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#65505

**AGS Statement  
on the Common Position of the Council of 20.11.2007  
concerning the Directive of the European Parliament and of the Council on Waste**

**1. The AGS**

The AGS represents the interests of 12 well-known waste management companies in nine states in Germany. Some of these companies carry out sovereign functions in that they are responsible for monitoring the recovery and disposal of both national and cross-border waste. Some of them also operate their own waste management plants ([www.info-ags.de](http://www.info-ags.de)).

**2. Problems**

One of the major aims of amending the Directive on Waste is to achieve clarity on the definitions of recovery and disposal. In accordance with Recital 13 (now 17) of the Directive, which was passed on 13.02.2007 by the European Parliament and adopted by the Council, these definitions should be modified to such a degree that a clear differentiation is made between the two concepts. The overriding factor should be whether or not the operation leads to the substitution of natural resources in a desirable manner.

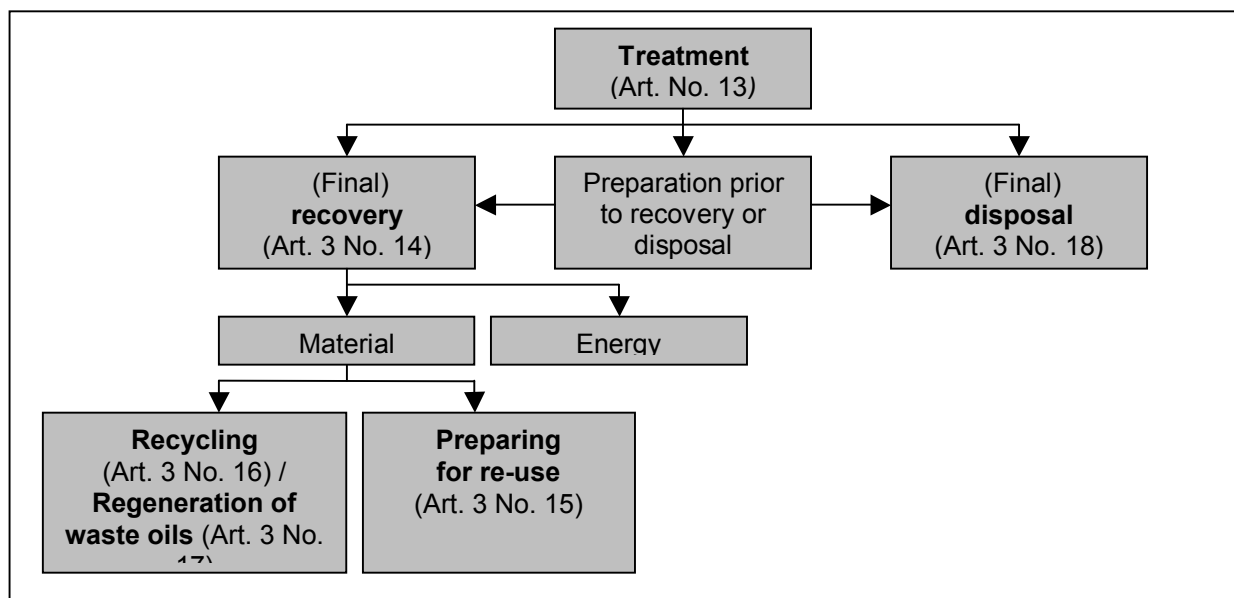
This cause is also strongly supported by AGS because clearly defining the core terminology is not only essential for applying the law but also for the transparency of the waste streams.

**2.2 Definitions**

Current considerations restrict themselves to the issue of whether final thermal treatment in waste incineration plants can be classified as recovery or disposal. In practice, however, the vast majority of waste does not go to final recovery or disposal. Instead, the waste is usually first prepared in self-contained plants. In the definitions proposed by the Council, preparation prior to (final) recovery or disposal is mentioned in Article 3 No. 13 as part of the treatment, but it is not defined separately (see figure 1 below).

