



Overview of EU rules on waste & by-products, work underway on end-of-waste under the EU Circular Economy Action Plan

**Webinar on Regulatory questions
around waste-derived algae & nutrient
recycling**

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Waste Framework Directive 2008/98/EC (WFD)

- A decision on whether a substance or object is i) waste, or ii) a by-product, or whether iii) it has ceased to be waste must be taken on a **case-by-case basis** by the producer of the substance or object, taking due account of:
 - **The scope and rules of the WFD (transposed in Member States national law),**
 - **CJEU case law,**
 - **The specific factual circumstances of the case,**
 - **National procedures** (e.g. for providing relevant justifications to Competent Authorities)

Waste means: “*Any substance or object* which the holder discards or intends or is required to discard*” (Article 3(1) of the WFD) .

- The key term is ‘**discard**’ and is used in three alternatives as any substance or object which the holder: discards (**action or activity**), intends to discard (**intention**) or is required to discard (**legal obligation**).

By-products and End-of-waste

- Inclusion of concepts of by-products (BP) & end-of-waste (EoW) in the WFD introduced a distinction between waste and non-waste.
- The WFD provides rules and conditions against which MS can establish criteria for BP and EoW (Articles 5 and 6 of the WFD), further clarified in Directive (EU) 2018/851



- ✓ Onus is on Member States
- ✓ More certainty for operators in the market
- ✓ Promotes a level playing field
- ✓ MS have to notify the EC those criteria in accordance with Directive (EU) 2015/1535

EC work on establishing EU level EoW and BP criteria

- The Circular Economy Action Plan of 2020 requires the EC to scope the **development of EU-wide criteria for EoW of certain waste streams and potentially for BP.**
- Risk considerations can be addressed under **product legislation**
- EC assessment takes into account **previous work** e.g.
 - ✓ Past stakeholder consultations related to the Communication on the interface between chemical, product and waste legislation (2017 and 2018)
 - ✓ A on member states (MS) practices on BP and EoW (2020)
- **Stakeholder survey** from 27 October 2020 – 15 January 2021



EC work on establishing EU level EoW and BP criteria

Next steps

- Candidate waste and material streams will be **shortlisted** based on criteria e.g.
- A **workshop** is planned later in Q2/Q3 2021
- Future **detailed development work** (on identified priority streams) will be carried out based on the previously established JRC methodology.

Thank you

Additional Resources

- Waste Framework Directive (consolidated version) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20180705>
- EC website on waste and recycling https://ec.europa.eu/environment/topics/waste-and-recycling_en
- Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste (2012) http://waste-prevention.gr/waste/wp-content/uploads/2015/10/2012_Guidance%20interpretation%20Directive%2098-2008-EC_EN.pdf (Note: this is still largely valid, however note that certain updates were made in 2018 via Directive (EU) 2018/851)
- JRC, End of Waste Criteria, Final Report (2008), <https://publications.jrc.ec.europa.eu/repository/handle/JRC53238>
- Study to assess member states practices on by-product (BP) and end-of waste (EoW) <https://op.europa.eu/en/publication-detail/-/publication/beb56eaa-9fc0-11ea-9d2d-01aa75ed71a1/language-en/format-PDF/source-search>

Additional Resources

- COM(2018)32 Communication on the interface between chemical, product and waste legislation <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52018DC0032>
- “Make it work” project (NL, SE, UK, CZ and DE MoE) <http://minisites.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/home/> (guidance for MS CA on how to enable eco-innovation on circular economy for the production of secondary raw materials)
- Joined cases C-418/97 and C-419/97 ARCO (2000), paras 36 et seqq; Case C-252/05 Thames Water (2007) para 28; Case C-188/07 Commune de Mesquer (2008), para 39, 44.
- Palin Granit, Case C-9/00 Palin Granit Oy (2002) ECR I-3533. Saetti, C-235/02, Saetti Order, 15th January 2004
- TRIS database <https://ec.europa.eu/growth/tools-databases/tris/en/>

Conditions outlined in Article 5 (1) WFD on BP

1. *Member States shall take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if the following conditions are met:*

(a) further use of the substance or object is certain;

