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23.02.2006

AGS Statement

**on the Proposal for a Directive of the European Parliament and of the Council on
waste, presented by the Commission on 21.12.2005 [KOM(2005) 667 final]**

1. The AGS

The AGS represents the interests of 13 well known waste management companies in eleven states in Germany. Some of these companies carry out sovereign functions in that they are responsible for monitoring the disposal of both national and cross-border hazardous waste. Some of them also operate their own waste management plants. These plants, established and operated at considerable cost, comply with the highest ecological standards for the purpose of effective environmental protection. They ensure that hazardous waste is recovered and disposed of in an environmentally manner.

2. Opinion of the AGS on the proposal, presented by the commission

The aim of crystallising statutory provisions in order to achieve legal clarity and legal certainty for national legislators and those responsible for the application of the law has unfortunately not been fully attained in the draft submitted by the Commission. We have summarised our suggestions for improvement in the appendix. We wish to point out a few particularly vital points here:

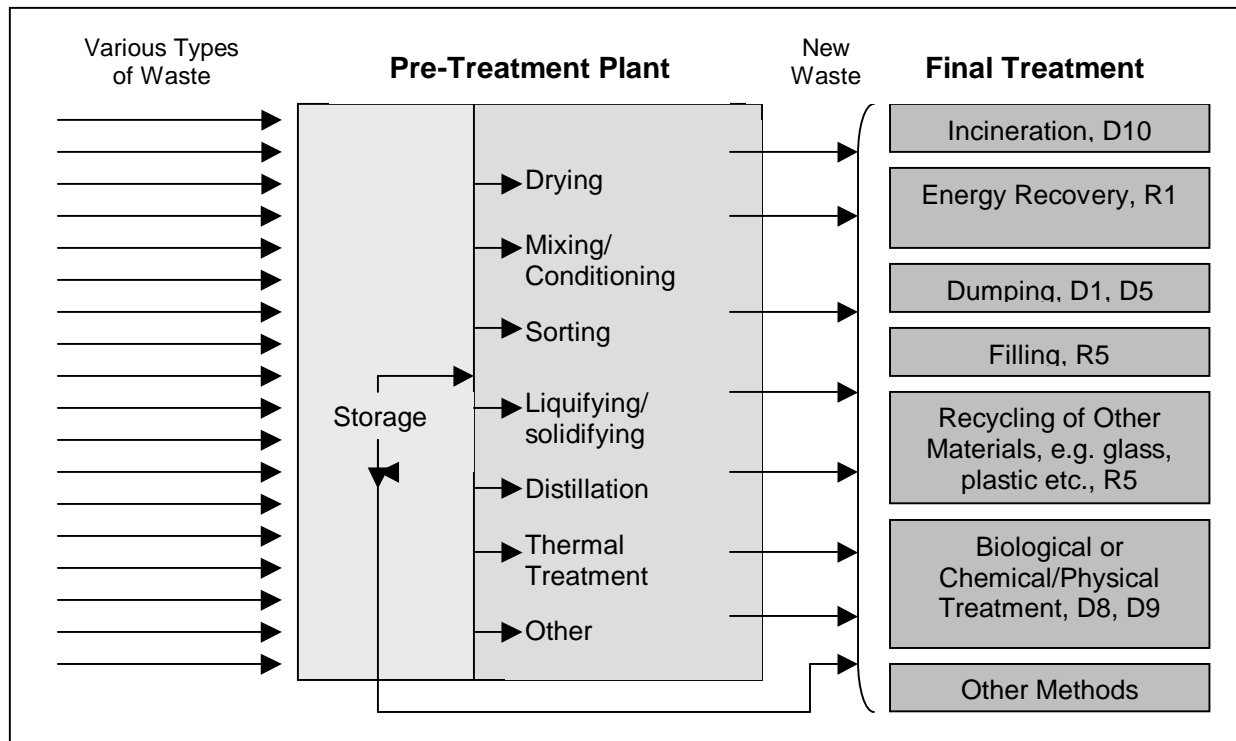
2.1 Recovery procedure

2.1.1 Multi-stage recovery (Article 5)

Article 5 Paragraph 1 provides that the preparatory stage for the purpose of appropriate utilisation should already be considered as a recovery measure. Irrespective of the fact that this paragraph should define the meaning of "being prepared", the authorities and those responsible for waste management must still be able to recognise whether waste is ultimately to be recovered and if so, how this is actually to be done (transparency requirement). This is why this ruling can only apply to preparation methods in which a defined flow of waste is processed and only if it is clear that waste prepared in this manner will then actually be recovered as well.

