Assessment of
Solid Waste Management Law of Macedonia

Submitted by

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1. Executive Summary

1.1 Background

The Republic of Macedonia has entered into a Stabilisation and Association Agreement with the European Communities and their Member States with a view to joining the Community, it is hoped in 2014. As part of the process leading to accession Macedonian law must be approximated to EU law. When the draft Waste Management law and Environment law were produced in November 2003 it became clear to the secondary materials industry, as represented by ZMS, that difficulties were going to arise if the trade were to be obedient to the law, because the law would render their valuable secondary materials industry, part of the waste management industry and therefore subject to controls which ZMS view as unacceptable.

This report assesses the new laws, compares them with what is required under EU law and concludes that whilst there are some small areas where the draft laws could be relaxed, substantially the laws accurately reflect EU demands.

1.2 Terms of reference

The work underpinning the contents of this report was carried out under Terms of Reference prepared in May 2004 and contracted for on 4 June 2004. The work was carried out between 10 June 2004 and 30 June 2004 with two and one half days of interviews conducted in Skopje, Macedonia between 22 and 24 June 2004.

1.3 Sources of information

The report was prepared from materials gained from a variety of sources and included environment background materials, existing and draft environmental laws, relevant websites and face-to-face interviews.

1.4 Interviews conducted

Most of the interviews were conducted through an interpreter. Present at all the meetings was the International Consultant and some or all of the local consultants.
1.5 Applicable International and European law

The environment is heavily regulated at both European and international level. Much of current environmental law is based on the notion that “waste” must be reduced, re-used or recycled and that it requires careful attention during all phases after production through to and including final disposal. Unfortunately, the term “waste” by reason of its definition includes many secondary raw materials and as a result there is sometimes an adverse effect on trade.

1.6 Applicable European Court case law

Interpretation of European environmental legislation can be problematic and has resulted in a number of cases being referred by national courts to the European Court of Justice (European court) for assistance in interpretation. No area has caused more difficulty than waste definition, as it is central to whether the trade is in secondary raw materials or waste. Three significant cases have been summarised to illustrate some of the difficulties posed by European Waste law.

1.7 Assessment of the draft waste management law

Comparison of the proposed waste management law with the existing European waste laws reveals that the proposed law is in accordance with European waste law. In some instances the interpretation is strict and these instances are highlighted in the table at Schedule 2 Part II.

1.8 Potential problems for ZMS

There is no doubt that implementation of the waste management law will cause problems for ZMS, not least of which is that there must be a change in the notion that the scrap materials with which they deal whilst still valuable secondary raw materials being recovered and not disposed of, will be regarded by the law as waste and regulated under waste legislation. In most EU countries there have been compliance difficulties but education, based on the experience of others, should prove helpful.

1.9 A suggested method of regulating secondary raw materials producers

It is plain from European law that once the Macedonian waste management law is in force in January 2005 many secondary raw materials producers/traders will be in the business of waste management. The new law will require to be enforced, although as the subordinate legislation which will set out methods of regulation, is not yet available. Suggestions are
offered, drawing on the experience of English legislators and regulators as to possible ways forward which might not be unduly oppressive to trade.

1.10 Recommendations and points of action.

There is opportunity for positive action to be taken at this stage, in terms of influencing the shape of the subordinate legislation, which will lessen the risks for trade and result in a law, which is not overly harsh or oppressive. Moreover some practical suggestions are offered which will enable trade to prepare for the legislation when it is in force and enforced. For example:

- Lobby for consultation rights in relation to the detailed regulations which will follow from the Waste Management Act
- Offer the Environment Ministry suggestions for the regulatory regime
- Insist that the secondary materials industry is exempt the legislation where that is appropriate and subject to a lighter regulatory touch where it is not – to reflect the valuable part they play in the economy of the country
- Insist that there is a long lead in time for the legislation so that all of government, the regulators and trade are comfortable with the law and the way it will be enforced

2. Introduction

The Republic of Macedonia entered into a Stabilisation and Association Agreement with the European Communities and their Member States, on 26 March 2001. The agreement includes a commitment by the Republic of Macedonia to approximate its legislation to that of the EU, notably in key areas of the internal market. The agreement confers on the Republic of Macedonia the status of potential candidate thus opening up the possibility of future accession to the European Union. As part of its obligations, steps are currently being taken to harmonise Macedonian environmental law with that of the EU.

In the process of drafting and adopting a new Waste Management Law (WML) difficulties have become apparent which may adversely affect the secondary raw materials industry. These potential difficulties were revealed as a result of a project SEED started with Makstil to improve their domestic supply chain network. The network consists of 10 authorized scrap metal operators in Macedonia. Makstil suppliers are members of the Macedonian Association for secondary raw materials (ZMS) which has more than 70 members dealing with scrap metal and other various scrap materials (paper, plastic, textiles.) The Association was established in 2000 with the goal of improving the recycling
industry sector in the country by providing services to their members in the area of: market
information, marketing and sales, partner contacts, trade term negotiation with buyers,
information for equipment suppliers, access to finance and lobbying the government. To
improve the operations of the scrap metal businesses in Macedonia, there was expressed to
be a need to improve that part of the legal business environment, which is governed by
Macedonian environmental law.

To demonstrate the complexity of the issues with which Macedonian legislators are
currently faced and with which trade will be faced; reference is made to a well-known
English case concerned with Town and Country Planning law – not waste management.
Schiemann J. in 1990¹ was asked to determine, whether the solvents recovered at a
solvents recovery plant were trade waste (they had been used previously and had gained
impurities) or whether they were raw materials (in the solvent recovery plant they were
chemical feedstock)

Schiemann noted at p99C/D “At times the argument reminded me of those black and white
lithographs by Escher which depict fishes or swallows depending on whether one is
concentrating on the black or the white. Some would say the picture was of fishes; others
would say it was of swallows. The right answer is that it is both fishes and swallows.
Similarly here the solvents are perhaps rightly regarded as being both trade waste and
raw materials”

The lesson to be drawn from this case is not only the absurdity of the same material being
viewed both as a waste and as a product but also that the argument on definition can
impact, on other areas of law, and, as in this case, operate to challenge the validity of an
operation which ceases, at some point, to be one of manufacturing and becomes one of
waste recovery, thus requiring different management under planning law. Once a
secondary raw material has been defined as “waste” it becomes subject to the full rigours
of waste law.

3. Objectives of the project

The purpose of the study was expressed in the Terms of Reference to be “to improve the
business legal environment of the scrap metal operators and the whole recycling industry
in Macedonia as the industry is an important part of the Macedonian economy (more than
20,000 people make their living in this industry in Macedonia.) The study is also required
as being in line with the continual Macedonian government efforts to approximate the
country’s laws and regulations to be in compliance with the European laws (EU Accession
Application), especially those related to environmental issues”

¹ R v Rotherham Metropolitan Borough Council ex p Ramkin 1990 1 PLR 93
The Terms of Reference further provide that the study should encompass “not only an assessment of the current position of the local law but the ways in which the new laws need to be drafted to take account of experience gained in implementing EU legislation and experiences in EU countries from the perspective of the secondary materials industry”.

The assessment was to include to the following:

- The current Macedonian environmental law as it relates to waste and in consequence, the likely problems arising from it
- Waste definition
- The proposed law and a preliminary assessment of the likely adverse (or positive) affects on the secondary raw materials processors.
- The need for different regimes for recovery and disposal operations
- Waste management site licensing
- Identification of conflicting or underrepresented areas related to regulation of the recycling industry (scrap material operations) and
- Other aspects as a result of information gathered.

4. Methodology

The information, which supports this report, was obtained through desktop research, and face-to-face interviews:

4.1 Desk top research – Sources of information

A list of documents made available for review is to be found at Schedule 1 Part I. This report is based on the November 2003 version of the draft WML and environment law, although there have been later amendments; these are not formally incorporated in the text. The drafts, no doubt with the amendments, were due to be submitted to Parliament at the end of June. However, almost none of the subordinate legislation, which will contain the detail of the regulations, has yet been drafted.

A variety of websites were also consulted and these are listed at Schedule I Part II.
4.2. Summary of Interviews conducted

4.2.1 Jadranka Ivanova: Ministry of Environment and Physical Planning: An explanation of the issues raised by ZMS was given together with the following points raised by the International Consultant:

- Licence to be granted for maximum of 10 years (Articles 31, 44, 64) – this appeared to be unduly restrictive on trade
- Definition of “waste” as contained in Waste Directive 442/75 as amended by Directive 156/91 (together called the Waste Framework Directive) routinely causes problems for business
- Three persons with university degrees to operate a scrap yard seemed excessive
- The definition of “discard” (which is not contained in the WML or in the EU Directive 91/156) causes problems and requires clarification as does the word “generator”
- A definition of “secondary raw materials or by-products” would be helpful to assist trade in understanding its responsibilities.

The matters of concern to ZMS are set out in two documents one in tabular form and the other signed by Spase Zacevski both prepared in May 2004 copies of both of which are to be found in Schedule 2 Part I to this report. A copy of the document produced by Makstil noting its problems is likewise to be found in Schedule 2 Part I. A paper produced for the Ministry at the request of Jadranka Ivanova on 23 June 2004 demonstrates some of the more obvious problems associated with waste definition and other issues relating to waste is to be found at Schedule 3.

4.2.2 Kiro Spandzev Ministry of Economy: Mr Spandzev had not seen the draft WML. After he had received an explanation of the principal difficulties envisaged by ZMS and the International Consultant he promised assistance and indicated that, from the Ministry’s standpoint, what was required was a control of quality and the imposition of quality standards for scrap. It was suggested by the International Consultant that there did exist quality standards for different grades of scrap, which could be adapted for use in Macedonia.