The term “preparation” is also termed as “*pre-processing*” in several parts of the Common Position: The definition of the waste producer in Article 3 No. 5 differentiates between “*pre-processing, mixing or other operations*”. As can be seen from footnotes \*\* on the description of the D13 operation and \*\*\*\* the description of the R12 operation in Annexes I and II, “*preliminary operations ... including pre-processing*” such as sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating should be one of the operations that take place prior to submission to any of the operations numbered R1 to R11.

Figure 1:

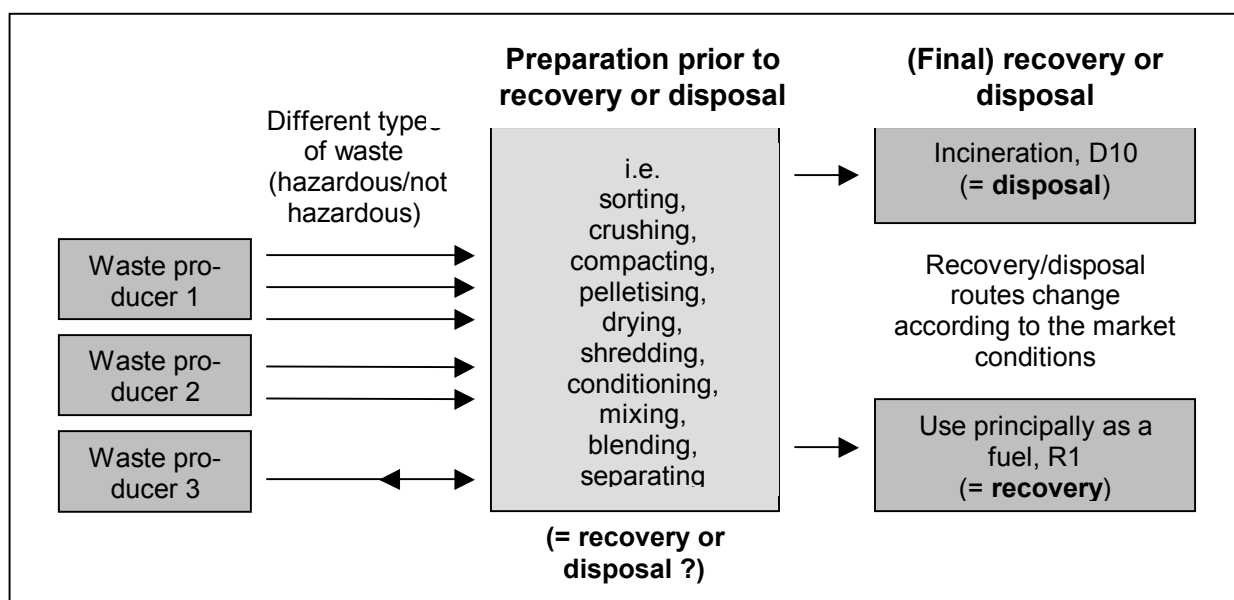


In order to achieve legal clarity, it is necessary to establish a separate definition of “*preparation prior to recovery or disposal*” in accordance with the attached **Amendment 1**. The term “*pre-processing*” needs to be replaced by this term. At the same time, it is expedient that – in accordance with the resolution adopted by the European Parliament on Article 8 paragraph 2 – provision is made, to set in the procedure laid down in Article 251 of the Treaty environmental and efficiency criteria on the basis of which preparation may be considered to be an operation of recovery or disposal.

### 2.3 Classification of preparation as recovery or disposal

If the final recovery or disposal only occurs after (under certain circumstances repeated) preparation this is known as multistage recovery or disposal. Figure 2 below illustrates this using the example of preparation prior to the recovery of energy (R1) or disposal through incineration (D10).

