



CONSTRUCTION FORUM

POSITION OF THE OF THE UEAPME CONSTRUCTION FORUM¹

regarding the

Proposal for a Directive of the European Parliament and of the Council on Waste COD 2005/0281

INTRODUCTION

The Construction sector and especially the SMEs, have a strong potential for growth and job creation. There is a need to simplify as much as possible the conditions in which small builders operate and to create legal certainty, in order to encourage the desire to develop and recruit.

This is the reason why the UEAPME Construction Forum particularly welcomed last October's Communication from the European Commission (COM(2005)535final) stating the need to set up a strategy aiming at the simplification of EU regulation, citing as a priority the construction sector and waste. It is a matter of fact the in the field of waste, current regulation, as illustrated by numerous court cases, is particularly difficult to apply for SMEs and craftsmen.

The Commission draft revised directive aims at the clarification of the definitions of the key elements and attempts to encourage re-use, recycling and recovery of waste.

In the construction sector the project of creating a "European recycling society" results and will do so increasingly in the future, in important difficulties, especially for the small and medium sized enterprises.

It needs to be remembered, especially regarding demolition works, that due to space restrictions it is often impossible to segregate waste on site. Furthermore builders are often faced with a lack of appropriate infrastructure and more generally well established recovery channels for construction waste near by.

¹ The UEAPME Construction Forum is a specialised discussion platform representing the interests about 1,000,000 construction enterprises across the European Union and beyond. The overwhelming majority of these enterprises are small or medium-sized. It is formed by the following associations: Comité européen des équipements techniques du bâtiment (Génie Climatique International - Union internationale de la Couverture et de la Plomberie), European Builders Confederation, European Metal Union, European Federation of Chimney Sweeps, European window, curtain wall and door manufacturers, European Federation of Timber Construction, European Tile Fixers' Association, International Association of Building Service Contractors, International Association of Roofing Contractors, Union Internationale des Entrepreneurs de Peinture

The UEAPME Construction Forum believes that the waste hierarchy should be based on a 3-level system prioritised by type of waste management (1 – Prevention; 2 – Recovery; 3 – Disposal). This system should again integrate the principle of giving the priority to prevention on the one hand and not place one type of specific operation above the other on the other hand. Recovery of building waste entails important difficulties, both technical as well as financial in nature, for the Craftsmen and SMEs of the construction sector. Similarly it is essential to specify that waste be subjected to recovery procedures “as much as possible” rather than in absolutely every case.

In addition, **the UEAPME Construction Forum considers that any product material or substance, that can be re-used without further treatment, should be removed from the scope of this directive.** For such products, materials or substances there is no justification to submit them to the requirements of the directive. The administrative procedures contained therein may actually lead to a result that is in opposition with the general aim of the directive and discourage rather than encourage re-use.

The UEAPME Construction Forum is also of the opinion that it is essential to make a distinction between such undertakings or professionals, who deal with large amounts of waste on regular basis and such undertakings or professional, who as a consequence of their activity are required to transport certain amounts of waste for disposal or recovery. For example, a builder that undertakes small works on a private dwelling may very well be called upon to remove certain debris. It would be disproportionate if a situation would arise where such a builder would require a permit under the waste framework directive. This would be another additional burden imposed on the small enterprises; something, which everyone agrees should be avoided.

Furthermore, the UEAPME Construction Forum supports the Commissions proposal (article 10) demanding the Member States ensure the presence of an **adequate network of disposal facilities but is of the opinion that these requirements should also apply to recovery installations.** It is indeed imperative that sufficient number of landfill sites, recycling installations and others, be available within a reasonable distance, which currently most definitely is not the case in certain Member States.

Finally **the UEAPME Construction Forum would like the Commission to ensure that this directive and in particular the hazardous wastes list be easily readable by SMEs and readily accessible.** The Commission should support programmes aiming at helping users and, in particular SMEs, to implement the requirements of this directive.

