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Working Group on Waste Prevention and Recycling

OPTIONS FOR COMBINATIONS OF COMPONENTS FOR AN OECD FRAMEWORK ON THE ENVIRONMENTALLY SOUND MANAGEMENT OF WASTES AND MATERIALS DESTINED FOR RECOVERY OPERATIONS

3rd Workshop on Environmentally Sound Management (ESM) of Wastes
Washington D.C., 20-22 March 2002

This paper was submitted to the Delegates of the Working Group on Waste Prevention and Recycling and participants to the 3rd Workshop on Environmentally Sound Management of Wastes for consideration in March 2002.

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FOREWORD

At the second Workshop on Environmentally Sound Management of Wastes (ESM) in September 2000 considerable interest was expressed in an OECD framework that would enhance industry progress toward sustainable practices by emphasising the use of existing Environmental Management Systems (EMS), such as ISO 14 000 series and the European Eco-Management and Audit Scheme (EMAS). It was recognised that EMS could play a role in promoting the application in practice of ESM guidelines. However, it was emphasized that any ESM system making use of such EMS would also have to provide approaches that small and medium size enterprises (SMEs) could implement.

At the October 2001 meeting of the Working Group on Waste Prevention and Recycling (WGWPR) the Secretariat was asked to prepare a flow chart to show how the core performance elements would co-exist with the guidelines being developed. This initiative was taken with the aim to look at how the ESM components would fit together and what are the options for developing an ESM framework into an implementable policy tool.

This document provides various options for the OECD's WGWPR to consider for developing an ESM framework into an implementable tool. The paper has been prepared by Mr. John Moffet and Mr. Michael van Aanhout at Stratos Inc., Ottawa, Canada, in co-operation with Mr. Howard Mann from International Sustainable Development Law, Ottawa, Canada. This version incorporates comments from the ESM Steering Group.

Member countries recommended the declassification of this paper in December 2002. It is released on the responsibility of the Secretary General of the OECD.

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EXECUTIVE SUMMARY

This paper describes the OECD work on environmentally sound management (ESM) of waste recovery operations as evolving into an “EMS plus” model. This model has a generic EMS at its core. The “core performance elements” elaborate and add to these core elements, and the “waste specific guidelines” add further relevant detail.

This paper reviews various options for the OECD to consider for developing this framework into an implementable package. We emphasise the importance of ensuring that any such options should be assessed against various factors relating to acceptability to relevant stakeholders (including of paramount importance the Member states), the likely impact the approach will lead to on industry performance and on government laws and policies, and the flexibility the option provides for future amendment to reflect emerging techniques and to allow for expansion up- and down-stream. We also recognise the importance of ensuring its applicability to SMEs.

There are essentially two main options for the OECD to consider to “package” and implement these components into a coherent framework. One is to request/sponsor the International Organisation for Standardisation (ISO) to establish a Technical Committee to develop a Standard or a Guidance Document in order to finalise and formalise the CPEs and/or the waste specific guidelines. The second general option is to use an OECD instrument to promulgate the CPE’s and waste specific guidelines.

The ISO option’s two main advantages are the credibility associated with ISO 14001 and the fact that other sectors are considering asking ISO to develop a sector-specific EMS-plus model. This approach may therefore become the norm for developing sector-specific or issue-specific environmental performance standards.

One of the main disadvantages of the ISO option flows from the multistakeholder approach relied on to develop normative Standards and non-normative Guidance Documents. This process may lead to a loss of control on the part of the OECD, a slower process and a potentially lower standard than might result from an OECD-run process. A recent ISO Policy Document indicates that it will not develop any sector-specific versions of ISO 14001 until completing the current process of revising the 14001 standard, which is currently planned for January 2004. Another important possible disadvantage is the historical resistance to include any performance criteria in ISO 14000 documents.