Figure 2:



As a rule, waste enters a preparation plant without first establishing where and how final recovery or disposal should actually occur. Frequently, no decision has been made at this time as to whether the waste should be recovered or disposed of after preparation, because such a decision depends on a number of factors:

- ❖ Since the price for recovery or disposal is the decisive factor and the prices for recovery or disposal are geared to changes in the market conditions, the market situation dictates the further recovery or disposal of the waste.
- ❖ For reasons of ensuring recovery or disposal, the preparation plant operator always has several different options available for the further recovery or disposal of the waste which also determine the preparation operation that is to be used.
- ❖ In the example of a waste incineration plant, classifying the recovery or disposal channel depends on whether or not such a plant satisfies the formula of energy efficiency (Footnote \* in Annex II).

In concrete terms, this means that, in many instances, it is only possible to classify the preparation as recovery or disposal at the time when the decision is reached as to which plant is used for the final recovery or disposal.

Under existing European and member state regulations, however, a decision must be reached for every individual item of waste from the waste producer whether it will be recovered or disposed of. It must, for example, be clear prior to the trans-frontier shipment of hazardous waste to preliminary operations whether recovery or disposal is to occur since this is of significance for any grounds for objection in accordance with Article 15 (b) in connection with Article 11 and 12 of Regulation (EC) 1013/2006. The classification is even more complicated when, during preparation of the waste (e.g. sorting), new waste and materials are created (e.g. glass, plastics, paper, etc.) which are further recovered or disposed of through a variety of different operations. Here, too, the preparation itself – and not just the final recovery or disposal – must be classified.

The Common Position of the Council offers no solution on this matter. Whilst it defines when the incineration of waste is to be classified as recovery by taking a formula for energy efficiency into account,

- ❖ it leaves open whether preparation should be classified as a separate operation and therefore as disposal/recovery itself;
- ❖ in Article 15, it eases the present ban on mixing hazardous wastes as provided for under Article 2 of Directive 91/689/EEC and therefore allows for waste to be mixed with other waste and materials during the preparation operation, thereby making classification of the action as recovery or disposal even more difficult;
- ❖ it only presents a possible solution for mixed municipal waste (waste entry 20 03 01) in that, to safeguard the self-sufficiency, a stipulation is made that such waste does not lose its classification as mixed municipal waste so long as the composition of the waste is not modified to a significant degree during preparation (Recital 30).

To prevent sham-recovery, preparation operations during which the waste cannot be conclusively assigned to final recovery from the outset, i.e. during which the recovery is a mere possibility but not a certainty from the outset, may not be deemed recovery. **Amendments 2, 3 and 4** offer possible solutions to this issue. They should preferably be filed cumulatively but may also be filed as alternatives where applicable. Tabled Amendment 3 in particular illustrates that any preparation during which the following the recovery or disposal channel changes cannot be classified as recovery.

## 2.4 Soil cleaning

Footnote \*\*\* adopted by the Council for Annex II relates to “*soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials*” and classifies this under recovery operation R5. At the same time, although the terms “*soil cleaning*” and “*recovery of the soil*” have been included, neither of them is described in further detail. This implies the risk of abuse

and sham-recovery where the contaminated soil is only pre-cleaned to such an extent that it can be deposited on landfills.

The Council had obviously intended that the full cleaning of contaminated soil should be allocated to operation R5. This presupposes that the soil is then free from contaminants and can be utilised without having any harmful impact on the environmental media. This should also be possible without the need for any special technical safeguards (e.g. in landscaping). **Amendment 5**, which is enclosed in the annex, is required to clarify this. This would, at the same time, precipitate alignment with the definitions contained in Article 3, as cleaning represents a case of “*preparing for re-use*” under Article 3 No. 15.

Alternatively, the Council’s footnote \*\*\* could also be deleted entirely (**Amendment 5a**) or at least adopted in such a way that it complies with the vote cast by the European Parliament regarding Article 3 (u) in the first reading (**Amendment 5b**).