Numerous types of waste frequently end up in pre-treatment plants in which this process is not guaranteed. In some cases waste is transported directly from the storage area at a pre-treatment plant – without any type of pre-treatment whatsoever – for final disposal. However, in most cases various pre-treatment measures (e.g. drying, mixing/blending, sorting, solidifying, etc.) are carried out and these measures fundamentally change the nature and composition of waste. Operators of pre-treatment plants thus become producers of new waste according to Article 3, Letter b of the proposal submitted by the Commission. Waste pre-treated in this manner can no longer clearly be classified as the original type of waste. In addition, generally only a proportion of pre-treated waste is recovered. The rest is disposed of one way or the other. In many cases, even when waste is accepted, it is not clear in which final recovery or disposal plants the waste will eventually be

disposed of. There are usually several methods for recovery or disposal of pre-treated waste; these are applied individually, depending on the market situation.



In order to avoid sham recovery, pre-treatment procedures in which it is not clear that waste will be subsequently recovered, may not be recognised as being preparation for recovery. Instead these procedures must be made subject to the stringent regulations applying to waste disposal, particularly since no natural resources are replaced in pre-treatment plants.

For this reason we suggest that, besides making a few minor amendments to Article 5 Paragraph 1 (see appendix), the following new paragraph, Paragraph 2, be included:

"Preparation of waste is only to be recognised as a recovery procedure if homogenous waste of the same type, which is not mixed with other waste or with other substances, is treated in order to have it fully recovered or reutilised or in order to have most of it recovered or reutilised in compliance with the efficiency criteria as stipulated in Paragraph 3." (The former Paragraph 2 now becomes Paragraph 3)

The following ruling is a possible alternative:

Article 3 Letter (j): *"Preparation means a procedure in which homogenous waste of the same type, without having being mixed with other waste or with other substances, is treated in order to have it fully recovered or reused or in order to have most of it recovered or reutilised in compliance with the efficiency criteria as stipulated in Paragraph 3."*

Article 5 Paragraph 2: *"In the case of several individual steps in current waste disposal procedures, classification for disposal or recovery is to be made, taking the first procedure into consideration. This will not apply if pre-treatment and final disposal are carried out at the same plant or if waste, subsequent to preparation which does not involve being mixed with other waste or substances, is recovered, either fully or partially and in compliance with the efficiency criteria specified in Paragraph 3."* (The former Paragraph 2 now becomes Paragraph 3)

2.1.2 Reference to Annexes I and II (Article 5 Paragraph 1 and Article 6 Paragraph 2)

With regard to the reference made in Article 5 Paragraph 1 and Article 6 Paragraph 2 concerning Annexes I and II, no improvement in the quality of these appendices was observed compared to previous annexes contained in Directive 75/442/EEC.

Only procedure R1 has been implemented, with efficiency criteria (energy efficiency) as defined by Article 5 Paragraph 2 having been stipulated directly in the Directive in this case. This conflicts with the schema of the Directive, since efficiency criteria, in accordance with Article 5 Paragraph 2, are actually to be specified in the procedure according to Article 36 Paragraph 2, while Annexes I and II are limited to descriptions of procedures only. Annex II should therefore be altered accordingly.

Moreover, the descriptions of the procedures contained in Annexes I and II concerning the distinction between recovery and disposal are of little help. For example the definition of "*exchange of wastes for submission to any of the operations numbered R1 to R11*" (R12) is still unclear. Since R12 does not contain the term "*blending or mixing*" used in D13, the term "*exchange*" would appear not to mean blending or mixing. The descriptions of the procedures should therefore be carefully revised and made clearer in order for the procedure to be more precisely classified and defined for practical, everyday use. In doing so, the R12 procedure description should be worded as follows in Article 5 Paragraph 2 in accordance with our proposal for ruling on preparation.

