



## **British Metals Recycling Association**

### **Response to DEFRA consultation on the Proposals for a Directive of the European Parliament and the Council on waste, published October 2006**

The British Metals Recycling Association (BMRA) is the trade association for ferrous and non ferrous recycling companies throughout the UK; and represents some 300 businesses, from multi-national companies to small family-owned enterprises. This £3.5billion industry processes over 13 million tonnes of metal annually, into secondary raw material which is vital for metals manufacturing,

Worldwide, over 400 million tonnes of metal are recycled each year. Virtually any metal can be recycled into high quality new metal. Using recycled metals means less use of natural resources which would otherwise be needed to smelt new metals: and there are also considerable savings in energy, and other environmental benefits, in production methods using recycled materials. And so, the international trade in 'scrap' metals was established well before Europe's environmental measures were introduced.

European definition of recycled metals as 'waste' has led to a significant regulatory burden, which has done little to increase either the volume or the environmental benefits of metals recycling – both of which were already high. Meanwhile, businesses face mounting costs, paperwork and transfrontier shipment controls which increasingly undermine the trading structure of our industry.

#### **BMRA therefore**

- **welcomes the Directive's proposal to implement measures which will determine when 'certain wastes cease to be waste' and may be reclassified as a 'secondary product, material or substance'**
- **urges Defra to support the European Parliament Environment Committee amendment to Article 11 which identifies metals as a priority for waste/non-waste determination.**

BMRA welcomes the increased openness displayed by Defra in both the consultation document and the recently established stakeholder group. The comments which follow are based on the views of a wide range of our members, and informed by discussions with our international partners the Bureau of International Recycling (BIR), the European Ferrous Recovery and Recycling Federation (EFR) and the European Metal Trade and Recycling Organisation (EUROMETREC).

*DEFRA consultation question numbers are shown in parentheses:*

### **Article 1 – Subject matter (1)**

BMRA strongly supports:

- the intention to move the environmental objectives closer to whole life cycle thinking;
- the explicit focus on determining “end-of-waste” criteria

It is essential that the Directive will produce clear and unambiguous definitions of “recycling” and “recovery” that will help achieve these objectives.

BMRA also welcomes:

- the links to the existing five-stage waste hierarchy.

Where economically-viable, the preferred option for waste recovery should be re-use and recycling over other recovery options.

### **Article 2 – Scope (2)**

The Directive should exclude wastes otherwise covered by other Community legislation. However, we have some concerns about the proposals to reverse the Avesta Polarit judgment and would therefore welcome further discussion.

### **Article 3 – Definitions (3)**

#### *Recycling*

The definition of “recycling” as proposed is clear and concise. It is less likely to need future interpretation than the definition proposed in the Rapporteur Caroline Jackson’s compromise amendment.

It would be advantageous if the Commission’s proposed definition is used in the Packaging and Packaging Waste Directive, the End-of-Life Vehicle Directive and the Waste Electrical and Electronic Equipment Directive.

#### *By-products*

A definition that “by-products” are not waste and shall therefore be excluded from the waste regime within the Directive would be welcomed. However, we are concerned that the proposed Council wording is unclear and may lead to misinterpretation, especially with regard to the “direct use without further processing” and the further use as an “integral part of the production process”.

#### *Discard*

A definition of “discard” should have been included in the proposal.

### **Article 5 – Recovery (4)**

The definition of “recovery” should be practicable and environmentally-sound. We therefore support Government’s view that:

- a) the proposed requirement for Member States to take measures to ensure that **all** waste undergoes waste recovery operations would not help achieve this; and
- b) circumstances may arise in which life cycle thinking indicates that disposal is a better option.

### **Article 6 – Disposal (5)**

We agree that “disposal” should remain an option where recovery is either environmentally or economically non-viable.

In order to help ensure that the UK meets future recycling/recovery targets, it is essential that where energy recovery or reclamation of substances takes place, these should be regarded as recovery and not disposal (e.g. Annex I, D10 – incineration on land).

We are concerned that the use of comitology in Article 6.3 could impose measures that would add to the list of disposal operations, which could undermine the achievability of recovery/recycling targets

#### **Article 9 – Costs (6)**

There should be consistency between the revised WFD and Article 174 of the EC Treaty regarding reference to the “polluter pays” principle.

We do not believe that there should be an extension of provisions to waste recovery operations which are already subject to a wide variety of controls.

We seek clarity/definition of the term “previous holder”.

#### **Article 10 – Network of disposal operations (7)**

Disposal operations are better qualified to comment on this topic.