## Amendment 1

### Article 3 No. 13 a) (new)

	<b>“Preparation prior to recovery or disposal” defines the activities prior to the final recovery or disposal of waste such as sorting, crushing, compacting, pelletising, drying, shredding, conditioning, mixing, blending, separating; in accordance to the procedure laid down in Article 251 of the Treaty the Commission will submit a proposal by .... for a legal instrument to be adopted on the enactment of implementation measures in order to determine environmental and efficiency criteria on the basis of which the preparation operations can ultimately be deemed recovery operations.</b>
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#### *Justification*

*In waste management practice, the overwhelming amount of waste does not immediately go to final recovery or disposal. Instead, the waste is usually first prepared in self-contained plants.*

*Given the major practical significance of this, it is essential to have a separate definition of the term “preparation prior to recovery or disposal” which, until now, had only found a mention in Article 3 No. 13. At the same time, within the legislative procedure pursuant to Article 251 of the Treaty, it would appear expedient to determine environmental and efficiency criteria for the preparation operations.*

#### *Comments*

*If the definition of the term “regeneration” contained in Article 3 (v), which was proposed by the European Parliament in the first reading, is retained, the term “regeneration of waste oils” needs to be used, since the definition only relates to the regeneration of waste oils.*

## Amendment 2

### Article 3 No. 14

<p>“Recovery” means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;</p>	<p>“Recovery” means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations; <b>A preparation operation should only then be approved as recovery if it serves to prepare the waste for subsequent recovery or recycling taking Article 16 into account and, at the same time, it is certain from the outset that all or the predominant amount of the prepared waste will always go to recovery or recycling;</b></p>
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#### *Justification*

*In waste management practice, the overwhelming amount of waste does not immediately go to final recovery or disposal. Instead, the waste is usually first prepared in self-contained plants. Depending on the current price level on the waste market, the prepared waste is then either recovered or disposed of. To quote just one example of this, the waste is prepared either in readiness for recovery in cement works or waste incineration plants with the corresponding energy efficiency at favourable conditions or for disposal at lower incineration costs in waste incineration plants without sufficient energy usage.*

*However, the decision as to whether waste is recovered or disposed of must, under European legislation and policies [e.g. those found in Regulation (EC) 1013/2006], already have been taken prior to shipment of the waste to the preparation plant. If this is not the case, and the preparation plant operator can not only use recovery channels but also alternative disposal routes, it is not certain at the time the waste is shipped to the preparation plant that the waste will be recovered. In this case, the preparation operation cannot be allocated to the recovery operation. In particular, operation R12 in Annex II, which – according to footnote \*\*\*\* adopted by the Council – includes preparation, presupposes in fact that it is definitely followed by a recovery operation specified under R1 to R12.*

### Amendment 3

#### Annex I, Operation D16 (new)

	<b>D16 preparation not specified elsewhere in this Annex which results in final compounds or mixtures which may alternately be recovered or disposed of using one of the operations listed under D1 to D15 or under R1 to R13</b>
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#### *Justification*

*In waste management practice, the overwhelming amount of waste does not immediately go to final recovery or disposal. Instead, the waste is usually first prepared in self-contained plants. Depending on the current price level on the waste market, the prepared waste is then either recovered or disposed of. To quote just one example of this, the waste is prepared either in readiness for recovery in cement works or waste incineration plants with the corresponding energy efficiency at favourable conditions, or for disposal at lower incineration costs in waste incineration plants without sufficient energy usage.*

*However, the decision as to whether waste is recovered or disposed of must, under European legislation and policies [e.g. those found in Regulation (EC) 1013/2006], already have been taken prior to shipment of the waste to the preparation plant. If this is not the case, and the preparation plant operator can not only use recovery channels but also alternative disposal routes, it is not certain at the time the waste is shipped to the preparation plant that the waste will be recovered. In this case, the preparation operation cannot be allocated to the recovery operation. In particular, operation R12 in Annex II, which – according to footnote \*\*\*\* adopted by the Council – includes preparation, presupposes in fact that it is definitely followed by a recovery operation specified under R1 to R12. As a consequence, it is necessary to incorporate a further operation into the list of D operations.*