"R12: Preparing waste for submission to any of the operations numbered R1 to R11"

2.1.3 Specifying efficiency criteria (Article 5 Paragraph 2)

Article 5 Paragraph 2 provides that the Commission may determine efficiency criteria for recovery in accordance with Article 36 Paragraph 2. Although this means that Parliament and the Council lose influence, this regulation means that the question of which efficiency criteria the Commission should use as a basis for its actions remains completely open. The respective criteria should be specified in the Directive (e.g. calorific value, recovering rates, pollutant content etc.).

2.2 Prohibiting mixing/blending (Article 16)

Article 16 Paragraph 1 relaxes the previous, relatively strict, ban on mixing or blending hazardous waste in accordance with Article 2 of the Council Directive 91/689/EEC for reasons which are impossible to understand. Until now the mixing of hazardous waste with other hazardous waste or any other type of waste or substances has only been permitted if the provisions of Article 4 of the Council Directive 75/442/EEC have been observed and if this mixing/blending has been carried out for the purpose of „*improving*“ safety during disposal or recovery. However, mixing or blending to make recovery possible in the first place has not been permitted.

Under the proposed revision this restriction will be abandoned. The practise of mixing or blending may frequently be observed even today. This practise is inconsistent with sustainable development and with an optimal waste management strategy aimed at keeping (negative) effects on the environment to a minimum. For example, contaminated soil is mixed with unpolluted earth in order to be able to recycle the mixture. The practise of mixing polluted waste with other waste or substances, which is non-polluting or harmful to human health as such, for the purpose of producing Solid Recovered Fuels for cement plants, power stations, etc. also occurs. Until now the mixing/blending for the purpose of disposal by dumping is prohibited only in Article 5

Paragraph 4 of the Landfill Directive 1999/31/EC ("*The dilution or mixing of waste solely in order to meet waste acceptance criteria is prohibited.*"). In this case it is impossible to understand why only waste which is to be dumped, i.e. disposed of, is subject to such a prohibition. This should apply more than ever to waste which is to be recovered or recycled, i.e. when the harmful substances in the waste may also be found in the resulting-recovered or recycled substances and products.

Given this fact, the implementation of a general, unlimited ban on mixing or blending is essential. A corresponding ruling in Article 16, similar to Article 10 of the Swiss Technical Regulation on Waste and No. 4.2 of the German Technical Instructions on Waste, might be worded as follows:

1. Owners of waste may not mix or blend this waste with other waste or with any other substances if this does not primarily lead to the reduction in the concentration of toxic substances in the waste by means of dilution. In addition, hazardous waste may only be mixed with other waste or substances with the prior approval of the authorities and in accordance with the instructions of the operator of the respective recovery or disposal plant.
2. Waste which is mixed or blended in accordance with Paragraph 1 Clause 2 is to be marked with a waste code from the appendix on Resolution 2000/532/EC indicating that the waste is toxic and comprises several substances that were mixed or blended.
3. Subject to technical and economical feasibility criteria to be determined by the Member States, (...)

2.3. Differences in classification

Article 27 of the Waste Disposal Regulations as amended in the version of the joint position (EC) No. 28/2005 of the Council of 24.6.2005 and the parliamentary resolution of 25.10.2005 provides for provisions governing differences in waste classification. It would be prudent to include such regulations in the Waste Directive as well in order to guarantee legal security and due implementation. We suggest the following wording to this purpose:

1. If there is any doubt as to whether waste disposal constitutes disposal or recovery and if the current directive or the procedure pursuant to Article 36 Paragraph 2 does not indicate any corresponding criteria, then the regulations for disposal will apply.
2. Paragraph 1 will apply correspondingly for distinguishing between waste and non-waste provided that the respective substance or object is treated as waste in the case of any doubt.
3. Paragraph 1 will apply correspondingly for classifying waste as hazardous waste on provided that the respective substance or object is treated as waste in the event of any doubt.
4. The rights of those involved to settle any disputes on this issue in court remains unaffected. The Commission is to be notified of any such disputes.