4.2.3 Ljubica Simonovska, Trade, Catering and Tourism Department Economic Chamber of Macedonia: The Economic Chamber had been responsible for preparation of the second ZMS document. The greatest concern expressed was the lack of distinction in the draft legislation between businesses handling wastes moving for recovery and wastes moving for disposal. Thus ZMS members felt they were categorised with the communal waste collectors.
4.2.4  **Nove Georgievski, Makstil:** The problems faced by Makstil revolve around the quality of the secondary raw materials (scrap) received, the difficulties posed by radioactivity and the fact that there are no present means of border inspection of scrap being imported. Once at Makstil there is often inadequate time available to inspect the scrap before it is fed to the furnace and in consequence the quality of steel and the amount produced per tonne from the scrap received is lower than should be expected. The only concern relating to the draft WML was the Articles relating to import/export. A copy of the Submissions prepared by Makstil is to be found at Schedule 2 Part II.

4.2.5  **Bonum:** The views expressed by the Proprietors of the scrap yard were those of ZMS. The yard is supposed to contain first quality scrap ready for delivery to Makstil. It was evident that sorting was not complete as there was evidence of plastic and rubber in the metal scrap. Moreover, much of the scrap comprised End of Life Vehicles (ELVs) or parts of them and it is to be noted that whilst these are not regulated under the Integrated Pollution Prevention Control Directive 1996/61\(^2\) (IPPC Directive) they will, in due course, be regulated in accordance with the End of Life Vehicles Directive 2000/53.

\(^{2}\)“Pollution Prevention and Control is a regime for controlling pollution from certain industrial activities, including some waste activities, for example landfill. The regime introduces the concept of Best Available Techniques ("BAT") to environmental regulations. Operators must use the BAT to control pollution from their industrial activities. The aim of BAT is to prevent, and where that is not practicable, to reduce to acceptable levels, pollution to air, land and water from industrial activities. BAT also aims to balance the cost to the operator against benefits to the environment.”
4.2.6 ZMS Zaceski Spase and his colleagues: The documents to be found at Schedule 2 Part I did not represent all the comments that ZMS have with respect to the proposed WML. A list was therefore prepared of the issues raised by ZMS and is to be found in annotated form in Schedule 2 Part III. It was evident that ZMS view the proposed legislation, with great suspicion, are worried about implementation, the detail of the subordinate legislation, the framework for which is not yet apparent in some instances and concerned that the legislation once in force will adversely affect their livelihoods. It was also clear that there was no general understanding of waste law at EU level and therefore that what was being proposed by the Macedonian government was simply in accordance with EU law in force.

Specifically ZMS considered that there were notable differences between the Basel Convention and the draft WML, although as will seen from the table to be found at Schedule 2 Part III detailing ZMS complaints concerning the legislation, this does not appear to be so. It may be therefore that the implementation of the Basel Convention has, to date been inadequate.

5. Applicable International and European law

5.1 International law

Although there is much international law that provides overarching regulation of various environmental issues this section focuses on trans-boundary movement of wastes.

5.1.1 The Basel Convention: The 1989 United Nations Basel Convention on the control of trans-boundary movements of hazardous wastes and their disposal provides the framework for a global system of controls on international movements of hazardous and certain other wastes. Countries that sign up to the Convention are obliged to take appropriate measures to:

- Reduce trans-boundary movements to a minimum, consistent with their environmentally sound management
- Minimize the generation of waste
- Aim at self-sufficiency in final disposal
- Prevent trans-boundary movements where the proposed country of destination has not given its consent
• Ensure environmentally sound disposal and recovery of wastes

• (Subject to the ratification of the “Ban” amendment agreed in 1995) prohibit the export of hazardous waste from Annex VII countries (those belonging to the OECD, the European Union and Liechtenstein) to non-Annex VII countries.

The European Union implemented the Convention by way of Council Regulation 259/93 (the Waste Shipments Regulation.) This was amended by Council Regulation 120/97 to implement the ban on exports of hazardous wastes from EU Member States to non-OECD Countries. The Waste Shipments Regulation also incorporates the OECD Decision on the Control of Transfrontier Movements of Waste Destined for Recovery Operations. This Decision, which is regarded as a multilateral agreement under the Basel Convention, was introduced to facilitate movements of wastes for recovery between countries belonging to the OECD.

The European Commission has indicated that the Wastes Shipment Regulations are to be amended. The current proposals are:

• Reduction in waste lists from three to two. The current hazardous (amber) list to be combined with the very hazardous (red) list.

• Written consent from competent authorities of dispatch and destination to be required for shipments of all wastes on this combined list for recovery or disposal (with the exception of exports to non-EC OECD countries, where tacit consent from Competent Authorities of destination may be assumed)\(^2\)

• All mixtures of wastes, including those on the non-hazardous (green list) to be considered as unlisted. Notification of these shipments will therefore be required. Physically separated wastes will not be considered as mixtures.

• Notifications are to be processed by Competent Authorities. Notifications will only be transmitted by competent authorities of dispatch.\(^3\) Financial guarantees or equivalent insurance must be in place and legally binding at the time of notification, and be ‘activated’ by the time a shipment commences.

\(^2\) It is to be noted that many metal wastes are amber listed and will therefore be subject to increased regulation and delay, which can only serve to hamper trade.

\(^3\) They can currently be transmitted by notifiers or Competent Authorities of dispatch.
• Contracts are to be in place at the time of notification, including an undertaking on behalf of the notifier to take back the waste if the shipment cannot be completed as planned or are found to be illegal.

• Final recovery will have to be undertaken before a shipment of waste can be considered to be completed. Interim recovery operations such as storage will not complete the waste shipment.

These proposals have yet to be agreed and at the June 2004 meeting of the EU Council of Ministers a decision on the current proposals outlined above, was deferred. A copy of the Basel Convention is to be found at Schedule 4.

5.2 European law

It is not the purpose of this report to provide a detailed text on European waste law. Much work has been done by the Ministry of Environment and Physical Planning and their consultants on harmonising Macedonian waste law with EU law but it is important to set out the salient matters, which will cause difficulties when the Macedonian law takes effect in January 2005.

5.2.1 Definition of “Waste”: Waste was first defined in the 1975 Directive on Waste. The definition was general and resulted in member states defining waste differently. There were also significantly different approaches between member states as to how “waste” passing to recovery or re-use were defined. Accordingly the EU addressed the topic again in 1991 and substantially amended the 1975 Waste directive by Directive 156/91 which inter alia, redefined the term waste in Article 1 as follows:

“Waste shall mean any substance or object in the categories set out in Annex 1 which the holder discards or intends or is required to discard”

It is clear from Annex 1 that “waste“ covers very many substances and so the question in reality turns on whether the material is being “discarded” The term “discard” is not defined in the Waste Framework Directive and in accordance with usual rules of interpretation therefore carries its ordinary meaning. However, the ordinary meaning of “discard” is to “throw away” and it is difficult to reconcile this notion of “throwing away” with materials being discarded, when they are passing to recovery or reuse. Accordingly there have been a series of cases at European court level designed to clarify the position. These decisions are discussed in Section 7 of this report.
5.2.2 **Definition of “recovery”:** Recovery operations is set out in Annex IIB of the Waste Framework Directive. The definition includes recycling/reclamation of metals and metal compounds (R4) and storage of wastes pending any of the operations in R1 to R12 (R14.) Under the 1975 Waste Directive there were no exceptions to the requirement that all waste management facilities needed to be permitted. However under the Directive 156/91 Article 11 allows the option of lifting the general requirement for a permit inter alia for the carrying out of recovery operations. Further, if the recovery operation falls within Annex IIB then member states may lay down general rules on the types and quantities of waste and the conditions under which the recovery operation may be exempted from the permit requirements.

5.2.3 **Definition of “by-products” or “secondary raw materials:”** It may be argued that by-products fall outside the definition of “waste” Furthermore, a particular problem arises in relation to R4 above. Many materials can be put to direct re-use without any form of intermediate recovery process to make them suitable. The lack of a definition means that these words are subject to judicial interpretation without the benefit of legislative guidance and indeed some of the issues have been considered by the European court and are referred to in more detail in Section 7.

5.2.4 **Permit obligations:** The effect of Articles 9 and 10 of the 1991 Directive is to require anyone carrying out a waste disposal operation or a waste recovery operation to obtain a permit from the competent authority. The objective of these requirements is set out in Article 4 of the Waste Framework Directive and is to ensure that:

- Waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:
  - Without risk to water, air, soil and plants and animals,
  - Without causing a nuisance through noise or odours,
  - Without adversely affecting the countryside or places of special interest

Since it is plain from the definitions in the draft WML and the Mayer Parry case referred to in the Section 7 that the materials handled by ZMS fall within the definition of “waste,” it follows that the operators’ sites must be licensed. Although it was said by the Ministry of Environment and Physical Planning that metal recycling sites or scrap yards would be

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regulated under Part B of the Macedonian proposed Integrated Pollution Prevention and Control legislation (IPPC) it has since been indicated that not all sites will be regulated under this legislation. It is understood that only sites engaged in the recovery of hazardous wastes will be regulated under Part B and it is to be noted that even those sites do not as a matter of European law require IPPC regulation. It may be that all sites, which do not fall to be exempted from the legislation altogether could be regulated at local level although in England, where ELVs sites have until now been exempted from waste management licensing requirements, with the implementation of the ELVs Directive

- Operators who currently treat motor vehicle waste under the terms of a registered exemption from licensing will be required to obtain a site licence under Part II of the Environmental Protection Act 1990 if they continue to accept vehicles that have not been depolluted,

- All sites that store or treat ELVs will be required to meet minimum technical standards.