The OECD/ISO ESM Framework could include various mixes of ISO Standards and Guidance Documents, including:

- i. ***Set of Standards***: one for each waste or material stream and each incorporating the CPEs.
- ii. ***One Standard plus Guidance Documents***: An ISO standard, incorporating the CPEs plus Guidance Documents for the various waste and material streams.
- iii. ***A set of Guidance Documents***: one for the CPEs plus others for the various waste and material stream guidelines.

An ISO Standard would be auditable and easily incorporated into domestic laws and policies. Relative to a Guidance Document, however, a Standard would be slower to develop. In addition, the requirement that each element be auditable may restrict the type of issues included in the Standard. And, experience with the ISO 14000 series to date suggests that it is unlikely that any sector-specific version of ISO 14001 will include performance requirements.

By contrast, because not every element in an ISO Guidance Document must be auditable, it may be easier to include a wider range of issues in such a document, and to provide it with the flexibility required to accommodate different interests, including SMEs. Experience to date suggests, however, that a Guidance Document will likely have limited impact on industry performance or government policies.

Alternatively, the Working Group could propose an OECD instrument as the vehicle to finalise and formalise its EMS work on CPEs and on waste specific guidelines. The advantages to using an OECD instrument in the current context include a faster process, more control over the outcome and a more easily amended outcome. The main disadvantages to using an OECD instrument are that it would probably have less influence than an ISO document on industry practice and in non-OECD countries.

Table 1: Pros and Cons of Five Possible OECD Instruments

	Pro	Con
Council Decision	Most direct impact on industry and member governments.	Unlikely to be acceptable to all members. Because mandatory, would be slow to develop and may result in low standard.
Council Recommendation	More flexible than a Council Decision.	May have minimal impact on governments and industry.
Council Recommendation and joint work plan	Could engender "buy in" over time, and provides considerable flexibility.	Requires ongoing investment of time and effort into the process to develop and implement the work plan by Members.
Policy/Principles Statement	Should be relatively acceptable to all Members. May be more useful for CPEs than waste specific guidelines.	Unlikely to have significant impact on governments or industry.
Guidance document	Could provide considerably detailed advice and easily updated.	Requires additional efforts to ensure direct impact on governments and industry.

Regardless of which option is adopted to promulgate the Framework, it will be important to ensure that it can be applied cost-effectively to and by SMEs. Experience with ISO 14001 and EMAS as well as the OECD ESM case studies suggest that SMEs may have difficulty adopting ESM standards that require all elements of an EMS. Accordingly, it may be appropriate to consider the following options, each of which could be included in any of the overall implementation options reviewed above:

- ***SME Option 1: Establish thresholds within the CPEs and waste-specific guidelines for the application of individual elements.*** This could be accomplished by specifying that the Framework applies to all facilities, but either: a) some specific elements only apply to facilities employing more than XX persons; doing over \$YY annual revenue; or managing over ZZ tones of waste annually; or b) stipulating that, below the threshold, some specific elements are reduced (in a defined way), but not eliminated.

Pro: Would help reduce the compliance burden, thereby making it more likely that Member governments and individual SME companies will adopt the Framework.

Con: May reduce the overall environmental impact and would lead to an unequal playing field between SMEs and larger facilities. Also, may be more complicated to develop and enforce.

- ***SME Option 2: Allow for self-certification by SMEs.***

Pro: Would reduce need for third-party auditing and registration

Con: Would reduce credibility of Framework and may not address most important SME considerations, which relate to the cost of implementing some of the elements, not the cost of auditing and registration.

- ***SME Option 3: Include in the framework recommendations for technical support and assistance for SMEs.***

Pro: Technical support and assistance is an essential part of any effort to raise the environmental performance of SMEs.

Con: On its own, may not be sufficient.

1. PURPOSE AND BACKGROUND

1.1 Purpose

This report is intended to be used as background for the March 2002 OECD workshop on environmentally sound management (ESM) of wastes and used and scrap materials. The paper identifies, analyses and recommends options for the further development and implementation of the current OECD work on ESM.