## Amendment 4

### Annex I, Footnote \*\* on operation D13

If there is no other D code appropriate, this can include preliminary operations prior to disposal including pre-processing such as, inter alia, sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D1 to D12.	If there is no other D code appropriate, this can include <b>preparation prior to disposal such as</b> , inter alia, sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D1 to D12. <b>This also applies when, following preparation, application of one of the operations listed under R1 to R11 is a mere possibility but not a certainty from the outset</b>
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### Annex II, Footnote \*\*\*\* on operation R12

If there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as, inter alia, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R1 to R11.	If there is no other R code appropriate, this can include <b>preparation prior to recovery such as</b> , inter alia, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R1 to R11. <b>To achieve this, application of such an operation must not only be a possibility but a certainty from the outset.</b>
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### *Justification*

*In waste management practice, the overwhelming amount of waste does not immediately go to final recovery or disposal. Instead, the waste is usually first prepared in self-contained plants. Depending on the current price level on the waste market, the prepared waste is then either recovered or disposed of. To quote just one example of this, the waste is prepared either in readiness for recovery in cement works or waste incineration plants with the corresponding energy efficiency at favourable conditions or for disposal at lower incineration costs in waste incineration plants without sufficient energy usage.*

*However, the decision as to whether waste is recovered or disposed of must, under European legislation and policies [e.g. those found in Regulation (EC) 1013/2006], already have been taken prior to shipment of the waste to the preparation plant. If this is not the case, and the preparation plant operator can not only use recovery channels but also alternative disposal routes, it is not certain at the time the waste is shipped to the preparation plant that the waste will be recovered. In this case, the preparation operation cannot even be allocated to the recovery operation. In particular, operation R12 in Annex II, which – according to footnote \*\*\*\* adopted by the Council – includes preparation, presupposes in fact that it is definitely followed by a recovery operation specified under R1 to R12.*

## Amendment 5

Annex II, Footnote \*\*\* on operation R5

This includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.	This includes the <b>preparation of soil for reuse</b> and the recycling of inorganic construction materials.
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### *Justification*

*The version of footnote \*\*\* adopted by the Council implies the risk of abuse and sham-recovery where contaminated soil is not entirely purged of contaminants. Clarification is needed here to ensure that only those operations are included under R5 where soil is purged of contaminants to such an extent that it can be re-used without the need for any special technical safeguards, and without having any harmful impact on the environment and people’s health (e.g. in landscaping). At the same time, an amendment will be made to the definitions in Article 3, since cleaning represents a form of “preparing for re-use” under Article 3 No. 15.*

## Amendment 5a (Alternative 1)

Annex II, Footnote \*\*\* on operation R5

This includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.	<b>(Delete)</b>
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### *Justification*

*The footnote introduces new terminology and therefore does not promote clarification within the context of this Annex. The Annex itself only represents an inconclusive list of recovery operations in the first place. Soil cleaning that seeks to lower the impact on the environment by hazardous substances as a means of adhering to the assumed limit values of a landfill site is not recovery.*

## Amendment 5b (Alternative 2)

Annex II, Footnote \*\*\* on operation R5

This includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.	This includes the <b>cleaning of contaminated soil</b> and the recycling of inorganic construction materials.  <i>(Follow-up amendment: The definition of “cleaning” pursuant to the proposal put forward by the European Parliament with respect to Article 3 (u) will be reincorporated)</i>
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### *Justification*

*Clarification of what was intended. The term “soil cleaning” is not defined in the Directive. As a consequence, there is no regulation governing the quality level of soil cleaning. This is essential, however, if abuse and sham-recovery are to be prevented.*

*The European Parliament has defined the term “cleaning” in Article 3 (u) in its first reading. This will be maintained and is also used in the footnote.*