Appendix

Proposal, presented by the Commission

Amendment by AGS

Amendment 1
Article 1

<p>This Directive lays down measures with a view to reducing the overall environmental impacts, related to the use of resources, of the generation and management of waste.</p> <p>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.</p>	<p>This Directive lays down measures with a view to reducing the overall environmental impacts, related to the use of resources, of the generation and management of waste.</p> <p>For the same purposes, it also makes provision whereby the Member States are to take measures, as:</p> <p>(a) primarily for the prevention or reduction of waste production and its harmfulness</p> <p>(b) secondly, for the recovery of waste by means of re-use, recycling and other recovery operations</p> <p>(c) thirdly, for the disposal of those wastes which prevention or recovery is not technically feasible or economically reasonable.</p>
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Justification:

In the Communication “Taking sustainable use of resources forward: A Thematic Strategy on the prevention and recycling of waste” [COM(2005) 666 final], published on 21.12.2005 the Commission points out correctly under point 5: “But, as that waste management option is still the default solution in many Member States, moving away from landfill will take time. Furthermore, for some types of waste, landfill might remain the only viable option. The new Member States will need time to build up alternative infrastructure and to deal with the legacy of the past.” Furthermore, there will be waste in the future for which prevention and recovery are not technically feasible or economically reasonable. For this waste Member States need to guarantee an environmentally sound disposal (e.g. landfilling).

Amendment 2
Article 2 paragraph. 1

<p>It shall not cover the following categories of waste, as regards certain specific aspects of those categories which are already covered by other Community legislation:</p> <p>(a) radioactive waste;</p> <p>(b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;</p> <p>(c) faecal matter and other natural, non-</p>	<p>It shall not cover the following categories of waste, as regards certain specific aspects of those categories, as far as the wastes are already covered by other Community legislation:</p> <p>(a) radioactive waste;</p> <p>(b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;</p> <p>(c) faecal matter and other natural, non-</p>
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dangerous substances used in farming; (d) waste waters, with the exception of waste in liquid form; (e) decommissioned explosives; (f) unexcavated contaminated soil.	dangerous substances used in farming; (d) waste waters, with the exception of waste in liquid form; (e) decommissioned explosives (f) (delete)
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Justification:

The formulation “so far as” provides clarification of what is wanted and corresponds with the current Directive 75/442/EEC, Article 2 par. 1 lit. b.

The exemption for unexcavated contaminated soil from the scope of the Directive as proposed by the Commission cannot solve the problems related to the waste definition concerning non-movable objects. Harmful construction ruins or other derelict buildings, e.g. would further fall under the scope of the Directive. Therefore, the scope of the Waste Directive should principally be restricted to movable substances and objects.

Amendment 3
Article 3 lit. a

(a) “waste” means any substance or object which the holder discards or intends or is required to discard	(a) “waste” means any movable substance or object which the holder discards or intends or is required to discard (aa) “Discard” means that the substance or object is supplied to a recovery or disposal operation. (bb) “intends to discard” means, - that the substance or object released from a production process, the primary aim of which is not the production of that item and is not used as a product without any further prior processing neither by the producer himself in a legal way nor put on the market by other trading bodies for a corresponding use, or - that the original purpose of a substance or object has ended without being able to directly fulfil a new purpose. (cc) “required to discard” means that the substance or object is not used any more according to its original purpose, its concrete characteristic is currently or in the future potentially dangerous to the environment and to human health and its potential danger can only be excluded by means of an
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	environmentally sound and health conscious recovery or disposal operation.
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Justification:

Regarding the restriction of the waste definition to movable substances and objects see the justification in amendment 2.

The definition of waste, proposed by the Commission corresponds to the former non sufficient definition and does not provide any legal clarity. The amendment considers the rulings of the European Court of Justice on the item.

Amendment 4
Article 5

<p>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.</p> <p>2. The Commission may, in accordance with the procedure referred to in Article 36(2), adopt implementing measures in order to set efficiency criteria on the basis of which operations listed in Annex II may be considered to have resulted in a useful purpose, as referred to in paragraph 1.</p>	<p>1. Member States shall take the necessary measures to ensure that all waste, for which it is technically feasible and economically reasonable, undergoes operations that result in it serving a fully or at least predominantly 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 according to paragraph 2, hereinafter “recovery operations”. They shall regard as recovery operations at least the operations listed in Annex II.</p> <p>2. Preparation of waste is only to be recognised as a recovery procedure if homogenous waste of the same type, which is not mixed with other waste or with other substances, is treated in order to have it fully recovered or reutilised or in order to have most of it recovered or reutilised in compliance with the efficiency criteria as stipulated in Paragraph 3.</p> <p>3. The Commission may, in accordance with the procedure referred to in Article 36(2), adopt implementing measures in order to set efficiency criteria on the basis of which operations listed in Annex II may be considered to have resulted in a useful purpose, as referred to in paragraph 1.</p>
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Justification:

Regarding the restriction of the recovery obligation to technically feasible and economically reasonable operations see the justification in amendment 1.