1.2 Background

The OECD has focused on developing and promulgating international policies to promote the environmentally sound management of wastes since the 1980s. Recently, it has been recognised that the level of environmental safety varies widely among recovery facilities and among the OECD Member countries. Therefore, the OECD decided in 1999 to start working towards improving and harmonising the environmental safety level of recovery facilities within the OECD area.

To this end, the OECD has held two workshops on *Environmentally Sound Management of Wastes Destined for Recovery Operations (ESM)*, the first one in October 1999 and the second in September 2000.

During those workshops and in the OECD's subsequent work on the issue, it was widely recognised that the initial, principal focus of the OECD ESM programme should be on recovery and related activities. However, to maximise resource efficiency, it was recognised that recovery should not be addressed in isolation, but rather in the context of fostering sustainable development, in particular encouraging waste minimisation.

Participants in the OECD process have also suggested that the OECD ESM work should be useful for both domestic and transboundary applications. They have also recognised that it should be operative mainly at the facility level, while taking into account the needs for ESM at the international, national, sub-national, and regional levels. In addition, the OECD work has recognised the importance of ensuring the applicability of the Framework to small and medium sized enterprises (SMEs).

2. CONCEPTUALIZATION OF THE ESM FRAMEWORK

The current work on the OECD ESM Framework for wastes destined for recovery operations has the following basic components:

- i. Domestic laws and policies.
- ii. The use of environmental management systems (EMS) (see: ENV/EPOC/WGWPR(2001)5/REV2).
- iii. A generic set of EMS "core performance elements" (CPEs) to be used in conjunction with an EMS, specifically relating to management activities of wastes (see: ENV/EPOC/WGWPR (2001)4/REV2).

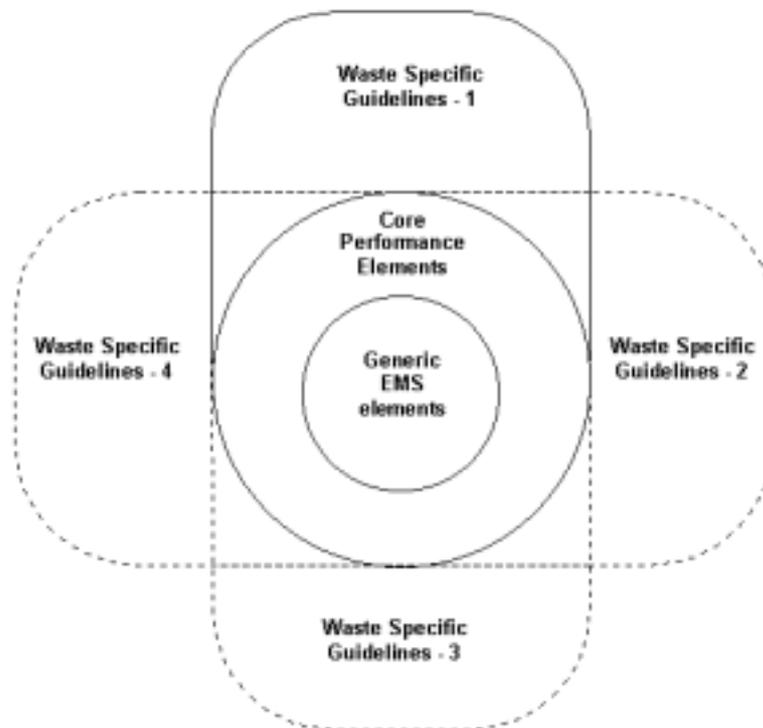
- iv. A series of waste / material stream specific guidelines, each focusing on a specific segment of the sector. The initial effort here relates to the recovery of scrap personal computers (see: ENV/EPOC/WGWPR(2001)3/REV2).

Combining these different elements leads to a conception of the OECD ESM Framework as an “EMS Plus” concept (see Figure 1):

- The basic elements of generic EMS standards are at its center.
- With one exception (Element 1 re adequate regulatory infrastructure and enforcement), the core performance elements (CPEs) should build on the generic EMS standards by either:
 - a) elaborating on generic EMS elements (e.g., element 5: the facility shall have an appropriate operative monitoring and reporting program); or
 - b) adding new elements of particular relevance to waste facilities (e.g., element 10: adequate financial guarantee for emergency situations and closure)
- In turn, the various waste/material specific guidelines should build on the core performance elements by adding detailed technical or performance-based requirements.

