Following the Internet consultations on the Communication towards the Thematic Strategy on the prevention and recycling of waste, the stakeholder and expert meetings, and the Member State meetings in Leipzig and Brussels, the Commission is now preparing a revised Waste Framework Directive (WFD) and other legal modifications linked to the Thematic Strategy.

In order to assist us in this process we have compiled a questionnaire. Not all of the questions necessarily link to an option that will be taken up in the final proposal, but in all cases it would be helpful to have your view on the way forward, and to judge the level of support for different options. This questionnaire does not cover the issues related to the potential incorporation of the Hazardous Waste Directive in the WFD, or the potential repeal of the Waste Oils Directive, as these have been consulted on separately.

**Framework conditions**

Q1a – The Communications “towards the Thematic Strategies on the prevention and recycling of waste”\(^1\) and “towards the sustainable use of resources”\(^2\) highlight the importance of focusing on the important environmental impacts of the use of resources. Would you support the insertion of an environmental objective into the WFD, based upon the notion of reducing impacts on the environment from waste generation and management?

Q1b – Would you support an obligation for the Member States to conduct an analysis of the extent to which their waste policy is meeting such an objective?

Q1c – The Communication towards the Thematic Strategy on the prevention and recycling of waste also noted the efficiency of economic instruments in promoting waste management options that reduce environmental impacts. Would you support the inclusion in the WFD of general text indicating that Member States should use economic instruments in pursuit of the environmental objective where appropriate?

Q1d – Do you consider that there are other framework conditions for national waste policies that should be promoted?

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Definitions

Discussion with stakeholders on the definition of waste have made it clear that there is no appetite for substantively amending the definition of waste, but that clarification of when a waste ceases to be a waste would be welcome. This could both link the waste/non-waste transition to environmental standards and reduce unnecessary burdens for low risk recycling activities. Some stakeholders have also indicated that they consider that it would be useful to clarify the distinction between non-waste by-products and waste.

Q2a – Would you support the clarification of when a waste ceases to be a waste through the insertion of a provision allowing the development of waste stream based environmental and fitness for use criteria through a comitology process?

Q2b – Which waste streams do you consider would benefit from environmental and fitness for use criteria clarifying the end of waste? Please indicate a reasoned prioritisation if you are able to do so.

Q2c – Do you consider that there is a need to clarify the situation as regards by-products through non-legislative guidelines from the Commission?

A number of stakeholders consider that the distinction between recovery and disposal as interpreted in the most recent decisions of the European Court of Justice does not work well, particularly as regards energy recovery/incineration. At the same time, wholesale reform does not seem to be an option, as this would require a revision of legislation that is either currently in negotiation or recently adopted. One option would be to have a simple general definition coupled with two corrective mechanisms based on comitology.

Q3a – Would you support a general definition of recovery based on the notion of substitution of resources?

Q3b – Would you support the establishment of the possibility to explicitly include specific processes in the disposal annex, where it is considered that from an environmental perspective they are not appropriately classified as recovery?

Q3c – Would you support the use of efficiency thresholds to clarify specific cases – starting with municipal incinerators?

There was also a considerable degree of consensus on the need to include a definition of recycling in the WFD. This could then harmonise the definition of recycling across the WEEE, ELV and Packaging Directives.

Q4a – Would you support a definition of recycling that excludes energy transfer processes (chemical or thermal energy transfer) but includes depolymerisation, for example?

Q4b – Or would you prefer a definition of recycling that is based on maintaining the same material throughout the recycling process?

Reuse organisations would like to see a definition of the reuse of waste in the WFD.

Q5 – Do you consider that a definition of the reuse of waste in the WFD would be useful?
Exclusions

A number of the exclusions laid down in Article 2 WFD could be made more precise, or have been subject to interpretations by the ECJ that have had unwanted practical consequences. In addition, there may be grounds for extending the exclusions to one new issue.

Q6 – In the light of C-1/03 Van de Walle would you support:

A – The exclusion of unexcavated contaminated soil from the scope of the waste definition and Framework Directive, and dealing with this issue in a different context, i.e. the Soil Thematic Strategy?
B – Maintaining unexcavated contaminated soil in the scope of the waste definition and Framework Directive?
C - Maintaining unexcavated contaminated soil in the scope of the waste definition and Framework Directive but developing a special regime for its management/remediation under the Soil Thematic Strategy?

Q7 – Would you support the amendment of Article 2 WFD to clarify that “covered by other legislation” means EU legislation only? (in the light of C-114/01 Avesta Polarit)

Q8 – Are there other exclusions in Article 2 that you would support either removing or clarifying?

BAT + IPPC

The absence of environmental standards for a certain number of waste treatment activities has led to both environmental problems and a fracturing of the internal market for recycling. Many stakeholders have called for standards to be set to address these issues. Work on the waste/non-waste transition and on the recovery definition (see Q2 and Q4) and additional work not addressed by this questionnaire may help in tackling a number of these issues. This question tackles the issues related to setting EU reference standards for the operation of waste treatment facilities.

Q8 – Would you support the inclusion in the WFD of a general obligation that waste management facilities must operate taking into account BAT as defined in IPPC?

Q9a – would you support the extension of IPPC to cover waste treatment activities not yet covered, assuming that appropriate thresholds are set?

Q9b – Which waste treatment activities do you consider should be exempted from this extension?
**Separate collection**

In the context of the potential repeal of the Waste Oils Directive, it would be necessary to maintain the collection obligation from that Directive.

Q10 – Should there be a possibility to add other flows to such an obligation by comitology where:

A – These are hazardous flows that require specific handling?
B – These are materials where recycling would be advanced through separate collection?

**Waste prevention**

One possibility for proportionate action on waste prevention would be the reinforcement of the existing obligation for Member States to include waste prevention in their waste management plans.

Q11a – Would you support clarifying that the planning obligation covers waste prevention, through requesting the Member States to draw up waste prevention programmes?

Q11b – Do you consider that Member States should have the choice as to whether they integrate waste prevention programmes within their waste management plans or draw up stand alone programmes?

**Waste management plans**

The focus on life cycle thinking in the Communications “towards the Thematic Strategies on the prevention and recycling of waste” and “towards the sustainable use of resources” could be made concrete in the national or regional waste management plans. In addition, there have been a number of problems with the content and scope of these plans, which a further clarification of what is required might solve.

Q12 – would you support a modification of the waste management planning obligation to:

A – Incorporate life cycle thinking in the elaboration of such plans? (note that this would not be an obligation to undertake LCAs but rather a requirement to analyse how the plan being elaborated contributes to the environmental objective referred to in Q1a)
B – Further clarify the planning obligation, through explicitly specifying the minimum standards for such plans?

**Open question**

Q13 Do you consider that there are other amendments that should be made to the WFD that are not mentioned above?