6. European case law

There are a number of cases that have reached the European court concerned with “waste” its definition, classification and recovery. Three cases, which demonstrate the development of this complex topic, have been selected and are analysed in detail in Schedule 5. The first, Tombesi⁵ concerns, inter alia an Italian scrap metal dealer. The second, Palin Granit Oy v Vehmassalon kansanterveystyon kuntayhtman hallitus⁶ how to differentiate two materials of identical composition – one of which was found to be waste and the other product. In the third, R (Mayer Parry Recycling Ltd) v Environment Agency and Another⁷ the European court adjudicated upon when secondary raw material ceases to be waste.

All evidence just how difficult it is to identify the boundary between waste and product and what far reaching consequences there may be when trade in secondary raw materials becomes waste management in law.

7. An assessment of the draft waste management law

The central purpose of the project was to identify the differences, if any, between European waste law and the proposed transposition of it into Macedonian law. There are a

⁵ Tombesi (C-304/94, together with joined cases C-330/94, C-342/94 and C-224/95, ECJ, 25 June 1997)
⁶ Case C-9/00, 18 April 2002)
⁷ (Case, C-444/00, 14 July 2003)
number of EU Directives and Regulations, which together form the body of waste law, and these are being transposed into a single Act – with some overspill into the proposed Environment Act.

As will already have been noted from what has been said earlier the greatest problem associated with the EU waste legislation revolves around the definition of waste. A preliminary review of the draft WML disclosed that most definitions followed the European text:

- The definition of: “waste” is identical.

- The definition of “holder” in EU law includes the “producer” whereas in the draft WML the holder is simply the person in possession of the waste.

- The term “generator” is used in the draft WML in place of the term “producer” and the generator is the entity generating waste as a result of the business or activity performed. (“Original generator”) and any person conducting operations of treatment, mixing or other operations resulting in a change in the nature or in the composition generated waste (“secondary generator”)

- In EU law the producer is anyone who carries out “pre-processing” whereas in the draft WML the expression used is “treatment.”

- “Discard” is not defined either in the EU legislation or in the draft WML but it follows from the draft WML that discard does include both disposal and recovery operations and it is recovery operations that are undertaken by the secondary generators, which includes ZMS members.

- Both “disposal” and “recovery” are defined by in the Waste Framework Directive by reference to Annexes (IIA and IIB respectively). The definition is treated somewhat differently under the draft law. “Waste disposal” is defined as the operations providing a final solution for the waste that cannot be re-used or processed and “waste recycling” (not recovery) is defined as obtaining substances from the waste and their utilisation as a substitution for the primary raw materials. In practice there is little difference between these definitions and the more specific lists in Annex II.

- Two tables of concordance were produced by the Ministry of Environment and Physical Planning and it seems reasonably clear from the tables that all the necessary elements of EU law are incorporated into the draft WML. However,
there are some instances where additional burdens have been imposed on trade, particularly with respect to the import/export of secondary raw materials and these are referred to in Schedule 2 Part II.

There seems little doubt that the secondary raw materials producers fall within the EU waste laws – and will remain there until a new definition for “waste” is found.

Although some alterations to the draft WML were being made in late June 2004, to reflect some of the points made by ZMS and others, there are still further amendments that could be introduced which would assist trade and these are detailed in the final section of this report.

8. Potential problems for ZMS

At the meeting with ZMS, detailed consideration was given to the draft WML. A schedule was prepared of the items, which were causing difficulty to ZMS, and this schedule is to be found, in annotated form in Schedule 2 Part III to this report.

The main objection raised by the English metal recycling industry to being subjected to waste management controls is not whether the actual facility should be licensed but the other matters such as waste transfer notes and hazardous waste controls. It was suggested by the trade in 1997\(^8\) that the cost to each facility of operating the duty of care transfer note system was £8,400. It is to be noted that in England there is currently taking place, a review of waste transfer notes and the duties of the holder of waste.

Here are the most likely problems for ZMS after enacting of WML.

- The requirements for a university degree to run a scrap yard will impose an unnecessary burden on trade
- The difficulties of running a waste management business rather than a metals recycling business will take a considerable level of understanding and cost
- There is cost attached to the necessary record keeping (but this is unavoidable)
- Identification of scrap and recording it properly will cause difficulties initially
- There is a grey area between what is regarded as waste and what as product as a matter of law and wrong classification can lead to penalties

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\(^8\) British Secondary Metals Association “Barriers to sustainable waste management: A plea for recycling” Memorandum of the House of Commons Environment Committee
The definition of waste is difficult to understand and this hampers business and will add to cost

Technical standards may be imposed which are costly to meet

The costs of obtaining a licence – and the of carrying out the work to the site to enable a licence to be obtained will be costly and could be time consuming

Management time must be devoted to learning the regulations and complying with them and this takes management away from running the business

Provisions to comply with the Transfrontier Shipment of Waste regulations and the Basel Convention should be the minimum necessary – no “gold plating” of regulations

European experience is that:

- The industry will contract leaving only the bigger players
- The enforcement agency will seek to make examples of non compliant businesses and will often prosecute the smaller business as it is often easier to secure a conviction
- The smaller the organisation, proportionately the greater is the cost of environmental regulation

9. **A suggested method of regulating secondary raw materials producers**

9.1 It is clearly established that the framework of environmental law to be implemented by the Macedonian government must be adequate to meet the requirements of the EU. However, there is no obligation upon the Macedonian government to promote legislation that is more onerous than that required at EU level. It follows from this that the early Macedonian government suggestion that scrap sites, whether metal or for other secondary raw materials, should be regulated under IPPC would have been unduly burdensome for trade, as such regulation is not a requirement of the IPPC Directive

For ZMS the new regulatory regime is likely to prove difficult. However they have taken the view that the legislation as presently drafted is too harsh. This stance does not bear close scrutiny, as in most cases the objections raised by ZMS are in respect of matters where the WML is taken directly from European legislation. Where that is the position there can be no possibility of the WML being altered. However as stated
elsewhere in this report it should be possible to mitigate against some of the worst effects of the legislation.”

The question therefore to be asked is: what is the appropriate form of regulation for the valuable secondary raw materials industry, given the respective starting points – by the trade - that they are not part of the waste management industry - and by the government - that EU law centres the industry in waste management.

To answer this question it is necessary to revert to the basic tenets of European environmental law:
  - To afford a high level of protection to the environment and to human health
  - To comply with the EU environmental “cornerstone” principles of which relevant to this report are:
    - Polluter pays
    - Proximity
    - Prevention
    - Precaution
    - Proportionality

It follows that if local legislation meets the terms of the Waste Framework Directive and these principles, and then both government and trade should be satisfied. It is understood that in drafting the WML the Ministry of the Environment and Physical Planning looked at the laws in place in Germany and Slovenia. The solution proposed here is based on English law and specifically the Waste Management Licensing Regulations. 1994 (as amended)\(^9\) (the 1994 Regulations)

9.2 **Waste management Licensing:** English law requires that anyone who deposits, recovers or disposes of controlled waste must do so either:
  - Within the conditions of a waste management licence, or
  - Within the conditions of an exemption from licensing

and must not cause pollution of the environment, harm to human health or serious detriment to local amenities. Otherwise a fine or even a prison term could result.

Section 33 of the Environmental Protection Act 1990 (the 1990 Act) makes it an offence to deposit or knowingly cause or knowingly permit the deposit of controlled waste in or on land unless a waste management licence authorising the deposit is in force. The 1994 Regulations provide that any reference to deposit shall include (but not necessarily limited to) a reference to the waste disposal or waste recovery operations of the Waste Framework Directive.

\(^9\) The regulations take effect under Environmental Protection Act 1990, which gives specific authority for the regulations to be made.
9.3 **The duty of care:** Section 34 of the 1990 Act imposes a duty to prevent the escape of the waste from his control and on the transfer of the waste to secure that the transfer is to an authorized person or to a person for authorized transport purposes and that there is transferred with the waste such a written description as will enable others to avoid a contravention of the provision.

9.4 **Metal recycling sites** (MRSs). These are classified as recovery operations for the purposes of waste management licensing. UK Department of the Environment Circular 6//65 issued guidance to the Environment Agency (the English competent authority) that the Agency

"(a) Should have regard to the fact that scrap metal recovery and waste motor vehicle dismantling are a source of benefit to the environment and sustainable development;
(b) Should strike an appropriate balance between advice and encouragement and regulation and legal enforcement; and
(c) Should distinguish between and act proportionately in relation to 'technical' breaches of the 1994 Regulations or 1990 Act where there is no threat of pollution to the environment or harm to human health; and breaches, which do give, rise to such a threat. In the former case waste regulation authorities' main aim should be to ensure that the person responsible is made aware of his legal responsibilities and that steps are taken by the authority or the person concerned to prevent the commission of any further 'technical' offences."

The UK Department of the Environment has also recognized the distinctive nature of MRSs in the guidance on the licensing of these facilities in Waste Management Paper No.4A. For example, it is said that the operator of a MRS is likely to have a sound knowledge of the materials he receives; and that a significant proportion of the scrap metal received will have a positive value both to the person transferring it and the person to whom it is transferred. In consequence the operator of a MRS is likely to have a direct interest in taking measures "to prevent the escape of waste from his control". Many MRSs operate under the terms of exemptions from waste management licensing. The terms of these exemptions require that the activity concerned be carried on at a "secure place designed or adapted for the recovery of scrap metal or the dismantling of waste motor vehicles...."

9.5 **Exceptions and exemptions from waste management licensing:** As already noted a waste management license is required for the deposit, recovery or disposal of waste unless either the activities are excluded from the waste management licensing provisions, or exempt from the need to hold a waste management license.

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10 This document is currently being revised
Activities are excluded generally if they are included under other control legislation, for example IPPC and exempt if they fall within certain classes of operation. Presently there are 48 exempt operations, and it is important to note that exemptions were granted under English law for some scrap metal businesses in existence at the date the new English legislation came into force, provided they were regulated under the previous legislation. However, no hazardous waste is permitted on any exempt metal recycling site and if there is any, the exemption will no longer apply and a waste management license will be required. Even if an operation is exempt it must still register the exemption.