In theory, each of these elements should build on and add specificity to the previous level. The degree to which this actually proves to be the case depends entirely on the actual content of the CPEs and the waste/material specific guidelines.

Figure 1: Conceptual Model of the OECD ESM Framework



Together, the above elements will be able to inform both a) domestic laws, policies and non-regulatory programs; and b) industry practices. This concept must be seen in a dynamic way: as each element is developed and implemented by governments and industry, there will be a continuous ratcheting up of practices and standards across the OECD. EMS processes, for example, require each facility to continually review opportunities for improved environmental performance. Thus, the overall approach can be anticipated to lead to higher levels of regulatory and non-regulatory practices, as well as higher levels of industry performance.

3. OBJECTIVES AND CONSIDERATIONS FOR THE FRAMEWORK

3.1 Primary Objectives

The OECD ESM work has two primary and closely related objectives:

- Provide guidance to OECD countries on the management of recycling and recovery of wastes and materials in order to foster sustainable development; and
- Promote a level playing field for the environmentally sound management of wastes and used and scrap materials among OECD countries.

3.2 Intended Focus

The OECD's current work on ESM focuses on ensuring the environmentally sound management of waste recovery activities. This focus includes recovery activities related both to domestically generated waste and to transboundary shipments. Ultimately, it is possible that the Framework will contribute to broader sustainability-related concepts such as resource efficiency, waste minimisation and pollution prevention.

Thus, it will be important that the initial Framework address the activities of industries, primarily at the facility level, covering all aspects of waste and scrap materials management (including: evaluation, dismantling, treatment, pre-treatment, recovery / recycling facilities, and disposal or residues from these activities). In addition, to ensure that the Framework can contribute to the longer-term objective of promoting resource efficiency and waste minimisation, it should be designed so as to be applicable, over time, to a broader range of actors throughout the product lifecycle (see "Flexibility", below).

In addition, it will be important to ensure that the Framework addresses the special situation of small and medium sized enterprises (SMEs).

3.3 Intended Roles of the Framework

According to the most recent version of the OECD CPEs [ENV/EPOC/WGWPR(2001)4/REV2] the ESM Framework should not be considered a substitute for, or to override relevant domestic rules and regulations. Rather, the Framework should provide opportunities to build on existing national regimes by providing common principles and standards. As such, possible roles for the Framework include:

- influencing industry performance directly;
- informing domestic legal standards;
- providing a basis for evaluating transboundary shipments for recycling and recovery; and

- through the above, the Framework should help achieve a more level playing field among different actors in a sector.

3.4 Flexibility

While seeking to promote high standards and a level playing field, the Framework should have sufficient flexibility to:

- Respect the authority of member countries to articulate specific standards that account for their own circumstances and objectives; and
- Be updated or modified in the future to:
 - reflect new technologies and techniques;
 - be expanded to upstream and downstream issues; and
 - incorporate other emerging issues.

4. OPTIONS FOR THE FRAMEWORK

There are essentially two main options for the OECD to consider to “package” and implement these components into a coherent framework. One is to request/sponsor the International Organisation for Standardisation (ISO) to establish a Technical Committee to develop a normative standard or non-normative guidance document in order to finalise and formalise the CPE document and/or the waste specific guidelines. Section 4.1 describes this option.

The second general option is for the OECD to “go it alone”. Section 4.2 describes several types of instruments the OECD could use to promulgate the CPE’s and waste specific guidelines.

