that a certain amount of waste will be recycled (furthermore, if considered as a waste treatment installation, a plant would have a responsibility to receive waste),
  - to give a specific mill-level environment report annually,
  - to make a deposit to cover possible damages new investments could cause (because they are dealing with waste, not raw material),
  - to limit the delivery times (to allow trucks to deliver recovered paper between 07.00 – 19.00 only),
  - to fully fence the mill area with a strictly specified fence,
  - to have a sign at the entrance of the mill saying that the mill is dealing with waste.
- Used paper collectors and recovered paper merchants have, for example, been:
  - required to be licensed as waste operators, and based on possibilities given by the national waste management plans, collectors/merchants have an obligation to report commercial information to the authorities, which creates a competitive advantage for publicly owned waste management companies.
- In transportation, for example:
  - different value-added tax (VAT) levels for waste and non-waste have been introduced,
  - in addition to the problems related to intra-EU transportation, a lot of problems with respect to extra-EU trade has occurred (because regulated as waste, recovered paper is submitted to Regulation 259/93 controls on transfrontier shipments and therefore submitted to green (waste) or even amber/red/Article 15 controls or even banned as per requested by some non-OECD countries),
  - furthermore, non-OECD countries often use these controls to protect their markets (recovered paper in US, Canada and Australia, for example, is considered as a product).
- Products suffer of bad reputation as they are closely connected to waste[viii].

Finally, and perhaps most importantly, the existing unclear situation creates uncertainty with regard to future interpretations of the waste definition. Because of the long-term planning and investments paper recycling requires, any unnecessary uncertainty, in turn, does not specifically encourage companies to make these investments.

There are a number of factors that support a clarification when recovered paper should not be considered as waste any longer

- There are no environmental reasons and/or justifications to categorise recovered paper as waste.
- Recovered paper lacks any hazardous characteristics and can be assimilated to other raw materials used for the manufacturing of paper.
- The proposed clarification would not reduce environmental protection (paper mills are subject to IPPC requirements, and collection and sorting is carried out by recognised/certified facilities/operators). As paper recycling is generally considered environmentally beneficial the contrary would be the case.
- The waste status treats recovered paper in an inferior way compared to other raw materials used in papermaking without any technical or environmental justification.
- There is a European Standard EN 643 “European list of standard grades of recovered paper and board” that clearly defines the quality, composition and purity of recovered paper.

- Treatment operations (cleaning, sorting, baling and classification) provide added value to the material (from 18 to 50 Euro/ton) and determine its destiny to material recycling.
- Paper mills control the quality of the recovered paper that enters the mill.
- Recovered paper constitutes 47% of the total fibre raw material used by the European paper industry. Some paper grades are almost solely based on recovered paper (about 90% of the raw materials used in corrugated material production is recovered paper).
- The recovered paper market is thus well established and regular and is of world-wide importance.

More specifically, given the objective of promoting paper recycling, a clarification at Community level is needed in order to:

- Maintain the image of the sector and the products it produces.
- Ensure a proper and equal application of the EU definition by all Member States thus creating a level playing field for the industry[ix].
- Allow proper functioning of the Internal Market.
- Avoid unnecessary burdens on the EU industry that may hinder its world-wide competitiveness and thus capacity to recycle paper (recovered paper in US, Canada and Australia, for example, is not considered as waste).
- Avoid uncertainty with regard to possible future legislative development in the Member States.
- Optimise monitoring activities and bring legal certainty.

CONCLUSIONS

A clarification on when used paper ceases to be waste and becomes secondary raw material is feasible within the current Community legal definition[4], i.e. without amending the definition of waste as such. The clarification is necessary in order to avoid legal uncertainty, to ensure a level playing field and to safeguard the competitiveness of paper recycling and the EU paper industry in general. This clarification would promote paper recycling without reducing the level of environmental protection. On the contrary, higher levels of recycling would be beneficial for the environment.

[4] The Directive clearly refers to 'secondary raw materials', which are extracted by recovery operations (Art 3,1(b) (i)). But as long as clear criteria for secondary raw material are missing, this will remain a dead letter.

[i] Council Resolution of 24 February 1997 on a Community strategy for waste management, indent 9 recognises *the particular need to distinguish more clearly between waste and non-waste goods*.

[ii] In the common position of the Council with a view to the adoption of a Decision of the European Parliament and of the Council laying down the Sixth Environmental Action Programme the Council calls on the Commission to *developing or revising the legislation on wastes, including inter alia … clarification of the distinction between waste and non-waste…*

[iii] The European Parliament has acknowledged the existence of the problem by commissioning a study on the issue by the Institute for Prospective Technological Studies (IPTS) which recommended; *clarify the distinction between waste and secondary raw material.*

[iv] The Recycling Forum in its final report acknowledged that *the waste definition as it is creates interpretation problems* and recommended *organizing a more focused discussion on the clarification of when in the recycling chain waste ceases to be waste and to undertake this on a case by case basis*. *In this context, technical specifications and standards have been suggested as useful tools.*

[v] UNICE paper on Optimal Waste management (July 1998) calls for clarification of the distinction between waste and non-waste. More recently, UNICE in its report on the Conference "Towards Sustainable Resource and Waste Management" has stated that *it is still unclear when a material should be considered as waste and at which point waste ceases to be waste*. In January 2002 UNICE has sent its proposal for an amendment to the Council Directive 91/156/EC amending the Directive 75/442/EC on waste to the Commission.

[vi] The issue specifically related to paper was taken up at the high-level Forest-Based Industries Forum meeting on 6 September 2000 in Strasbourg organised by the European Commission.

[vii] The Commission Communication on the Competitiveness of the Recycling Industry (July 1997) noted *major differences between member States with regard to the implementation of the EC definitions and classifications of waste.*
In addition, the Commission Communication on the State of the Competitiveness of the EU forest-based and Related Industries (October 1999) states that *the waste management legislation is a particular challenge to a sector that has been active in recovering wood and paper waste to produce either secondary raw material (fiber) or energy from a renewable source.*

[viii] The Commission Communication on the State of the Competitiveness of the EU forest-based and Related Industries (October 1999) considered bad image as one of the major disadvantages of the forest-based and related industries.

[ix] The Directive 75/442/EEC gives possibilities to the Member States for exemptions, as noted also in the working paper from the GD ENV Waste Management Unit from 19 September 2000. That, however, would not lead to a European solution safeguarding the demands of the Internal Market.
Implicitly the Commission has recognised this problem as well when pointing out the deficiencies in implementing the European waste legislation. In the Commission Communication from 27 February 1997 on the application of Directives 75/439, 75/442, 78/319 and 86/278 dealing with waste management, the Commission noted that transposition of Directive 75/442, particularly with regard to the definition of waste, had taken place late, incompletely or not at all in some Member States and that some Member States were not applying the Directive correctly.
In the Commission report on the transposition of Community waste legislation between 1995 and 1997 from 10 January 2000, the commission stated that progress made in the transposition of the Directives 75/442, 91/689 and 75/439 was unsatisfactory. The Commission recognised that a great deal of work remained to be done in order to harmonise waste definition to enable efficient waste management in accordance with the priorities that have been laid down.
In the Commission Communication on the internal market and the environment from 12 August 1999, the Commission also complained that the use of varying definitions of waste by the Member States was hindering the harmonised application of the Community legislation. The Commission particularly regretted the lack of a clear definition of waste for recovery.