9.6 The transfer note system: If waste is transferred from one person to another a transfer note must be completed, signed and kept by the parties to the transfer. The format of the transfer note is not prescriptive. However, the transfer note must include prescribed information and the waste must be described using the appropriate six-digit code to be found in the European Waste Catalogue.

9.7 Itinerant traders: One of the issues raised by ZMS and others is the position with respect to itinerant traders. In English law the Scrap Metal Dealers Act 1964 makes express provision for dealers who carry on their business as part of the business of an itinerant collector. They are subject to the duty of care in the same way as anyone else that deals in scrap metal and must therefore ensure that a transfer note is completed and that a copy is retained when scrap metal is collected or handed on. However an important exception to this relates to householders’ own waste collected from their home.

9.8 Scrap metal dealers: Section 9(1) of the Scrap Metal Dealers Act 1964 defines a scrap metal dealer as follows: "For the purposes of this Act a person carries on business as a scrap metal dealer if he carries on a business which consists wholly or partly of buying and selling scrap metal, whether the scrap metal sold is in the form in which it was bought or otherwise, other than a business in the course of which scrap metal is not bought except as materials for the manufacture of other articles and is not sold except as a by-product of such manufacture or as surplus materials bought but not required for such manufacture; and `scrap metal dealer' (where that expression is used in this Act otherwise than in a reference to carrying on business as a scrap metal dealer) means a person who (in accordance with the preceding provisions of this subsection) carries on business as a scrap metal dealer."

9.9 Season tickets: For regular customers and suppliers there is provision to agree a "season ticket". In other words, one transfer note, which will cover multiple transfers over a given period of time. The use of a season ticket is, however, only permissible where the parties

There is an exception to this where the site is for vehicle dismantling – but this will change as a result of the need for “de-polluting sites” under the ELV’s directive.
involved in the series of transfers do not change and where the description of the waste transferred remains the same.

9.10 **Transferring and receiving waste:** Controlled waste may be transferred only to authorized persons or to persons for authorized transport purposes. The UK government recognized that the scrap metal industry received its material from diverse sources and that it could take considerable time to verify carriers’ or suppliers’ credentials and that this could prove awkward at a site where there were many transactions each day. The government said therefore that the code relating to the “duty of care” of those engaged in waste management was not intended to place dealers in the position where they have to seek excessive verification from their suppliers so that in time, the obligations would discourage them from transferring scrap metal for recovery. The reality is however, that the regulations have had just that effect and the numbers engaged in the trade have contracted over the last 10 years with the bigger businesses surviving at the expense of the smaller.

9.11 **Site Inspections:** "Appropriate periodic inspections" are required by the Waste Framework Directive; In England the competent authority is guided by a system of risk assessment, the objectives of which are to provide demonstrable evidence of:

- The competent authority’s fulfilment of its duty to supervise licensed sites and to ensure that licence conditions are being complied with; and
- The recovery or disposal of waste in ways which protect the environment and human health;
- The effective use of the competent authority’s waste inspection resources by targeting inspections on those sites where they are most needed - high risk/low performance sites;
- Inspections of adequate quality and consistency to allow reliable risk and performance appraisal; and
- Assistance to licence holders to improve their operational standards and performance and to reduce risk.

Accordingly the risk assessment system is based on the probability of an occurrence of an undesirable event (eg. the release of leachate) and the consequence of such an event (eg pollution of groundwater.) A system of this kind should provide an assessment of: the environmental risk of the waste disposal or recovery operation being carried out at each individual site; and the quality of each licence holder's performance in managing that operation.

9.12 **Technical competence:** There are special provisions, which deal with the need to demonstrate technical competence. There are separate provisions which allow only a “fit and proper person” to hold a waste management licence.
9.13 **Variation, Revocation, and Suspension of waste management licences:** A waste management licence is granted for an indefinite period of time. However, the competent authority has a duty to review all licences from time to time and to vary them in order to prevent pollution or harm to human health. Likewise, there are powers of suspension or revocation if the holder of the licence ceases to be a fit and proper person or if pollution etc. is caused.

9.14 **Surrender and transfer of a waste management licence:** In the event that the holder of the licence wishes to surrender it, he must make application to the competent authority. Surrender will only be permitted if the competent authority is satisfied that adequate arrangements are in place for after care of the site. Transfer may take place but only to a “fit and proper person” with the consent of the competent authority.

9.15 **Environmental management systems:** It is obvious that there should be some mechanism in place so that if a business can demonstrate that: it is technically competent and that it poses little risk to the environment, it should be lightly regulated. It is equally obvious that even the presence of hazardous materials do not necessarily mean that there must be greater regulation, provided the business can demonstrate that it is environmentally capable. One of the ways to do that is to have an accredited environmental management system such as that offered under the ISO14000 series of standards. These standards range from a full-scale environmental management system, to a methodology for environmental performance evaluation.

It is suggested that regulation of the type outlined above would be appropriate for Macedonia, be within the ambit of the relevant EU legislation and although time consuming and costly for trade, at least capable of compliance.

10 **Recommendations and points of action**

The points of action have been grouped under their various headings and are set out in order of priority.

10.1 **Lobbying activities**

There is much that could be achieved by lobbying provided it is undertaken in the right way. There follows a list of matters, which should be raised with the Ministry of Environment and Physical Planning. This could be done by the presentation of a lobby paper briefly addressing the relevant points and offering alternative suggestions. An example of a lobby paper is to be found at Schedule 3. The following list of matters is regarded as important to industry and appear in their order of importance:
There should be proper opportunity for consultation upon the draft subordinate legislation – and this consultation should be an ongoing process and be undertaken from the time the first draft is available.

The legislation is to come into force on 1 January 2005; there should be a period of grace before it applies to the secondary raw materials industry and a further period before enforcement. It is already known that this is to happen with respect to IPPC but it is relevant to waste management operations too.

IPPC should not apply to any waste management site handling secondary raw materials – even if the material is hazardous – unless such is required under EU waste laws.

There must be exemptions from the legislative framework and exceptions to it and these should be lobbied for. Examples of exemptions are:

- The treatment, keeping or disposal of waste) if the activity in question was being carried on the premises before [the date the regulations come into force] and before that date no licence was required for that activity. This exemption can only be for a fixed period of time - perhaps 2 years.

- The beneficial use of waste it is put to that use without further treatment and that use of the waste does not involve its disposal.

- Carrying on any activities, for example those set out in the table below, where the activity is carried on with a view to the recovery or reuse of the waste and the quantity handled is limited to a maximum amount.

For example:

<table>
<thead>
<tr>
<th>Kind of waste</th>
<th>Activities</th>
<th>Limit (tonnes per week)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste paper or cardboard</td>
<td>Baling, sorting or shredding</td>
<td>3,000</td>
</tr>
<tr>
<td>Waste textiles</td>
<td>Baling, sorting or shredding</td>
<td>100</td>
</tr>
<tr>
<td>Waste plastic</td>
<td>Baling, sorting, shredding, densifying or washing</td>
<td>100</td>
</tr>
<tr>
<td>Waste glass</td>
<td>Sorting, crushing or washing</td>
<td>1,000</td>
</tr>
<tr>
<td>Waste steel cans, aluminium cans or aluminium foil</td>
<td>Sorting, crushing, pulverising, shredding, compacting or baling</td>
<td>100</td>
</tr>
<tr>
<td>Waste food or drink cartons</td>
<td>Sorting, crushing, pulverising, shredding, compacting or baling</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: “UK Government HMSO.”
Further details may be found in Section 9 of this report.

- Record keeping provisions and the transfer note system should be simplified and as far as possible the same records should be required for both waste management and trans-frontier shipment of waste

- In place of a university degree, the qualification for operating a scrap site should be relevant technical competence, with transitional provisions of relevant experience

10.2 Quality systems:

- Both Makstil and the Department of Economy indicated that quality standards for scrap were needed. It is suggested that there are existing standards, for example those propounded by ISRI that could be adapted for use in Macedonia.

10.3 Training issues

- A variety of training programmes need to be designed and implemented for ZMS members and others. These should cover everything from basic environmental awareness training through to specialist training for those who must demonstrate technical competence.

- The environment agency, when created should spend its first period offering advice and assistance to those affected by the environmental legislation, which will by then be in place

10.4 Generally

- Thought should be given now to the application of the “priority waste” directives namely: packaging waste; waste electronic and electrical equipment and end of life vehicles, as all will impact on the businesses of ZMS members and all will impact on the management of scrap sites. The principles of the priority waste stream legislation are contained in the draft environmental law, as much of the metal scrap is from end of life vehicles.
Schedule 1

Part I: Documents reviewed


Law on Waste 37/1998

The draft National Solid Waste Plan

Draft strategy

Law on Environment and Nature Protection and Improvement 51/00

Law on Public Hygiene and on Communal Solid and Technological Waste Gathering and Transportation 37/98

Report produced by the Regional Environment Centre in 2000 “Greener with Accession” Comparative report on public perceptions of the EU Accession Process and the environment in Hungary, FYR Macedonia and Romania.