4.1 Considerations

In assessing these options, the considerations identified in section 3, above, may be useful. In summary, these include:

- Effectiveness in informing the domestic legislative and administrative process (i.e., possible impact on laws and policies, on facility licensing, and on permits for transboundary movements).
- Effectiveness in improving industry performance (waste management and waste minimisation).
- Effectiveness in providing a benchmark on ESM across the OECD to assist in levelling the playing field (e.g., enforceability and ease of determining compliance).
- Is sufficient flexibility maintained re:
 - Domestic implementation?
 - Adaptation to new technologies?
 - Expansion to upstream and downstream issues?
 - Ability to be updated?

Not all of these factors are relevant to each option.

In addition, it is possible that the different components of the ESM Framework may be suited to different types of packaging options. For example, it is unlikely that the OECD will create a new EMS standard. Thus, ISO 14,000 and EMAS will likely be incorporated into the programme by reference. However, the core performance elements have not yet been formalised or finalised, and only a pilot project exists on the waste specific guidelines. Thus, there is a greater range of reasonably available options for these two ESM components.

4.2 The ISO Options: Guidance Documents and ISO Standards

4.2.1 General Assessment of the ISO Option

The International Organisation for Standardisation (ISO) has two types of documents that are relevant options for the Working Group to consider. The first of these is a normative standard (or technical specification document). It specifies detailed, auditable elements and criteria. ISO 14001 is an example of a normative process standard. The second ISO instrument is an ISO non-normative guidance document, which is not an auditable standard. There are two types of ISO guidance documents: guides and technical reports. ISO 14004 is an example of the former: it provides supplemental guidance about the detailed elements and criteria in the 14001 standard. There are numerous ISO technical reports providing recommended approaches to various issues, including environmental labelling, life cycle assessment, etc.

In response to a growing interest in sector-specific EMS models, the ISO Technical Committee responsible for environmental management issues, ISO/TC 207, recently issued a "Policy for the Development of ISO 14000 Sector-Specific Documents" (ISO/TC 207 N 524, January 2002). This Policy emphasises that all sector-specific EMS documents will be based on ISO 14001, the elements of which "shall be wholly referenced in the Sector-Specific Document as a normative requirement, or incorporated in their entirety." The Policy also states that no Sub-Committee of ISO/TC 207 or any other TC "shall develop a Sector-Specific Document to ISO 14001 before the revision of ISO 14001: 1996 standard is completed and the 2nd edition of ISO 14001 is published." TC 207 anticipates completing this revision by January, 2004.

The ISO option, as regards both of the types of documents (standards and guidance documents), has two main advantages:

- ISO 14001 is widely recognised as a basic EMS standard, giving ISO a high degree of credibility. As a result, an ISO standard or guidance document that expands the generic ISO 14001 EMS standard to reflect the CPE and/or waste specific guidelines will likewise be widely recognised.
- Other sectors are also considering asking ISO to develop a sector-specific EMS-plus model. This approach may therefore become the norm for developing sector-specific or issue-specific environmental performance standards.

The ISO option also has certain disadvantages:

- Loss of control: neither the OECD itself, nor the Member governments will be able to dictate the outcome of an ISO process, which is open to all countries and must include a range of stakeholders.
- Delay: the development of either a standard or a guidance document can take many years. In addition, as noted above, ISO/TC 207 has stated that it will not start work on any sectoral documents until it completes the revision to ISO 14001.
- Level of standard: because the ISO process is open to all countries, there is a risk that the result may not lead to higher ESM standards in OECD countries.

4.2.2 *Comparison among the ISO Standard Options*

As is noted above, various sectors are currently debating how to build on the core EMS elements provided by ISO 14001 to address environmental performance and management issues specific to their sectors. Within the forestry sector, there are examples of both a Guidance Document and a sustainable forest management standard. The ISO Technical Report on forestry issues, ISO 14061, outlines the possible relationship between forestry performance measures and the elements of a generic EMS. Basically, it describes the relevant “sustainable forestry management” principles to consider with respect to each of the five core elements of the ISO 14001 EMS standard. This report is summarised in ENV/EPOC/WGWPR(2001)5/REV2.