The following amendments and comments reflect the UEAPME Construction Forum’s opinion on the Commission proposal and on the report (draft version 20/06/2006) by Mrs. Caroline Jackson MEP (Rapporteur for the Committee on the Environment, Public Health and Food Safety) on this same Proposal for a Directive of the European Parliament and of the Council on Waste.

AMENDMENTS AND SPECIFIC COMMENTS

ARTICLE 1

Article 1, paragraph 2

Commission Proposal

For the same purposes, it also makes provision whereby the Member States are to take measures, as a matter of priority, 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.**

UEAPME Construction Forum Amendment n°1

*For the same purpose, it also makes provisions whereby the Member States are to take measures, as a matter of priority, for the prevention or reduction of waste and its harmfulness and, secondly, for the recovery of waste and, **thirdly, for the disposal of waste.***

Justification

The UEAPME Construction Forum believes that the waste hierarchy should be based on a 3-level system prioritised by type of waste management (1 – Prevention; 2 – Recovery; 3 – Disposal). This system should again integrate the principle of giving the priority to prevention on the one hand and not place one type of specific operation above the other on the other hand. It needs to be understood that recovery of construction waste entails important difficulties, technical (difficulty to segregate waste on site, lack of appropriate and established infrastructure near by, ...) as well as financial in nature, for the Craftsmen and SMEs of the construction sector.

Article 1, paragraph 2 a (new)

Commission Proposal

Amendment n° 5 proposed by C. Jackson

2a. When life-cycle assessments and cost benefit analyses indicate clearly that an alternative treatment option shows a better record for a specific waste stream, Member States may depart from the priorities established in paragraph 2. If necessary, the Commission will draw up guidelines for the application of such assessments and analyses.

Justification

The UEAPME Construction Forum supports this amendment submitted by the Rapporteur and which allows for a certain flexibility at Member State level regarding the application of prioritisation of the types of waste management systems.

ARTICLE 2

Article 2, point 5 (new)

Commission Proposal

UEAPME Construction Forum Amendment n°2

5. It shall not cover such products, materials or substance, which may be re-used.

Justification

The UEAPME Construction Forum is of the opinion that the scope of this directive should exclude such materials, products or substances, which may be utilised under the re-use definition. For such products, materials or substances there is no justification to submit them to the requirements of the directive. The administrative procedures contained in Article 11 may actually lead to a result that is in opposition with the general aim of the directive and discourage rather than encourage re-use.

Article 2, point 6 (new)

Commission Proposal

UEAPME Construction Forum Amendment n°3

6. Nor shall it cover such products, materials or substances, which are 'by-products' as defined in Article 3-i c (Amendment 12 Mrs Jackson) and constitute a primary resource usable without further treatment.

Justification

The UEAPME Construction Forum believes that it is not useful to impose the requirements contained in the proposal directive for such by-products, as defined under the Mrs. Jackson's amendment 12 in Article 3 (i c) and which constitute a primary resource.

ARTICLE 3

Article 3, point (i a) (new)

Amendment n° 10 proposed by C. Jackson

UEAPME Construction Forum Amendment n°4

(ia) 'recovery' means any operation, other than **cleaning processes**, that waste undergoes that results in it serving a useful purpose in replacing, whether in the plant or in the wider economy, other resources which would have been used to fulfil that function or in it being prepared for such use, hereinafter referred to as "recovery operations".

(ia) 'recovery' means any operation, other than **'re-use'**, that waste undergoes that results in it serving a useful purpose in replacing, whether in the plant or in the wider economy, other resources which would have been used to fulfil that function or in it being prepared for such use, hereinafter referred to as "recovery operations".

It shall cover the operations listed in Annex II. All recovery operations shall give a high priority to the protection of human health and of the environment.

It shall cover the operations listed in Annex II. All recovery operations shall give a high priority to the protection of human health and of the environment.