Ministry of the Environment and Physical Planning 2000 “Priorities”

OHIS 2000 “Solid Waste Generation from OHIS”


Draft environmental law November 2003 version

Draft Waste Management law November 2003 version


Assessing Environmental Law Drafting Needs in SEE”; Publication prepared by the REC (2003)

Terms of Reference for the National Solid Waste Management Plan currently being developed (2003)

Tables of Concordance
Schedule 1

Part II: Websites consulted

http://www.europa.eu.int
http://www.oecd.org
http://www.unep.int
http://www.epa.gov
http://www.grida.no
http://www.defra.gov.uk
http://www.mst.dk
http://www.law.gonzaga.edu
http://www.iue.it
http://www.bath.ac.uk
http://www.moe.gov.mk
http://www.britmet.org.uk
http://www.bir.org
http://www.environmentdaily.com
http://www.endsreport.com
http://www.greenpeace.org
http://www.isri.org
http://www.cia.gov/cia/publications/factbook
http://www.mchamber.org.mk/
http://www.lib.utexas.edu/maps/macedonia.
http://www.kidon.com/media-link/macedonia
http://www.umweltbundesamt.de/index-e.htm
http://www.iso.org
http://www.basel.int
Schedule 2

Part I: Paper submitted by ZMS

To: The Ministry for environment and physical planning

Ref. Opinion on the proposal for the waste management law

The group of collectors of secondary raw materials and the protection of the natural environment is striving enacting out a new legislation for handling the secondary raw materials (collecting and processing of the useful solid waste), due to the fact that the current law not only does not correspond to the European rules and standards, but it is also an obstacle for the utilization of valuable resources that irrevocably ends waste.

The proposer of the draft act for waste management provides the main reasons for enacting:

- Overcoming the inconsistency problems in the current legislation;
- Harmonization of the laws according to the Agreement for association and stabilization;
- Preparation of a law that will define a consistent policy for handling and utilizing the value contained in the waste and for protection of the environment (defined as goals of the law in article 3, section 1, subsection 2 and 3)

In this context, a subject of revision is whether the regulative offered can accomplish a waste management that will create more favourable business conditions and will increase the level of the “usage of the useful waste parts” and “sustainable development through preservation and savings of the resources”. The need of the revision of the law text is of a great importance for more than 50 economy subjects, with more than 15000 employees (without public utilization companies), whose main activity is collecting, processing and foreign trading with secondary raw materials.

The main remark on the offered draft law is following:

- The activity of collecting and processing the secondary raw materials does not get the expected favourable legislation conditions that would encourage the investment and the development, although there are preconditions even for a radical development in the disposable unused resources of the waste. The group also thinks that this law would be significantly limiting in comparison to the current law, not only for the collectors and processors of the secondary raw materials (useful waste), but also for the process of implementation of the eco standards, having in mind that these operators are as important carriers of these processes as the public waste management companies.

The main reason for the unfavourable law treatment of these activities is the fact that the subject of the law regulation is concentrated mostly on the 2 basic types of waste- dangerous and non dangerous, through the aspects of the “polluting” and “protection of the natural environment” (the industry as a polluter and the public waste management companies for the protection of the natural environment.) Since in a such a legal structure, the useful solid waste, as a significant segment of the non dangerous waste, does not have a different treatment in the general non dangerous waste, it bears the same legal obligations that makes the private sector having to deal with: complex administrative obligations and procedures like making plans and programs for working, ban for exporting of the secondary raw materials that can be processed in the country and similar
Bearing in mind that this law, in an unchanged form brings a risk of opening retrograde processes in the relatively young and developing industry for processing the secondary raw material “collecting-processing and foreign trade” and the fact that the draft version is already in its second phase, we are giving the following proposals for changing and supplementing (only essential comments are made without changing the basic structure of the law):

- In article 20, connected to the articles 21 and 22, it is proposed to make the obligations for the preparation of the programs more clear, i.e. that the individuals and companies who are not creating, but only collecting, processing and selling non dangerous industrial waste, to be excluded;

- In article 31, subsection 3, it is proposed that the obligation to have at least 1 employed person with high education, to stay only when storing and processing dangerous waste. It is also proposed to be deleted the part of the sentence “also appropriate equipment and technical instruments (means)” (because with a under acts, the Minister defines the minimum technical conditions and are defined better than “appropriate equipment and technical instruments (means)”.) Hence, we suggest that here is put “the minimum technical conditions as defined in section 1”, and the words “the closer conditions for the equipment and the technical means from stav3 of this law” to be deleted. For this requirement we have in mind that the minimum technical conditions have to be defined in a law, in order to eliminate the risks of bribing and corruption. This also includes defining appropriate location for storing the waste and the need of building license for buildings for processing the waste;

- In article 44, point 5 is required analogy change as in article 31, and that is with under acts to be defined the minimum technical conditions for collecting and transporting the communal waste and the other types of waste (having in mind that in the current text there is no obligation for location, building license, etc)

- In article 55, it is proposed that the non-dangerous waste is excluded, that according to the definition in article 6, point 30 is recycled as a secondary raw material (paper waste, ferrous, plastic, textile) and which in greatest part is collected from poorest population for sale. According to our judgments, the obligation to turn in the form for identification of the waste is unnecessary administration that will either prevent the law from being implemented in handling the secondary raw materials, or will be a great barrier for attracting new, especially foreign investment.

One of the most essential remarks concerning the draft law is the article 101, connected with article 102 and 103.

According to the article 101, only a waste that cannot be processed can be exported, or a waste that endangers the natural environment, the people’s life and health, and the costs are inappropriately high.

Because of the exclusiveness of the right for export, there is a legal constraint to export non-dangerous waste, since it is not endangering the people’s life and health, the natural environment, and there are places where it can be processed inside the country. This constraint is not in
accordance with the agreement for stabilization and association, especially with the part for unlimited movement of the non-dangerous waste.

The constraint for export of the non-dangerous waste (secondary raw material), together with the necessary documents needed for transit in Republic of Macedonia, will prove to be harmful for the future development of the activity.

The content of the articles 101, 102 and 103 would be consistent with the future development needs and the law if these 3 articles refer only to the dangerous waste. So we propose the following:

- In article 101 a new point to be added “the export of the waste is free”
  In the current point 1, that becomes point 2, the word dangerous to be added in front of the word waste
- In article 102, to be added new point “Transit of the waste through the Republic of Macedonia is free”
  In the current point 1, that becomes point 2, the word dangerous to be added in front of the word waste.
- In article 103, in the title, in front of the word “waste” to be added the word “dangerous”
  In the current point 1 the word dangerous to be added.

We hope that you will take a close look at our remarks and you will notify us for a meeting where we could exchange our opinions.

With respect,

Spase Zacevski
## Requirements from ZMS

<table>
<thead>
<tr>
<th>The Env Law at Nov 2003</th>
<th>The Env Law as revised by May 2004, Revised Articles for which the changes are required</th>
<th>Requirements from ZMS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 20</td>
<td>Waste management programs of the legal and natural entities</td>
<td>Processors of waste to be exempted from the obligation to prepare Waste Management Plans.</td>
</tr>
<tr>
<td></td>
<td>(1) Legal entities and natural persons which annually generate, process and dispose of waste which is more than the amount specified in the Waste Management Plan of the Republic of Macedonia shall be obliged to develop Waste Management Programs for the ongoing year.</td>
<td>Processors of waste to be exempted from the obligation to report on the implementation of the Waste Management Plans.</td>
</tr>
<tr>
<td>Article 22</td>
<td>Reporting on the implementation of the waste management programs</td>
<td>Processor to be exempted from the obligation to report on the implementation of the Waste Management Plans.</td>
</tr>
<tr>
<td></td>
<td>(3) The legal and natural entities managing non-hazardous waste shall be obliged to submit a Report on the implementation of their programs to the Council of the unit of the local self-government on an annual basis, and the legal and natural persons dealing with hazardous waste have to submit their annual reports for implementation of their programs to the Ministry of Environment and Physical Planning.</td>
<td>Requirement is: natural and legal entities which store, treat and process non-hazardous waste to be exempted from the obligation to employ at least one person with University degree.</td>
</tr>
<tr>
<td>Article 31</td>
<td>License for storing and processing of waste</td>
<td>Requirement is to correct the formulation “the more detailed conditions regarding the equipment and the technical means” with “minimal technical conditions for operation.”</td>
</tr>
<tr>
<td></td>
<td>(3) In order to be able to engage in the business of storage and processing of waste, the entities referred to in Paragraph 1 of this Article must have at least one person on the staff with a University degree in natural or technical sciences, as well as appropriate equipment and technical means.</td>
<td>Requirement is to correct the formulation “the more detailed conditions regarding the equipment and the technical means” with “minimal technical conditions for operation.”</td>
</tr>
<tr>
<td>Article 32</td>
<td>License for storing, treating and processing of waste</td>
<td>Requirement is to correct the formulation “the more detailed conditions regarding the equipment and the technical means” with “minimal technical conditions for operation.”</td>
</tr>
<tr>
<td></td>
<td>(6) The Minister of Environment and Physical Planning shall prescribe the form and the contents of the application for obtaining a license for processing or storing waste referred to in Paragraph 2 of this Article, the form and the content of the license for processing waste, as well as the more detailed conditions regarding the equipment and the technical means referred to in Paragraph 3 of this Article.</td>
<td>Requirement is to correct the formulation “the more detailed conditions regarding the equipment and the technical means” with “minimal technical conditions for operation.”</td>
</tr>
<tr>
<td>Article 44</td>
<td>Licenses for collection and transport of municipal and other types of non-hazardous waste</td>
<td>Requirement is to correct the formulation “the more detailed conditions regarding the equipment and the technical means” with “minimal technical conditions for operation.”</td>
</tr>
<tr>
<td></td>
<td>(5) The Minister of Environment and Physical Planning shall prescribe the form and the content of the application, the form and the content of the license for collection and transportation of municipal and other types of non-hazardous waste, as well as the more detailed conditions regarding the equipment and the technical means needed it order to be issued the license referred to in Paragraph 3 of this Article.</td>
<td>Requirement is to correct the formulation “the more detailed conditions regarding the equipment and the technical means” with “minimal technical conditions for operation.”</td>
</tr>
</tbody>
</table>
**Article 55**
Identification form for industrial non-hazardous waste

1. The legal and natural entities handling industrial non-hazardous waste shall be obliged to hand over an identification form if the waste is intended for transport, in accordance with Article 38 of this law.