By contrast, the Canadian Standards Association’s Can/CSA Z809-96 “A Sustainable Forest Management System: Specifications Document” is a National Standard of Canada. It is based on the CSA’s EMS standard (one of the main fore-runners to the ISO 14001 standard) plus the performance elements related to forestry defined by the Canadian Council of Forest Ministers’ “National Criteria and Indicators”. Over 20 companies for a total of 9 million hectares are now certified to this standard.

The OECD/ISO ESM Framework could include various mixes of ISO Standards and Guidance Documents, including:

- ***Set of Standards***: one for each waste or material stream and each incorporating the CPEs.
- ***One Standard plus Guidance Documents***: An ISO standard, incorporating the CPEs plus Guidance Documents for the various waste and material streams.
- ***A set of Guidance Documents***: one for the CPEs plus others for the various waste and material stream guidelines.

Factors that favour the use of an ISO Standard include:

- ISO Standards are auditable.
- Because of its specificity, an ISO Standard would be more easily incorporated into domestic laws and standards and guidelines.

Possible concerns about an ISO Standard include:

- Delay: typically, an ISO Technical Committee will require more time to develop a Standard than a Guidance Document.
- The requirement that each element be auditable may restrict the type of issues that can be addressed or guidance that can be included in an ISO Standard on ESM.
- To date, efforts to include performance criteria in ISO 14000 documents have not been successful. If this continues to be the case, a sector-specific ISO standard may not be a viable approach for the detail envisaged for the waste specific guidelines.

Factors that favour an ISO Guidance Document include:

- Quicker development process.
- Because not prescriptive, may be more widely accepted.
- Because of the flexibility regarding its content, it may be easier to ensure that a Guidance Document is applicable to SMEs.

The main factors against the use of an ISO Guidance Document include:

- It would not be auditable.
- The experience with existing guidance documents is that they have had mixed impacts, with some having had very little impact and being perceived primarily as a contribution to an ongoing discussion about an issue, as opposed to a widely accepted norm.

4.3 Use of an OECD Instrument to Promulgate the Framework

4.3.1 *General Assessment of the OECD Instrument Option*

The Working Group could propose an OECD instrument as the vehicle to finalise and formalise its EMS work on CPEs and on waste specific guidelines.

The advantages to using an OECD instrument in the current context include:

- It would be quicker to stay within the OECD family than to go outside to the ISO, particularly given the work already done on the CPEs.
- The OECD Working Group would maintain control over its objectives and the ability to achieve them.
- The result would be easier for OECD Members to amend in the future, thus enhancing its potential flexibility.

As well, there are certain disadvantages to using an OECD instrument:

- Except for the OECD Council Decision option (see below), these approaches may have less influence than an ISO document directly on industry practice.
- An OECD instrument may have less influence than an ISO document in non-OECD countries.

4.3.2 *Specific OECD Instruments*

Among the various possible OECD instruments, this section reviews five:

- OECD Council Decision;
- OECD Council Recommendation;
- OECD Council Recommendation and joint work plan;
- OECD Policy/Principles Statement; and
- OECD Guidance document.

4.3.2.1 *OECD Council Decision*

A Council Decision is the only option that would be mandatory on all Member Governments. It could require Members to implement the Framework by means of mandatory domestic laws. Alternatively, it could require members to implement the Framework, but provide the flexibility to do so through mandatory laws or through non-mandatory approaches.

A Council Decision requiring the adoption of new laws would have the most immediate impact on government action, and hence the most direct impact in terms of creating a level playing field. The mandatory adoption of domestic laws reflecting or expressly containing some or all of the OECD ESM Framework would also have the most immediate impact on industry in the areas where new standards were enacted.

Various considerations may militate against a formal legal instrument of this type in the ESM context, however. First, and of some consequence, there appears to be no established expectation at this point in the process that this is the intended outcome. It may be difficult, though not impossible, to create such an intent in the middle of this process. Second, given that national legal regimes have generally existed in this sector for some time, it could be very difficult to reach agreement about any obligation to reform domestic laws. Third, developing a legally binding regime that requires new laws may be more appropriate for the detailed, waste specific guidelines than to the more general CPEs. The latter lack the same degree of enforceability due to their general nature. For the CPE's, consideration of a mandatory international law instrument that requires the adoption of non-legally binding standards at the national level may be more appropriate than one requiring the adoption of a new law or regulation.