The pre-treatment of wastes can only be classified as recovery operation if a defined flow of waste is processed and only if it is clear that the waste prepared in this manner will then actually be recovered as well. Only these operations should fall under the definition “being prepared” according to Article 5 par. 1. In order to avoid sham recovery, other pre-treatment procedures in which it is not clear that waste will be subsequently recovered, may not be recognised as being preparation for recovery. Instead these procedures must be made subject to the stringent regulations applying to waste disposal, particularly since no natural resources are replaced in pre-treatment plants. The proposed new paragraph 2 clarifies this.

Amendment 5
Article 11

<p>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:</p> <p>(a) reclassification would not lead to overall negative environmental impacts;</p> <p>(b) a market exists for such a secondary product, material or substance.</p> <p>2. On the basis of its assessment pursuant to paragraph 1, the Commission shall, in accordance with the procedure referred to in Article 36(2), adopt implementing measures in respect of a specific product, material or substance category of waste, specifying the environmental and quality criteria to be met in order for that waste to be deemed to have become a secondary product material or substance.</p> <p>3. The criteria set pursuant to paragraph 2 shall be such as to ensure that the resulting secondary product, material or substance meets the necessary conditions to be placed</p>	<p>1. A substance or object does not cease to be a waste until the recovery or disposal operation is completed.</p> <p>2. Recovery is completed once</p> <p>(a) secondary products, materials or substances, which cease to be a waste according to paragraph 3, are extracted, or</p> <p>(b) with the actual re-use of the waste if the human health and environmental protection, required in Article 7, is guaranteed.</p> <p>3. Secondary products, materials or substances are no longer waste if they</p> <p>(a) have an economic value,</p> <p>(b) can be used instead of equivalent primary products or substances due to the same quality characteristics,</p> <p>(c) are actually used in an appropriate way in due time and</p> <p>(d) thereby the human health and environmental protection, required in Article 7, is guaranteed.</p> <p>4. On the basis of its assessment pursuant to paragraph 1, the Commission can, in accordance with the procedure referred to in Article 36(2), adopt implementing measures in respect of a specific product, material or substance category of waste, specifying the environmental and quality criteria to be met in order for that waste to be deemed to have become a secondary product material or substance.</p> <p>5. The criteria set pursuant to paragraph 4 shall be such as to ensure that the resulting secondary product, material or substance</p>
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<p>on the market. The criteria shall take into account any risks of environmentally harmful use or shipment of the secondary material or substance, and shall be set at a level that guarantees a high level of protection for human health and the environment.</p>	<p>secondary product, material or substance meets the necessary conditions to be placed on the market. The criteria shall take into account any risks of environmentally harmful use or shipment of the secondary material or substance, and shall be set at a level that guarantees a high level of protection for human health and the environment.</p>
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Justification:

Article 11 does not deliver solutions for national legislation and daily practise. It transfers the problem of when a waste ceases to be a waste to the process under Article 36 paragraph 2, not only taking away de facto influence by the Parliament and the Council, but also causing significant legal uncertainty for daily practise. Everyone will have to cope with this legal uncertainty until the Commission comes up with its decision. As this is not reasonable, the process according to Article 36 paragraph 2 should only apply to particularly problematic exceptional cases. With respect to the regular cases Article 11 must contain its own criteria, which considers the rulings of the European Court of Justice on the subject.