2. The legal and natural entities handling industrial non-hazardous waste shall be accountable for the accuracy of the data listed in the Identification form referred to in Paragraph 1 of this Article.

3. The legal and natural entities handling industrial non-hazardous waste must not take the waste without receiving first the Identification form.

4. The legal and natural entities handling industrial non-hazardous waste shall be obliged to submit a copy of the Identification form to the Ministry of Environment and Physical Planning.

**Article 56**
Identification form for industrial non-hazardous waste

1. The legal and natural entities handling industrial non-hazardous waste shall be obliged to hand over an identification form if the waste is intended for transport, in accordance with Article 38 of this law.

2. The legal and natural entities handling industrial non-hazardous waste shall be accountable for the accuracy of the data listed in the Identification form referred to in Paragraph 1 of this Article.

3. The legal and natural entities handling industrial non-hazardous waste must not take the waste without receiving first the Identification form.

4. The legal and natural entities handling industrial non-hazardous waste shall be obliged to submit a copy of the Identification form to the Ministry of Environment and Physical Planning.

**Article 101**
Export of waste

1. Export, import, and transit of hazardous waste shall be carried out on the basis of a permit issued by the Ministry of Environment and Physical Planning.

2. The waste that can not be processed in the Republic of Macedonia, or the processing of which endangers the environment and human life and health, and if the waste processing costs are extremely high, can be exported after a permit had been obtained from the Ministry of Environment and Physical Planning.

3. Transit of hazardous waste through the territory of the Republic of Macedonia can be accomplished after a permit had been obtained from the Ministry of Environment and Physical Planning.

4. Transit of waste through the territory of the Republic of Macedonia is free.

**Article 102**
Transit of waste through the territory of the Republic of Macedonia

1. Transit of waste through the territory of the Republic of Macedonia can be accomplished after a permit had been obtained from the Ministry of Environment and Physical Planning.

2. Transit of hazardous waste shall be carried out in accordance with the Basel Convention on control of the trans-boundary transfer and storage of hazardous waste.

**Article 103**
Permits for export, import, and transit of waste

1. Export, import, and transit of waste shall be carried out on the basis of a permit issued by the Ministry of Environment and Physical Planning.

2. The new Article contains only one paragraph as described above.

3. The new Article contains only one paragraph as described above.

**Article 104**
Import, export and transit of waste through the territory of the Republic of Macedonia

1. Import, export and transit of hazardous waste shall be carried out in accordance with the Basel Convention on Control of the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

2. Import, export and transit of hazardous waste shall be carried out in accordance with the Basel Convention on Control of the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

3. Import, export and transit of hazardous waste shall be carried out in accordance with the Basel Convention on Control of the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

4. The new Article contains only one paragraph as described above.

5. The new Article contains only one paragraph as described above.

**Article 105**
Import, export and transit of waste through the territory of the Republic of Macedonia

1. Import, export and transit of hazardous waste shall be carried out in accordance with the Basel Convention on Control of the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

2. Import, export and transit of hazardous waste shall be carried out in accordance with the Basel Convention on Control of the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

3. Import, export and transit of hazardous waste shall be carried out in accordance with the Basel Convention on Control of the Trans-boundary Movement of Hazardous Wastes and Their Disposal.

4. The new Article contains only one paragraph as described above.

5. The new Article contains only one paragraph as described above.

**Article 106**
Permits for export, import, and transit of waste

1. Export, import, and transit of waste shall be carried out on the basis of a permit issued by the Ministry of Environment and Physical Planning.

2. The Minister of Environment and Physical Planning prescribes the types of wastes of paragraph (1), conditions for import, export and transit of wastes and the form and content of the permit for import, export and transit of wastes.

3. The Minister of Environment and Physical Planning prescribes the types of wastes of paragraph (1), conditions for import, export and transit of wastes and the form and content of the permit for import, export and transit of wastes.

4. The Minister of Environment and Physical Planning prescribes the types of wastes of paragraph (1), conditions for import, export and transit of wastes and the form and content of the permit for import, export and transit of wastes.

**General note:** There is a remuneration of some articles due to addition of some new articles in the updated Proposal on Law on Waste Management.

Assessment of Solid WML Macedonia, June, 2004
MAKSTIL OBSERVATIONS UPON THE DRAFT LAW ON WASTE MANAGEMENT

The draft for the Law on waste management delivered by you, in Makstil AD – Skopje, was carefully studied by a group of experts and referring to that we give you our opinion:

The draft for making the stated law is well done and it addresses in all the causes for its drafting, as stated in the introduction of the draft law.

The activity of “Makstil” AD – Skopje is manufacturing of steel slabs and plates. The basic raw material for steel production is scrap iron, which is provided in small quantities from domestic sources, and the bigger quantities by imports.

According to the Basel Convention for controlling international transport of dangerous waste and its disposal, which was ratified by R. Macedonia on 16.02.1997, scrap iron is considered not to be a dangerous waste, i.e. “Iron and Steel Scrap” in the English version of the convention.

In the draft law in article 6 point 6, scrap iron is defined according to the convention as an industrial non-dangerous waste.

400,000 t of scrap iron are used annually as a basic raw material in the technological process for steel production. Makstil AD Skopje, as a big consumer of this kind of scrap, suggests some articles from the draft law on waste management to be supplemented:

1. In the list of type of waste, stated in article 24 sub-articles 2 in the draft law the waste materials that can be used as secondary raw materials, (scrap iron, paper, plastic, oils etc) should be separately defined.

2. Article 101 should be supplemented with a new sub-article:
   “Waste that can be used as a secondary raw material and for it there are manufacturing capacities in R.Macedinia cannot be exported without a license from the Ministry of environment and physical planning. Getting such license should be conditioned by supplemental export taxes.

Explanation: This kind of waste is being exported by certain companies without control, which causes multiple damages to the companies that are using it and to the state. The license will prevent uncontrolled exports, and the introduction of supplemental taxes will discourage exporters.

3. Article 103 after sub-article 2, should be supplemented with a new sub-article 2a:
   “Manufacturers who are using large quantities of waste as a raw material from imports in their production process, can get a yearly license for import. On the basis of the yearly license they can make individual contracts for import without disruption.

Explanation: as it was previously stated, Makstil AD Skopje is a big consumer of scrap iron, which is mostly provided by import. Getting single licenses is prolonging making import contracts. Experience shows that this way of getting licenses has questioned the normal work of the company many times.
We are hoping that our proposals to the draft law on waste management would be carefully considered and as constructive comments they would be included in the draft law.

Schedule 2

Part III: Annotated ZMS schedule prepared 24 June 2004

<table>
<thead>
<tr>
<th>No</th>
<th>Article</th>
<th>Directive</th>
<th>Complaint</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>100</td>
<td>Basel Convention Article 4</td>
<td>This should accord with Basel Convention D4</td>
<td>D4 is a disposal item. Article 100(1) is in accordance with the Basel Convention Model law Part V First Option. Article 100(2) does not accord with V3 of the Basel Model law which reads: “The Authority shall ensure that hazardous wastes are not mixed with non-hazardous waste unless the generator, collector, storer, transporter or disposer prove that such mixing is more environmentally sound”. This is different from the exception in Article 100(3)1.</td>
</tr>
<tr>
<td>2</td>
<td>101</td>
<td>Basel Convention Article 4</td>
<td>The terms of the licence for export are too harsh</td>
<td>This draft could be improved using either of the options in Part IV of the Basel Model law</td>
</tr>
<tr>
<td>3</td>
<td>103</td>
<td>156/91 Articles 9,12,14 Basel Convention Article V</td>
<td>This Article should be deleted</td>
<td>Much of this is required by the Basel Convention and the EU TFS Regulations. It should be looked at in detail against the “duty of care” provisions which require to be implanted under the 1991 Directive</td>
</tr>
<tr>
<td>4</td>
<td>20</td>
<td>156/91 Article 16 &amp; Article 7</td>
<td>SMI should be exempt from the requirement to prepare a waste management plan</td>
<td>The directive imposes obligation on member states – it is for them to decide how to obtain the information. The provision does seem unduly restrictive and time consuming</td>
</tr>
<tr>
<td>5</td>
<td>31.3</td>
<td>Article 7 156/91</td>
<td>This sub clause should be deleted</td>
<td>Technical competence must be demonstrated – nothing further is required</td>
</tr>
<tr>
<td>6</td>
<td>31.6</td>
<td>Article 7 156/91</td>
<td>This sub clause should be amended to provide for basic minimum criteria</td>
<td>This is the duty of the competent authority. It is up to the government to decide who the competent authority shall be.</td>
</tr>
<tr>
<td>7</td>
<td>31.6</td>
<td></td>
<td>ZMS should be consulted on any application for a licence under this sub clause</td>
<td>This might be viewed as anti-competitive</td>
</tr>
<tr>
<td>8</td>
<td>44.5</td>
<td>Article 12 156/91</td>
<td>Processors of secondary materials should be exempted from this provision</td>
<td>This is a requirement of directive 156/91. The broad terms of the licence could be included in the subordinate legislation</td>
</tr>
<tr>
<td>9</td>
<td>55</td>
<td>Article 14 156/91</td>
<td>Processors of secondary materials should be exempted from this provision</td>
<td>This would be contrary to EU law</td>
</tr>
<tr>
<td>10</td>
<td>General</td>
<td></td>
<td>SMI is not part of the communal waste industry the draft law should be amended to reflect this fact</td>
<td>It is regarded as a waste operation in EU law</td>
</tr>
<tr>
<td>11</td>
<td>General</td>
<td></td>
<td>Subordinate legislation specifically for SMI is required</td>
<td>This seems unnecessary</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td>There should be no examination requirement to operate an SM site</td>
<td>It is possible to provide for “grand fathering” rights for an introductory period. See Article 5 UK Waste management Licensing regulations 1994</td>
</tr>
<tr>
<td>13</td>
<td>37</td>
<td></td>
<td>SMI should be exempt this Article</td>
<td>This demonstrates that the operation has a commitment to the environment</td>
</tr>
</tbody>
</table>