Justification

Considering the importance given to the word within the directive proposal a definition of recovery is essential. Nevertheless, the UEAPME Construction Forum is of the opinion that for the benefit of coherence and clarity the exclusion of 're-use' from this definition is essential.

Article 3, point (i b) (new)

Amendment n° 11 proposed by C. Jackson

(ib) 'disposal' means any operation that does not fulfil the conditions of recovery and at least the operations listed in Annex I. All disposal operations shall give a high priority to the protection of human health and of the environment.

UEAPME Construction Forum Amendment n°5

(ib) 'disposal' means any operation that does not fulfil the conditions of recovery **or re-use** and at least the operations listed in Annex I. All disposal operations shall give a high priority to the protection of human health and of the environment.

Justification

Considering the importance given to the word in the directive proposal a definition is essential. The UEAPME Construction Forum is of the opinion that the definition proposed by Mrs. Jackson needs to be supplemented to ensure coherence with Article 2, point 5 and Article 3 (i a).

Article 3, point (i c) (new)

Commission Proposal

Amendment n° 12 proposed by C. Jackson

(ic) 'by-products' means products, materials and substances resulting from a production process, the primary aim of which may not be the production of that item, and which the holder does not wish to discard but wishes at the time of production to use or sell for use; such use must be certain and the item must not require any further processing before such use;

Justification

The UEAPME Construction Forum is very much favourable to the definition added by the Mrs. Jackson's amendment. In the construction sector the fabrication process will very often entail the production of by-products, which may in them selves be a resource rather than waste. Therefore the inclusion of a definition of by-products and elements, which encourage the sensible utilisation of such by-products, which are actually primary resources, should be made.

ARTICLE 4

Article 4

Commission Proposal

List of wastes

A list of wastes shall be established by the Commission, in accordance with the procedure referred to in Article 36(2). The list shall include waste to be regarded as hazardous pursuant to Articles 12 to 15, taking into account the origin and composition of the waste and, where necessary, limit values of concentration.

UEAPME Construction Forum Amendment n°6

List of wastes

A list of wastes shall be established by the Commission, in accordance with the procedure referred to in Article 36(2). The list shall include waste to be regarded as hazardous pursuant to Articles 12 to 15, taking into account the origin and composition of the waste and, where necessary, limit values of concentration.

Measures shall be taken by the Commission to ensure that the list is easily understandable and readily accessible by SMEs.

Justification

The UEAPME Construction Forum has strong concerns about the use of the wastes list. In practice this constitutes a long document, which is sometimes excessively technical in nature and sometimes rather vague, resulting in great difficulties with regard to its practical utilisation by SMEs. Therefore the requirement for a certain user-friendliness is essential for the practical application of this article.

ARTICLE 5

Article 5 paragraph 1

Commission Proposal

1. Member States shall take the necessary measures to ensure that all waste undergoes operations ***that result in it serving a useful purpose in replacing, whether in the plant or in the wider economy, other resources which would have been used to fulfil that function, or in it being prepared for such a use, hereinafter “recovery operations”***. They shall regard as recovery operations at least the operations listed in Annex II.

Amendment n° 16 proposed by C. Jackson

1. Member States shall take the necessary measures, ***consistent with the objectives stated in Article 1***, to ensure that, ***wherever practicable***, all waste undergoes ***recovery operations***. ***These*** shall ***include*** at least the operations listed in Annex II. ***For the avoidance of doubt, operations shall fall within Annex II despite producing some material, which thereafter undergoes disposal operations, if their primary purpose is a recovery operation falling within Annex II.***

Justification

The UEAPME Construction Forum supports Mrs. Jackson’s amendment as it provides a more realistic approach. The notion of “all waste” in this context is technically not economically feasible, nor practical.

ARTICLE 7

Article 7

Commission Proposal

Member States shall ensure that the recovery or disposal of waste is carried out **as follows**:

- (a) **without endangering** human health;
- (b) **without using processes or methods which could harm** the environment;
- (c) **without risk to** water, air, soil and plants **and animals**;
- (d) without causing a nuisance through noise or odours;
- (e) **without** adversely affecting the countryside or places of special interest.