A Council Decision that authorises members to comply by means of non-binding domestic approaches may be easier to achieve. This approach also might help raise the bar for the negotiation of waste specific guidelines. Here, the combination of a) requiring Members to adopt the result, but b) allowing flexibility in how to implement the result, may encourage the adoption of an instrument that expressly seeks to raise standards existing in some or even all OECD countries. This option may have a lesser immediate impact on industry, but the ability to achieve a higher level in the document may help raise performance levels over time.

In general, it may be more difficult to amend or adapt a Council Decision than other OECD instruments, thus limiting flexibility in the future. This factor should be considered carefully.

In summary, the adoption of a formal OECD Council Decision has both pros and cons. On balance, however, the risks of lower standards being adopted and less long-term flexibility may work against this option. As between a Council Decision that mandates binding domestic action and one that allows implementation through non-binding domestic action, the latter would probably be more acceptable.

4.3.2.2 *OECD Council Recommendation*

OECD Council Recommendations are not legally binding on Member states. However, they do carry an important message, and have the effect of promoting the application and implementation of the subject matter they relate to, even if not to the same extent as a Council Decision.

A Council Recommendation could be used for both the CPE and the waste specific guidelines. Member countries could implement a Recommendation by either regulatory or non-regulatory measures, as the individual Members see appropriate. The domestic means of implementation will determine whether the Recommendation has a direct or a hortatory impact on industry.

A Recommendation would seek to promote a level playing field, but its effectiveness will be much more in the hands of the individual states than under a binding Decision. Conversely, a Recommendation would leave greater flexibility to be adapted domestically, amended in the future, or expanded (domestically or internationally) to address upstream waste minimisation issues.

It may be possible to include a higher level of performance expectations in a Recommendation. This potentially means a higher level playing field, but also risks having greater disparities result from one state fully implementing a Recommendation while another does not.

4.3.2.3 *OECD Council Recommendation and Joint Work Plan*

An OECD Recommendation could be accompanied by a joint work plan to which individual states commit in order to (1) implement the recommendation, and (2) further develop the waste specific guidelines. The North American Commission for Environmental Co-operation, Sound Management of Chemicals program has used this model effectively.

While the Recommendation process is the same as above, the additional joint work plan could help ensure a higher level of implementation combined with greater transparency in the implementation process. Thus, there is a greater likelihood of achieving a level, but rising, playing field than a Recommendation on its own. In addition, a workplan can be adjusted to remain flexible to the changing needs of the OECD Members, ensuring a dynamic structure for further development of the OECD ESM programme. In addition, the CEC experience suggests that this approach could promote industry awareness and uptake, thus enhancing the direct impact on industry behaviour.

In summary, the addition of a joint work plan to a Council Recommendation could significantly enhance the effectiveness of the Recommendation.

4.3.2.4 *OECD Policy/Principles Statement*

A Policy or Principles Statement would set out a broad policy direction, without a specific recommendation for further action by members. OECD members would be expected to consider it, but would have no obligation to act.

A Policy or Principles Statement can be expected to inform, but not necessarily govern, policy decisions, including those related to the development of new or amended legislation, as well as ongoing implementation decisions related to facility licences and permits for transboundary movements of hazardous wastes for recycling. In relation to industry, a Policy or Principles Statement may have some direct impact on larger businesses, especially multi-national ones that seek to uphold high standards of practice. This approach would have little impact on SMEs, however. As such, this option alone would likely have a limited ability to establish a level playing field.

This option may be most relevant for the CPEs, as opposed to the more detailed waste specific guidelines, and might best be considered further only as part of a package with other, more detailed documents.