12 SMI means Secondary Materials Industry
<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Article</th>
<th>SMI should be exempted</th>
<th>This Article should be compared with Article 101 and harmonised to the greatest extent possible to reduce costs for trade.</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.</td>
<td>38</td>
<td>14 156/91</td>
<td>SMI should be exempt this Article</td>
<td>This Article should be compared with Article 101 and harmonised to the greatest extent possible to reduce costs for trade.</td>
</tr>
<tr>
<td>15.</td>
<td>26</td>
<td>5.2 156/91</td>
<td>The requirements should be stipulated in the Act not left to the Minister to determine</td>
<td>The competent authority will make the determination. There is no reason why the principles should not be laid down in the subordinate legislation.</td>
</tr>
<tr>
<td>16.</td>
<td>110.5</td>
<td>SMI should be exempted from this article</td>
<td>Information is required under Directive 156/91 and under Aarhus Convention and the freedom of Information Directive for third parties. In order to be able to give information as required – it must first be collected</td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>111</td>
<td>SMI should be exempted</td>
<td>Commercially confidential information can be held off the public record</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>112-116</td>
<td>These Articles should be deleted</td>
<td>See 16 and 17 above</td>
<td></td>
</tr>
</tbody>
</table>
Schedule 3

Sample of Lobby Paper dated 23 June 2004

prepared by Hilary Stone for
Ministry of Environment and Physical Planning

PROPOSAL FOR AMENDMENTS TO THE MACEDONIAN
DRAFT WASTE MANAGEMENT LAW

Introduction

There are a number of potential problems for the secondary materials trade arising from the proposed draft Waste Management law. Experience of Directive 156/91 (the Directive) in other EU countries has shown that there is a lack of clarity in the original drafting which can cause difficulties to those industries engaged in recycling, particularly of non-hazardous wastes.

Principal proposed amendments

Definitions (Article 6)

2.1.1 “Discard”

There is no definition of the word “discard” However; it is not defined in the Directive either. Accordingly the word is to be given its dictionary meaning. Unfortunately it is difficult to reconcile the dictionary definition of “discard” with the recovery operations set out in the draft Waste Management law and in the Directive. At EU level this has led to several cases being brought to the European Court for clarification – some of them relating to secondary materials. There has been no definitive ruling of the European Court. Indeed, each occasion results in a more liberal interpretation of the word so that it now bears little relationship to its dictionary meaning. In those circumstances it seems sensible to offer an interpretation, which will result in clarification – if not satisfaction - for all those subject to the Waste Management law.

The European Court in Inter–Environnement Wallonie ABSL held that “discard” covers both wastes passing to disposal and to recovery” (paragraph 26) The Court also found that the definition of waste in the Directive “is not to be understood as excluding substances and objects which were capable of economic re-utilization” (paragraph 27) and that “that conclusion does not undermine the distinction which must be drawn between waste recovery within the meaning of the Directive and normal industrial treatment of products which are not waste no matter how difficult that distinction may be” (paragraph 30)

A previous attempt by Advocate General Jacobs attempted to link the lists of disposal and recovery operations to the basic definition of waste in order to provide a degree of certainty - the so-called "Tombesi by-pass" - but this approach was rejected by the European Court as being unduly restrictive given the overall aims of the Directive.

It does not seem that at this stage the Government is prepared to move from the EU Directive definition of waste but replacing the word “discard” with the word “dispose” would better reflect what the Directive seeks to achieve: namely control over wastes passing both for disposal and for
recovery. Since there is often a problem with the precise meaning of words in translation and since “se defaire” in the French version means to “get rid of” as does “entledigen” in the German version it might be considered that using the word “dispose” would give greater certainty to industry.

This does not assist the secondary materials industry in its underlying problem that the industry does not consider themselves to be part of the waste industry but in the business of valuable secondary materials production.

“By-products” or “secondary raw materials”

These terms are not defined in the Directive or in the draft law. Even if the word “discard” cannot be given its ordinary meaning in the draft law it might be possible to define “by-products” which are generally not regarded as “waste” and thus exclude from the ambit of regulation all those secondary materials which fall under the definition.

It is not possible to provide an instant definition of the term, as research at local level needs to be completed first.

10-year licences

A licence limited to 10 years could be seen as limiting the ability of the Investor to recover its capital investment and make a profit. A longer term would be desirable and would not have an adverse environmental impact since the regulator would always have the right to vary the terms of the licence or indeed revoke it for breach.

Financial instruments

You asked for comments on the desirability of financial instruments. Such instruments are usually support measures partly funded by the EU – usually through the LIFE programme. Economic instruments are an alternative, which act as incentive to industry to act in an environmentally responsible manner and result in a financial benefit if they do so. Conversely companies that ignore environmental regulation are penalised. Examples may be found in the priority waste streams namely packaging, WEEE and ELVS and if of assistance examples can be provided. The application of economic instruments can be extended to other environmental areas and coupled with other measures can assist in raising environmental standards.

Hilary Stone
23.VI.04
Schedule 4

European Waste Cases

_Tombesi (C-304/94, together with joined cases C-330/94, C-342/94 and C-224/95, ECJ, 25 June 1997)_ is significant because it is the first EU case to be concerned with the definition of waste following the Waste Framework Directive. Tombesi confirms that substances sold or sent for recycling or reuse still fall within the waste controls established by EU legislation.

The development of watertight definitions of what is or is not waste has caused great difficulty for legislators, both in member states and at EU level. A key policy dilemma concerns recycling and reuse, where some countries have tended to exclude such activities from waste disposal controls in order to encourage recycling.

The Tombesi and associated cases concerned a number of references from Italian courts, which raised the question of the compatibility of Italian waste legislation with EU law. The Italian implementing legislation was complex. 1982 legislation had implemented the 1975 Directive by defining waste as meaning "any substance or object deriving from human activity or natural cycles which is abandoned or destined to be abandoned."

This was followed in 1988 by a "decree-law". A decree law becomes inoperative unless converted by Parliament into formal law. The 1988 decree law introduced arrangements for residues capable of reuse, which differed from those applicable to waste in general. A series of subsequent decree-laws introduced further provisions concerning waste. Materials quoted with specific commodity characteristics in commodity exchanges or official lists were excluded from the scope of the decree-laws.

The European court concluded that although there were differences between them, the essential content of the decree-laws was the same. They drew a distinction between "waste" and "residues" and applied simplified procedures of control to the collection, transport, treatment and reuse of such residues. Some items were excluded altogether.

The cases concerned a number of criminal proceedings brought against industries concerning waste offences. Each of the defendants argued that according to the Italian decree-laws, the materials involved were no longer to be regarded as waste - implying that no offences were committed. The Italian court, concerned at the compatibility of the Italian legislation with EU law, then sought guidance from the European Court as to whether the EU definitions of waste encompassed reusable residues and certain other materials.
The Court first noted that, in accordance with its previous case law, a Directive, which had not been properly implemented, may not impose direct obligations. Conversely, the 1993 Waste Shipments Regulation, which incorporated the general EU definition of waste, has direct application.

The Court also noted that the Regulation excludes shipments within a Member State from most of its provisions, but nevertheless requires Member States to establish an appropriate system for the supervision and control of wastes within their jurisdiction. According to the preamble, this must reflect "minimum criteria" in order to ensure a high level of environmental protection. The Court therefore concluded that in relation to shipments of waste within a Member State, the common definition of waste had direct application.

The key issue was to what extent this definition excluded substances or objects capable of economic reuse. The Court observed that its case law on the previous definition had concluded that national legislation which defines waste as excluding substances or objects which are capable of economic re-utilisation was not compatible with the 1975 Directive as originally drafted. As might have been expected, it concluded that this approach was not affected by the 1991 amendments.

The Court noted that the 1975 Directive as amended obliges Member States to take measures to encourage the recovery of wastes by means of recycling, reuse or reclamation. The Directive lists various types of waste management operations, which require permits, and these include both disposal and recycling operations. The Court concluded, therefore, that the system of supervision and control established by EU law "is intended to cover all objects and substances discarded by their owners even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or reuse." It made no difference that the materials in question may be the subject of a transaction or quoted on public or private commercial lists.

The Italian court put forward a number of specific examples and sought guidance on whether they could fall outside the scope of EU legislation on the grounds that they related to reusable residues. They included a deactivation process intended merely to make a waste harmless, landfill tipping in hollows or embankments, the incineration of waste creating marketable residues, the classification of waste as a reusable residue without its characteristics or purpose being defined, and the grinding of waste without its characteristics being altered in any way. Given the Court's broad interpretation of the definition of waste, it was hardly surprising that it decided that none of these were excluded from the definition. However, Tombesi, while providing significant guidance, did not explore the notion of discarding in detail, despite its centrality to the fundamental definitions.

**Palin Granit Oy v Vehmassalon kansanterveystyon kuntayhtman hallitus (Case C-9/00, 18 April 2002)** was a reference from the Finnish Supreme Administrative Court seeking guidance on the meaning of waste.
The case arose from a dispute between two Finnish administrative bodies as to which should grant a licence in respect of a quarry.

An environmental licence had originally been granted in respect of a granite extraction works by the local municipal board. Some 65-80% of the quarried stone could not be sold immediately because it was the wrong shape or size, and the application included provision for storage and management of the left-over stone on an adjacent site with the intention of using it for embankments, landscaping or possibly as gravel or infilling material.