#### **Article 11 – Secondary products, materials and substances (8)**

- a) We fully support the proposal to implement measures to determine when “certain wastes cease to be waste” and may be reclassified as a “secondary product, material or substance”.
- b) The Article 11 environmental and quality criteria are supported. However, it is important that the Directive does not further constrain these criteria by, for example, introducing into the pre-ambule of the Article, phrases such as “completed a re-use, recycling or recovery operation”.
- c) We welcome the ENVI Compromise Amendment to determine end-of-waste criteria for metal. The metals recycling industry is well-established and operates in an international market of traded raw materials, which are supplied to reprocessors to internationally-agreed specifications. The Commission exercise to establish a general methodology for determining the end-of-waste criteria for iron, steel and aluminium suggests that the EC officials support this view.
- d) However, we believe that in order to drive recycling markets forward, the determination should be undertaken with a greater sense of urgency, rather than within five years of the revised WFD becoming effective.
- e) We agree that the selection of waste streams and the environmental and quality criteria to determine whether a specified waste ceases to be waste should be taken by comitology. Since the issue is of a technical nature, we believe that the national experts of the Technical Adaptation Committee are the most appropriate people to propose decisions in this regard. Industry representatives should be invited as stakeholders to comment on Commission proposals to assist those national experts. We therefore support the approach of the Commission and Council.

### **Articles 12-17 – Hazardous Waste (9)**

It is important that transitional arrangements covering the absorption of the Hazardous Waste Directive are handled sensitively and with proper road-testing to ensure minimal disruption to those affected.

We welcome the removal of the 3-month pre-notification to the Commission and consultation with Member States, of proposed hazardous waste exemptions. This should help reduce delays and administrative costs.

### **Article 18 – Mineral Waste Oils (10)**

We support the absorption of the Waste Oils Directive.

### **Article 19 – Permits (11)**

The view that energy recovery should achieve the highest practical level of energy efficiency is welcomed. However, this should be balanced by life cycle thinking and economic considerations rather than necessarily being a permit condition (Article 11(4)). For example, there may be instances where it is preferable that waste should be disposed of to energy recovery – even at low energy efficiency – rather than to other recovery operations or to landfill.

### **Article 21 – EU-wide Minimum Standards for Disposal and Recovery Operations (12)**

Many parts of the metals recycling sector are already impacted by EU-wide minimum standards for disposal and recovery operations that have been adopted in individual Directives (e.g. ELV Directive and from July 2007, the WEEE Directive).

- a) There needs to be clarity regarding “common” or “minimum” standards.
- b) It is important to ensure that the introduction of standards, either at a European or domestic level, does not add regulatory burden – particularly for SMEs.
- c) We agree that standard setting in permits for disposal and recovery operations at a Member State level avoids European-wide bureaucracy; however, it is important that Member States do not gold-plate those standards. However, we can also see the benefit of discussions that would lead to the adoption of common minimum standards operating across Europe.

### **Articles 22-24 – Exemptions (13)**

We believe that the relevant competent authority should be allowed to continue using its discretion to provide permit exemptions as a means to encourage the recovery/recycling of waste. Therefore, we share Government's concern that establishing the general rules on permit exemptions based on BAT could limit the flexibility currently available to Member States to provide permit exemptions for low risk recovery/recycling operations, such as metals recycling.

### **Article 25 – Registration (14)**

We are unable to comment until further clarity on the "certain minimum standards" are known. If these standards, set by the Commission by means of comitology, go beyond the existing UK provisions (e.g. Duty of Care and, waste carrier and waste broker registration), for example requiring further registration and training of carriers and brokers (paragraph 93, partial RIA), significant additional cost and administrative burden would be imposed on an industry that is already overburdened by regulation.

However, EU-wide "minimum standards" could reduce the potential for illegal activity on behalf of carriers and brokers.

### **Article 26-28 – Waste Management Plans (15)**

It is unclear how these proposals would provide benefits to the environment and human health without imposing further administrative burdens and costs on the UK, its competent authorities and industry.

### **Articles 29-31 – Waste Prevention Programmes (16)**

The current WFD requires Member States to deliver (*inter alia*) the objectives in Article 3 which refer firstly to the prevention or reduction of waste. The UK already has a number of plans that promote waste prevention, such as BREW, WRAP, NISP etc. We believe that Member States should be able to continue exercise choice on the conditions under which waste prevention programme should be developed (as currently provided in Article 7 of the WFD).

### **Article 32 – Inspection and Records (17)**

The requirement for competent authorities to inspect collection and transport operations to cover the origin and destination of *all* waste would introduce a significant burden on both the enforcement authorities and industry for low-risk wastes. We would therefore oppose additional inspection and record keeping for non-hazardous waste collection and transport operations.

### **Annex II – Waste Recovery Operations (18)**

We support Defra's comments made to the Commission in February 2005 that the use of efficiency thresholds in practice does not "preclude high value but low proportion waste recovery operations such as precious metal recovery; and the recovery of fractions of waste in sequential operations".