Amendment 6
Article 16

<p>1. Member States shall take the necessary measures to ensure that the following conditions are met where hazardous waste is mixed, either with other hazardous waste possessing different properties or with other waste, substances or materials:</p> <ul style="list-style-type: none"> (a) the mixing operation is carried out by an establishment or undertaking which has obtained a permit in accordance with Article 19; (b) the conditions laid down in Article 7 are complied with; (c) the environmental impact of the management of the waste is not worsened; (d) such an operation conforms to best available techniques. <p>2. Subject to technical and economical feasibility criteria to be determined by the Member States, where hazardous waste has been mixed, in a manner contrary to paragraph 1, with other hazardous waste possessing different properties or with other wastes, substances or materials, separation shall be effected where</p>	<p>1. Owners of waste may not mix or blend this waste with other waste or with any other substances if this does not primarily lead to the reduction in the concentration of toxic substances in the waste by means of dilution. In addition, hazardous waste may only be mixed with other waste or substances with the prior approval of the authorities and in accordance with the instructions of the operator of the respective recovery or disposal plant.</p> <p>2. Waste which is mixed or blended in accordance with Paragraph 1 Clause 2 is to be marked with a waste code from the appendix on Resolution 2000/532/EC indicating that the waste is toxic and comprises several substances that were mixed or blended.</p> <p>3. Subject to technical and economical feasibility criteria to be determined by the Member States, where hazardous waste has been mixed, in a manner contrary to paragraph 1, with other hazardous waste possessing different properties or with other wastes, substances or materials, separation shall be effected where necessary in order to</p>
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necessary in order to comply with Article 7.	comply with Article 7.
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Justification:

Until now only a strict mixing ban exists for waste destined for landfill, i.e. to be disposed of (see Article 5 paragraph 4 of the Landfill Directive 1999/31/EC). This should be even more the case for waste which is recovered and recycled respectively, as the pollutants in the waste can be transferred to the recovered and recycled substances and products.

Amendment 7
Article 17 paragraph 2

Whenever hazardous waste is transferred, it shall be accompanied by an identification form as referred to in Council Regulation (EC) No 259/93.	(delete)
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Justification:

The provision is superfluous as the obligation arises already in the mentioned regulation. This regulation also contains an obligation for the Member States to foresee such provisions for national waste treatment operations, according to its Article 13.

Amendment 8
Article 22

Member States may exempt the following from the requirement laid down in Article 19(1): (a) establishments or undertakings carrying out their own waste treatment at the place of production; (b) establishments or undertakings that carry out waste recovery. Where an establishment or undertaking carries out both disposal and recovery, it may be exempted only in respect of its recovery operations.	Member States may exempt the following from the requirement laid down in Article 19(1): (a) establishments or undertakings carrying out their own non-hazardous waste treatment at the place of production; (b) establishments or undertakings that carry out non-hazardous waste recovery. Where an establishment or undertaking carries out both disposal and recovery, it may be exempted only in respect of its recovery operations.
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Justification:

Following the precautionary principle, it should not be possible to exempt establishments or undertakings, dealing with hazardous waste, completely from the obligation of a permit.

Amendment 9
Article 24

In the case of hazardous waste, Member States may allow the exemption under Article 22 only of establishments or undertakings that	(delete)
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<p>carry out recovery operations. In addition to the general rules provided for in Article 23(1), the Member States shall lay down specific conditions for exemptions relating to hazardous waste, including limit values for the content of hazardous substances in the waste, emission limit values, types of activity, as well as any other necessary requirements for carrying out different forms of recovery.</p>	
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Justification:

See justification to amendment 8.

Amendment 10
Article 37a

	<ol style="list-style-type: none"> 1. If there is any doubt as to whether waste disposal constitutes disposal or recovery and if the current directive or the procedure pursuant to Article 36 Paragraph 2 does not indicate any corresponding criteria, then the regulations for disposal will apply. 2. Paragraph 1 will apply correspondingly for distinguishing between waste and non-waste provided that the respective substance or object is treated as waste in the case of any doubt. 3. Paragraph 1 will apply correspondingly for classifying waste as hazardous waste on provided that the respective substance or object is treated as waste in the event of any doubt. 4. The rights of those involved to settle any disputes on this issue in court remains unaffected. The Commission is to be notified of any such disputes.
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Justification:

Article 27 of the Waste Shipment Regulation in the version of the common position (EC) 28/2005 of the Council from 24.6.2005 and the Parliament's resolution from 25.10.2005 foresees provision for different opinions about the classification of waste. It is sensible to introduce these provisions into the Waste Framework Directive to guarantee legal certainty.

Amendment 11
Annex II – R12

Exchange of wastes for submission to any of the operations numbered R 1 to R 11	Preparing of wastes for submission to any of the operations numbered R 1 to R 11
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Justification:

It is not clear what the term “Exchange” means. We propose instead using the term “Preparing”, which is previously used in the Directive (see Article 5).