Amendment n° 20 proposed by C. Jackson

Member States shall **take measures to** ensure that the recovery and disposal of waste is carried out **by means of processes or methods ensuring a high level of protection for**:

- (a) human health,
- (b) the environment,
- (c) water, air, soil and plants,

and without causing a nuisance through noise or odours **or** adversely affecting the countryside or places of special interest.

Justification

The UEAPME Construction Forum supports Mrs. Jackson's amendment for the same reasons given in Mrs. Jackson's justification:

"Strictly speaking, "without risk" means with zero risk and that, sadly, does not exist. Existing Community case law recognises this: in Commission v. Ireland (2005) the Court held that, in relation to Article 4 of the existing directive "it is for the Community and the Member States to prevent, reduce and, insofar as is possible, eliminate from the outset the source of pollution or nuisance by adopting measures of such a nature as to eliminate recognised risks". This is a lot more carefully worded than the Commission's text in this proposal. "

ARTICLE 8

Article 8

Commission Proposal

Responsibility

Member States shall ensure that any holder of waste carries out its recovery or disposal himself or has its recovery or disposal handled by an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector.

UEAPME Construction Forum Amendment n°7

Responsibility

Member States shall ensure that any holder of waste **and/or the manufacturers, importers or distributors of products generating waste carries out its recovery or disposal** himself or has its recovery or disposal handled by an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector.

Justification

In order to give priority to the prevention of waste it is important to introduce in this article widened responsibility of producers, including all the actors involved in the life cycle of products that generate waste. Only a true policy of sharing the responsibility along all the actors of the product life cycle, may achieve the aim of conserving natural resources and preventing the production of waste.

ARTICLE 9

Article 9

Commission Proposal

Member States shall ensure that the costs entailed in the recovery or disposal of waste are allocated, as appropriate, between the holder, previous holders and the producer.

UEAPME Construction Forum Amendment n°8

In accordance with the “polluter pays” principle, the Member States shall ensure that the costs of waste management, be allocated between the holder of the waste and/or the manufacturer, importer or distributor of the products that generate waste.

Justification

In terms of cost it is important to consider the whole waste management cycle (collection, transport, recovery or disposal) rather than just the costs of recovery and disposal. In addition it is, yet again, to refer to the principle of widened responsibility of the producer in order to include the actors that place the products that generate waste on the market.

The UEAPME Construction Forum believes that, although the principal states that the responsibility along the chain of ‘holders’ of the waste is shared, this must not, although it might, automatically result in costs for every single holder. For Craftsmen and SMEs of the construction sector it very important to distinguish between the client who arranges for the works to be undertaken and the entrepreneur, who simply carries out the work. Although the entrepreneur may remove the waste this should be considered a service, which ensures proper disposal of the waste, but the costs of which should be bourn by the client.

ARTICLE 10

Article 10

Commission Proposal

Network of disposal and recovery installations
Each Member State shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available techniques within the meaning of Article 2(11) of Directive 96/61/EC, hereinafter “best available techniques”.

The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

UEAPME Construction Forum Amendment n°9

Network of disposal and ***recovery installations***
Each Member State shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal ***and recovery*** installations, taking account of the best available techniques within the meaning of Article 2(11) of Directive 96/61/EC, hereinafter “best available techniques”.

The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal ***and recovery*** and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

The network shall enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

The network shall enable waste to be **disposed of or recovered** in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

Justification

*The UEAPME Construction Forum is of the opinion that for the practical application of this directive it is essential that sufficient infrastructure, may it be disposal **or recovery sites**, be available to the professional and the public alike. It has been brought to our attention that in some countries the infrastructure is severely inadequate (For ex. UK, where there are only 13 hazardous waste landfill sites, none of which are located in Wales or Scotland). It is therefore essential to ensure that adequate facilities are present.*

ARTICLE 11

Article 11, paragraph 1

Commission Proposal

1. With a view to determining whether it is appropriate to deem certain waste to have ceased being waste, to have completed a **re-use**, recycling or recovery operation, and to reclassify that waste as secondary products materials or substances, the Commission shall assess whether the following conditions are met:

- (a) reclassification would not lead to overall negative environmental impacts;
- (b) a market exists for such a secondary product, material or substance.