4.3.2.5 *OECD Guidance Document*

A Guidance document could contain detailed direction as opposed to policy directions and recommended approaches, but would have no prescriptive force. A good example of a guidance document is the recent OECD guidance material on Extended Producer Responsibility. This option may be best suited for the waste specific guidelines, perhaps in association with a different option for the CPEs. Guidance documents can be more easily updated or amended than many of the other approaches reviewed here as technology or other factors change.

Perhaps the main concern with a Guidance document is the risk of poor dissemination and limited direct impact on industry behaviour. While it might be in a form that could be referenced by national-level instruments, there is no guarantee this would happen. Absent some form of national communications and implementation strategy, an OECD Guidance document may have little immediate impact on industry. It may be more effective, depending on the proper dissemination of the documents, at influencing government decision-making on specific facilities or on transboundary movements.

A Guidance document could be combined with a specified work plan, in particular one that set out steps for national implementation. This would improve the capacity for this option to have a significant impact.

4.4 SME Considerations

Regardless of which option is adopted to promulgate the Framework, it will be important to ensure that it can be applied cost-effectively to and by SMEs.

The costs associated with some of the requirements in the ISO 14001 and EMAS EMS standards have deterred adoption of these standards by SMEs. The case studies prepared for the OECD ESM initiative concerning recovery industry in Austria, Canada and the Netherlands also suggest that elements in the draft CPEs and waste-specific guidelines such as emergency planning [etc.] may deter adoption of the ESM Framework. Another deterrence to adoption by SMEs of existing EMS standards is the cost associated with the formal conformity assurance mechanism, which requires third-party auditing and registration.

Accordingly, it may be appropriate to consider the following options, each of which could be included in any of the overall implementation options reviewed above:

- **SME Option 1: Establish thresholds within the CPEs and waste-specific guidelines for the application of individual elements.** This could be accomplished by specifying that the Framework applies to all facilities, but either: a) some specific elements only apply to facilities employing more than XX persons; doing over \$YY annual revenue; or managing over ZZ tones of waste annually; or b) stipulating that, below the threshold, some specific elements are reduced (in a defined way), but not eliminated.
Pro: Would help reduce the compliance burden, thereby making it more likely that Member governments and individual SME companies will adopt the Framework.
Con: May reduce the overall environmental impact and would lead to an unequal playing field between SMEs and larger facilities. Also, may be more complicated to develop and enforce.
- **SME Option 2: Allow for self-certification by SMEs.**
Pro: Would reduce need for third-party auditing and registration
Con: Would reduce credibility of Framework and may not address most important SME considerations, which relate to the cost of implementing some of the elements, not the cost of auditing and registration.
- **SME Option 3: Include in the framework recommendations for technical support and assistance for SMEs.**
Pro: Technical support and assistance is an essential part of any effort to raise the environmental performance of SMEs.
Con: On its own, might not be sufficient.

5. CONCLUSIONS

The appropriate mechanism for finalising, packaging and promulgating the OECD ESM Framework depends on the Member countries' objectives for the Framework. The main considerations appear to be:

- the extent to which Members want the Framework to affect government laws and policies and direct industry performance;
- the desire to ensure flexibility to provide for current application to SMEs and for future amendment to reflect new techniques and allow for expansion up- and down-stream; and
- the degree to which OECD Members wish to retain control over the final content of the Framework.

Only an OECD Council Decision would ensure direct impact on domestic laws and policies and therefore on industry performance. If Members are unwilling to be bound by a Council Decision, there are various ISO and OECD instrument options that could provide equivalent levels of environmental benefit, but carry fewer guarantees of doing so. The main reason to use an OECD Instrument would be a desire to retain control over the final content of the Framework. An ISO Standard or Guidance Document would be developed by an ISO Technical Committee, which must follow a prescribed process and must include a variety of stakeholders from interested countries and perspectives. As such, an ISO document may take more time to develop. It may also be very difficult to include environmental performance criteria in an ISO document. Ultimately, however, an ISO document may have more influence on industry behaviour and on governments outside of the OECD.