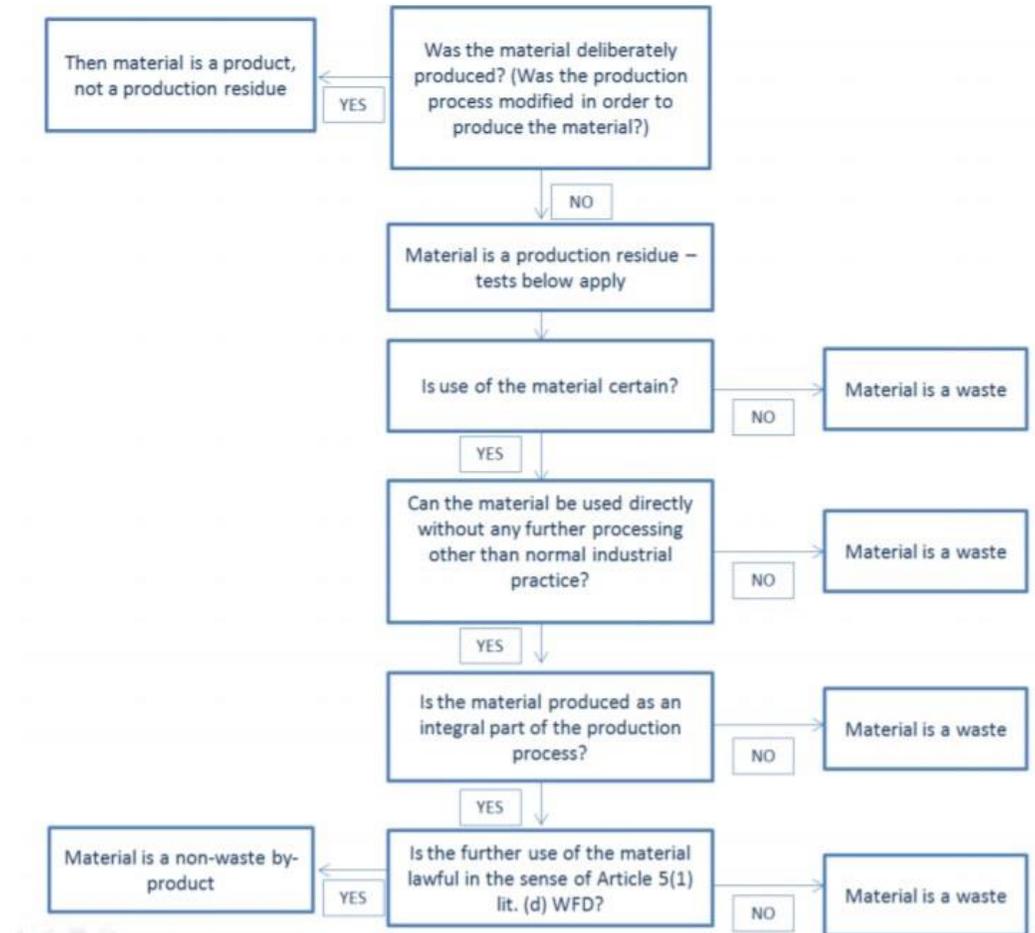
(b) the substance or object can be used directly without any further processing other than normal industrial practice;

(c) the substance or object is produced as an integral part of a production process; and

(d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

By-products (BP)

- The CJEU cases: guidance on when a material can be regarded as something which an undertaking wishes to **exploit** rather than a substance or object which is being **discarded** → codified in Article 5 of the WFD.
- A production residue that fulfils the conditions of Article 5(1) WFD is a **by-product = non-waste** → falls outside the scope of waste legislation.



Decision tree for determining whether a material is a by-product *

* Source: “Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste” (2012)

Conditions outlined in Article 6(1) WFD on EoW

Compliance with these criteria can be indicated by*:

(a) the substance or object is to be used for specific purposes;

(b) a market or demand exists for such a substance or object;

(c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products;

(d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

- The existence of firmly established market conditions related to supply and demand;
- A verifiable market price being paid for the material;
- The existence of trading specifications or standards.

- Compliance with established relevant technical specifications or technical standards that are used for virgin materials for the same purpose.
- The material should be ready for final use and no additional waste treatment steps should be needed.

- Comparing the use of the material under the relevant product legislation with the use of the same material under waste legislation.
- The following questions are also relevant:
 - ✓ Is the product legislation sufficient to adequately minimise the environmental or human health impacts?
 - ✓ Would releasing the material from the waste regime lead to higher environmental or health risks?

End of waste (EoW)

- A particular waste stream **can cease to be waste** if it meets the EoW conditions and criteria, after undergoing a recovery operation (including recycling) (Art. 6(1) & (2) and rec. 17 WFD)
- The concept of EoW is closely linked to the understanding of
 - the completion of a **recovery process** and
 - The **definition of recovery** itself (Article 3(15) WFD).
- The specific WFD obligations of waste producers and holders **remain in force until a recovery operation has been completed** → minimises possible waste-related risks to health and the environment.