**UEAPME Construction Forum
Amendment n° 10**

1. With a view to determining whether it is appropriate to deem certain waste to have ceased being waste, to have completed a completed a recycling or recovery operation and to reclassify that waste as secondary products materials or substances, the Commission shall assess whether the following conditions are met:

- (a) reclassification would not lead to overall negative environmental impacts;
- (b) a market exists **or would exist** for such a secondary product, material or substance.

Justification

The term 're-use' has been removed for the purpose of coherence with regard to the amendment in Article 2 point 5.

As for point (b), it seems essential to not restrict such a procedure to existing markets but rather allow for the potential yielded by the creation of new markets.

ARTICLE 13

Article 13

Commission Proposal

The Commission shall, in accordance with the procedure referred to in Article 36(2), establish a list of hazardous wastes, hereinafter “the list”.

The list shall take into account the origin and composition of the waste and, where necessary, limit values of concentration.

UEAPME Construction Forum Amendment n° 11

The Commission shall, in accordance with the procedure referred to in Article 36(2), establish a list of hazardous wastes, hereinafter “the list”.

The list shall take into account the origin and composition of the waste and, where necessary, limit values of concentration.

Measures shall be taken by the Commission to ensure that the list is easily understandable and readily accessible by SMEs.

Justification

The UEAPME Construction Forum has strong concerns about the use of the wastes list. In practice this constitutes a long document, which is sometimes excessively technical in nature and sometimes rather vague, resulting in great difficulties with regard to its practical utilisation by SMEs. Therefore the requirement for a certain user-friendliness is essential for the practical application of this article.

ARTICLE 19

Article 19, point 1

Commission Proposal

1. Member States shall require any establishment or undertaking intending to carry out disposal or recovery operations to obtain a permit from the national competent authorities. Such permits shall specify the following:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical requirements relevant to the site concerned;
- (c) the security precautions to be taken;
- (d) the method to be used for each type of operation.

Permits may specify additional conditions and obligations.

UEAPME Construction Forum Amendment n° 12

1. Member States shall require any establishment or undertaking intending to carry out disposal or recovery operations to obtain a permit from the national competent authorities. Such permits shall specify the following:

- (a) the types and quantities of waste that may be treated;
- (b) for each type of operation permitted, the technical requirements relevant to the site concerned;
- (c) the security precautions to be taken;
- (d) the method to be used for each type of operation.

Permits may specify additional conditions and obligations.

The Member States are not required to apply these dispositions to enterprises that manage waste only occasionally if the quantities of waste handled are below a fixed limit.

Justification

The UEAPME Construction Forum is also of the opinion that it is essential to make a distinction between such undertakings or professionals, who deal with large amounts of waste on regular basis and such undertakings or professional, who as a consequence of their activity are required to transport certain amounts of waste for disposal or recovery. For example a builder that undertakes small works on a private dwelling may very well be called upon to remove certain debris. It would be disproportionate if a situation would arise where such a builder would require a permit under the waste framework directive. This would be another additional burden imposed on the small enterprises; something, which everyone agrees should be avoided.

ARTICLE 25

Article 25, point 1

Commission Proposal

1. Member States shall ensure that the national competent authority keeps a register of establishments or undertakings which collect or transport waste on a professional basis or which, as dealers or brokers, arrange for the treatment of waste on behalf of others, and which are not subject to a permit requirement pursuant to Article 19(1). Those establishments or undertakings shall comply with certain minimum standards.