However, another administrative body, the regional environment centre, claimed that the left-over stone was waste, and that only it had the authority under national law to grant a waste licence.

The company argued that the left-over stone was identical in composition to the granite extracted and was stored for short periods for subsequent use without the need for any special recovery measures, and that there was no risk to human health or the environment. In those circumstances, the material should not be regarded as waste in law.

The governing EU legislation is the amended 1975 Waste Directive. The starting point for the Court was the basic definition of waste as "any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard."

Annex I of the 1975 Directive lists a large number of categories including "residues from raw materials extraction and processing (e.g. mining residues, old fieldslops, etc.)" But this is clearly an illustrative rather than a definitive list, since the last category includes "any materials, substances or products which are not contained in the above categories."

The Directive also provides for the Commission to draw up a detailed list of waste categories in the European Waste Catalogue. But again this is essentially guidance, and the catalogue states that the inclusion of a material on the list does not mean it is necessarily waste in all circumstances.

The position is made more complex because the Directive also contains an annex listing various types of disposal and recovery operations which include deposit in or on land, permanent storage, and storage pending such operations, excluding temporary storage pending collection on the site where the waste is produced. Similar provisions concerning storage apply to recycling and similar operations listed in the annex.

Establishments which carry out such disposal or recovery operations must be subject to a permit, though under Article 11 exemptions from the individual permit requirement may be granted where disposal is carried on at the place of production or for waste recovery operations, provided these
are subject to general rules and that waste is recovered or disposed of without risks to humans or the environment.

Material which is not subjected to one of these specified operations may therefore still be waste in law and, while no permit may be required in such cases, it is still subject to the general duty of Member States under Article 4 to ensure that waste is recovered or disposed off without risk to human health or the environment.

According to the Court, therefore, whether or not a substance is waste is primarily to be inferred from the holder's action, which depends on whether or not he intends to discard the substances in question.

The term "discard" is not defined in the legislation and, accordingly, it "must be interpreted in the light of the aim of Directive 75/442 which according to its third recital is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste."

The company argued that storing the leftover stone was not a landfill of waste but a deposit of reusable materials. The fact that it was reusable, however, did not preclude it from being waste since the Court had held previously that materials capable of economic re-utilisation could still be waste.

Conversely, even if the storage did fall within one of the operations specified in the Directive that was not conclusive since the Court accepted that the distinction between disposal or recovery operations from the treatment of other products was often a fine one.

A key factor is to determine whether the substance was in essence a production residue, and this is largely affected by the primary purpose of the production: "According to its ordinary meaning, waste is what falls away when one processes a material or an object and is not an end-product which the manufacturing process directly intends to produce."

Applying this test, the Court accepted that the leftover stone from the quarrying was not the primary product sought by the operator. The company, however, argued that in this case the leftover stone could be reused without any further processing, and that it should be regarded as a by-product rather than a production residue.

The Court appeared to have some sympathy with this analysis: "There is no reason to hold that the provisions of Directive 75/442 which are intended to regulate the disposal or recovery of waste apply to goods, materials, or raw materials which have an economic value as products regardless
of any form of processing and which, as such, are subject to the legislation applicable to those products.”

But the Court then reiterated the need to avoid a restrictive definition of the term "waste" as that might overlook its inherent risks and pollution. It concluded that the analysis concerning by-products as not being waste should be confined to those situations where their reuse was "not a mere possibility but a certainty without any further processing prior to reuse and as an integral part of the production process."

The degree of likelihood of reuse was therefore another critical factor, The Court noted that, "if, in addition to the mere possibility of reusing the substance, there is also a financial advantage to the holder in so doing, the likelihood of reuse is high."

The Court noted that that the only foreseeable uses of the leftover stone were not certain, and would in most cases potentially require long-term storage, which constituted a burden to the holder and potentially the cause of environmental pollution. Such stone should be classified as waste in the view of the Court, though it noted that it might be subject to the national exemption requirements under Article 11 provided effective general rules were in place.

The Court accepted that the left-over stone had exactly the same composition as the material being sold, but in the light of its analysis held this was not relevant to the question of its definition as waste, unless the material was actually being reused - in that case it might be treated as a by-product.

Similarly, the location of its storage, whether on site, adjacent or at a distance, did not affect the definition of waste, though in some cases temporary on-site storage might exclude the need for a permit according to the Directive.

Nor was the fact that the composition of the substance might be harmless to health or the environment decisive: "Even assuming that the left-over stone does not, by virtue of its composition, pose any risk to human health or the environment, stockpiling such stone is necessarily a source of harm to, and pollution of, the environment since the full reuse of the stone is neither immediate nor even always foreseeable.”

Distinguishing between production by-products and production residues now seems to require greater knowledge of contractual arrangements in place and the certainties of the market for the items in question.
R (Mayer Parry Recycling Ltd) v Environment Agency and Another

In 1998, in judicial review proceedings brought by Mayer Parry against the Agency concerning the point at which scrap metal ceases to be waste, the High Court held that where scrap needed no further processing but was capable of being used as a raw material for fuel or melting by manufacturers, it was no longer waste.

Mayer Parry subsequently argued that some of the waste it handled was reprocessed on its premises within those terms, and that it was entitled to be accredited as a reprocessor under the 1997 packaging regulations, enabling it to sell packaging waste recovery notes (PRNs.) But the Agency, in part conscious that the High Court decision was no longer consistent with subsequent European court rulings on the meaning of "waste", turned down its application.

In judicial review proceedings and following intervention from the Secretary of State, the question was referred to the European court for authoritative guidance in September 2000. The European court noted that the English regulations implementing the 1994 Packaging Directive use the definitions of recovery and recycling contained in the Directive.

"Recovery" is defined in the Directive to mean any of the applicable operations provided for in Annex IIB of the Waste Framework Directive. "Recycling" is defined as "the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery."

The operations carried out by Mayer Parry involved the sorting of scrap metal, including packaging waste, from industrial and other sources, and the transformation of ferrous scrap into raw material to be sold to steel makers for the manufacture of ingots, sheets and coil.

Mayer Parry essentially argued before the European court that waste recovery operations were completed by the time its process had produced a secondary raw material.

The Agency argued that the concept of recycling had to be given the same meaning in the Waste Framework Directive and packaging Directive. Material does not cease to be waste because it may be said to have undergone a recovery operation, and the activities of a company such as Mayer Parry do not result in recycling because it carries out only pre-processing or other operations resulting in a change in the nature or composition of the scrap metal it handles.

The UK Government took a slightly different legal view. It contended that, given the different objectives of the two Directives, a different approach could be adopted concerning the point at which material ceases to be waste - so that the packaging Directive should be viewed as a self-contained system.

13 (European Court of Justice, C-444/00, 14 July 2003)
Nevertheless, the UK argued that within the terms of the packaging Directive, Mayer Parry could not be said to carry out a reprocessing operation in the sense of either a reconstitution of waste materials into some new item, or use in a process similar to that in which the raw material is used. Recycling occurred only when the steel maker actually produces its final products.

Concerning the relationship of the two Directives, the European court considered that the packaging Directive contains specific rules or rules supplementing the Waste Framework Directive for the management of a particular category of waste. Nevertheless, the latter "remains very important for the interpretation and application of" the packaging Directive, even though the packaging Directive should be considered a "lex specialis" and that as such its provisions prevailed over the Waste Framework Directive in situations which it specifically seeks to regulate.

The European court ruled that it was apparent from both Directives that recycling is a form of recovery, and that in accordance with its case law the principal objective of a recycling operation is that waste serves a useful purpose in replacing other materials which would otherwise have had to be used for that purpose, thereby enabling natural resources to be preserved.

Although the packaging Directive did not expressly say so, it was clear from its context that the definitions of recycling and reprocessing refer only to packaging and packaging waste. The definition of recycling in the packaging Directive refers to reprocessing in a production process and, according to the Court, "such a process requires the packaging waste to be worked in order to produce new material or to make a new product."

In that sense, the definition of recycling was narrower than other concepts of recovery contained in EU legislation, and expressly excluded energy recovery. The definition was not, however, limited to situations where the new material or new product possessing characteristics comparable to those of the original material is used for the same purpose of metal packaging. Uses for other purposes could also be included.

The European court stressed the underlying environmental objectives of the legislation, and that a high level of environmental protection was secured by defining recycling as meaning that the reprocessing of packaging waste must enable new material or a new product possessing similar characteristics comparable to those of the material from which the waste was derived. "It is only at this stage that the materials at issue cease to be packaging waste and the various waste controls laid down by Community legislature accordingly lose their rationale."

The Court then applied these broad principles to the case in hand. It accepted that Mayer Parry, in producing secondary raw material, reprocesses packaging waste, but held that production of the material "did not constitute reprocessing of metal packaging waste with the objective of returning the material to its original state, namely steel, or reusing it accordance within its original purpose,
namely the manufacture of metal packaging, or for other purposes." The material still contained some impurities that remained to be removed when the material was used to produce steel.

However, once the material was actually used in the production of steel ingots, sheets or coils that was a production process that could be regarded as a packaging waste recycling operation. The process involved the manufacture of new products possessing similar characteristics comparable to those of the material of which the waste was initially composed.

Finally, the Court considered whether the results would be different if the concepts of recycling and waste referred to in the Waste Framework Directive were taken into account. It considered that the manufactured ingots, sheets or coils, which had been recycled, were no longer waste within the terms of either Directive. It noted that the Waste Framework Directive contained no definition of recycling as such, but held that if that term as envisaged by that Directive had a different meaning from the packaging Directive, the definition in the latter would prevail in the case of packaging waste.

As with many European court decisions, there remain issues for definitive clarification. But it is clear from this judgment and other recent waste decisions by the Court that the legal interpretations of waste and related concepts are being given a liberal interpretation in order to favour environmental protection.
Schedule 5

The Basel Convention