UEAPME Construction Forum Amendment n°13

1. Member States shall ensure that the national competent authority keeps a register of establishments or undertakings which collect or transport of waste on a professional basis or which, as dealers or brokers, arrange for the treatment of waste on behalf of others, and which are not subject to a permit requirement pursuant to Article 19(1).

Those establishments or undertakings shall comply with certain minimum standards.

The Member States are not required to apply these dispositions to enterprises that manage waste only occasionally if the quantities of waste handled are below than a fixed limit.

Justification

The UEAPME Construction Forum is also of the opinion that it is essential to make a distinction between such undertakings or professionals, who deal with large amounts of waste on regular basis and such undertakings or professional, who as a consequence of their activity are required to transport certain amounts of waste for disposal or recovery. For example a builder that undertakes small works on a private dwelling may very well be called upon to remove certain debris. It does not seem sensible to require the latter to be registered under Article 25.1. This would be another additional burden imposed on the small enterprises; something, which everyone agrees should be avoided.

ARTICLE 26

Commission Proposal

Waste management plans

1. Member States shall ensure that their competent authorities establish, in accordance with Article 1, one or more waste management plans, which shall be revised at least every five years. Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

2. The waste management plans provided for in paragraph 1 shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken for the prevention, re-use, recycling, recovery and safe disposal of waste.

3. The waste management plans shall contain at least the following:

- (a) the type, quantity and origin of waste generated as well as waste likely to be treated from outside the national territory;
- (b) general technical requirements, including collection schemes and treatment methods;
- (c) any special arrangements for waste streams that pose specific policy, technical or waste management problems;
- (d) an identification and assessment of existing disposal and major recovery installations as well as historical contaminated waste disposal sites and measures for their rehabilitation;
- (e) sufficient information, in the form of criteria for site identification, to enable the competent authorities to decide whether to grant authorisation or not for future disposal or major recovery installations;
- (f) the natural or legal persons empowered to carry out the management of waste;
- (g) financial and organisational aspects related to the management of waste;
- (h) an assessment of the usefulness and suitability of particular economic instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market.

Commission Proposal

4. Waste management plans shall be in accordance with the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC, including significant awareness raising campaigns and the use of economic instruments.

5. The Member States shall notify the Commission of all waste management plans adopted, or of any revisions to their waste management plans. At the same time, they shall provide the Commission with a general assessment of how the plans will contribute to the aims of this Directive. That assessment shall include the strategic environmental assessment of waste management plans provided for in Directive 2001/42/EC.

Justification

The UEAPME Construction Forum entirely supports this article. In the context available facilities it is important to support the principle of waste management plans. These plans allow for a realistic analysis of the available infrastructure and thereby help detecting short comings and needs.

ARTICLE 32

Article 32, point 1

Commission Proposal

1. Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis or which arrange for the treatment of waste on behalf of others, and producers of hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.

UEAPME Construction Forum Amendment n°14

1. Establishments or undertakings which carry out waste treatment operations, establishments or undertakings which collect or transport waste on a professional basis or which arrange for the treatment of waste on behalf of others, and producers of hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.

The Member States are not required to apply these dispositions to enterprises that manage waste only occasionally if the quantities of waste handled are below than a fixed limit.

Justification

The UEAPME Construction Forum is also of the opinion that it is essential to make a distinction between such undertakings or professionals, who deal with large amounts of waste on regular basis and such undertakings or professional, who as a consequence of their activity are required to transport certain amounts of waste for disposal or recovery. For example a builder that undertakes small works on a private dwelling may very well be called upon to remove certain debris. It does not seem sensible to require the latter to be registered under Article 32.1. This would be another additional burden imposed on the small enterprises; something, which everyone agrees should be avoided.

Annexe I and II :

Regarding the operations classed as D15 and R13 (temporary storage pending recovery or disposal), the UEAPME Construction Forum is in favour of:

- an exemption for temporary storage of less than one year and on the grounds of the enterprise.

***** END *****

Brussels, 14 November 06