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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	6336/17 ENV 139 COMPET 97 MI 133 AGRI 73 IND 39 CONSOM 48 ENT 39 CODEC 215
No. Cion doc.:	14975/15 ENV 771 COMPET 559 MI 782 AGRI 646 IND 203 CONSOM 214 ENT 260 CODEC 1662 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste - Revised Presidency compromise text

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With a view to the Working Party on the Environment on 24 March 2017, delegations will find in the Annex a revised Presidency compromise text on the above.

Amendments to the Commission proposal are indicated in **bold** and deletions in [...]. Amendments compared to the last Presidency compromise text (6336/17) are indicated in **bold underlined** and deletions in [...].

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2008/98/EC on waste**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, ensuring prudent and rational utilisation of natural resources and promoting a more circular economy.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) The targets laid down in Directive 2008/98/EC of the European Parliament and of the Council<sup>3</sup> for preparing for re-use and recycling of waste should be amended to make them better reflect the Union's ambition to move to a circular economy.
- (3) Many Member States have yet to develop the necessary waste management infrastructure. It is therefore essential to set long-term policy objectives in order to guide measures and investments, notably by preventing the creation of structural overcapacities for the treatment of residual waste and lock-ins of recyclable materials at the bottom of the waste hierarchy.
- (4) Municipal waste constitutes approximately between 7 and 10% of the total waste generated in the Union; however, this waste stream is amongst the most complex ones to manage, and the way it is managed generally gives a good indication of the quality of the overall waste management system in a country. The challenges of municipal waste management result from its highly complex and mixed composition, direct proximity of the generated waste to citizens, and a very high public visibility. As a result, its management involves a need for a highly complex waste management system including an efficient collection scheme, a need to actively engage citizens and businesses, a need for infrastructure adjusted to the specific waste composition, and an elaborate financing system. Countries which have developed efficient municipal waste management systems generally perform better in overall waste management.
- (5) Definitions of municipal waste, construction and demolition waste, [...] and backfilling need to be included in Directive 2008/98/EC so that the scope of these concepts is clarified.

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<sup>3</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (6) To ensure that recycling targets are based on reliable and comparable data and to enable more effective monitoring of progress in attaining those targets, the definition of municipal waste in Directive 2008/98/EC should be in line with the definition used for statistical purposes by the European Statistical Office and the Organisation for Economic Co-operation and Development, on the basis of which Member States have been reporting data for several years. **Municipal waste should be defined as waste from households and [...]waste from other sources, such as retail, administration, education, health, accommodation, food and other services and activities, which is similar in nature and composition to household waste. Therefore, municipal waste should include, inter alia, waste from park and garden maintenance, such as leaves, grass and trees clipping, and waste from market and street cleaning services, such as the content of litter containers and sweepings except materials such as sand, rock, mud or dust. Waste from activities such as production, agriculture, forestry, fishing or construction and demolition should be excluded from the scope of municipal waste. Member States may use relevant categories in the List of Waste for statistical purposes.** The definition of municipal waste in this Directive is neutral with regard to the public or private status of the operator managing waste and therefore includes waste from households and other sources that is collected by or on behalf of municipalities or directly by private operators.
- (6a) **While the definition of construction and demolition waste refers to waste resulting from construction and demolition activities in a general way, it also includes waste arising from minor do-it-yourself construction and demolition activities within private households. Different types of materials and objects listed in Chapter 17 of the Commission Decision of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council, may be defined as construction and demolition waste in so long as they fulfil the definition of waste.**

- (6b) The definition of backfilling should be introduced to clarify that it means any recovery operation of suitable non-hazardous waste for the purposes of reclamation in excavated areas or for engineering purposes in landscaping and infrastructure and construction foundation such as for roads. The waste used for backfilling should be limited to the amount strictly necessary to achieve these purposes. The definition of backfilling does not exclude that reprocessing of waste into secondary raw materials for engineering purposes in construction of roads or other infrastructures may fulfil the definition of recycling, if the use of materials is based on proper quality control and meets all relevant standards, norms, specifications and environmental and health protection requirements for the specific use.**
- (6c) The definition of extended producer responsibility scheme should be introduced to clarify that it means a set of measures taken by Member States requiring producers of products to bear financial responsibility for the management of the waste stage of a product's life cycle including separate collection, sorting and treatment operations. That obligation may also include organisational responsibility and a responsibility to contribute to waste prevention and to the reusability and recyclability of products.**
- (7) Member States should put in place adequate incentives for the application of the waste hierarchy, in particular, by means of financial incentives aimed at achieving the waste prevention and recycling objectives of this Directive, such as landfill and incineration charges, pay as you throw schemes, extended producer responsibility schemes and incentives for local authorities.

(8) In order to provide operators in markets for secondary raw materials with more certainty as to the waste or non-waste status of substances or objects and promote a level playing field, it is important to establish at the Union level harmonized conditions for substances or objects to be recognised as by-products and for waste that has undergone a recovery operation to be recognised as having ceased to be waste. Where necessary to ensure the smooth functioning of the internal market or a high level of environmental protection across the Union, the Commission should be empowered to adopt **implementing** acts establishing detailed criteria on the application of such harmonized conditions to certain waste, including for a specific use. **Such implementing acts should take account of the developments in the Member States as regards the adoption of national criteria.**

**(8a) Member States should 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 all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, case by case decisions and other procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive. Where such measures take the form of technical regulations in accordance with Directive 2015/1535/EU they must be communicated to the Commission in accordance with that Directive. The final determination whether the conditions of Article 5 and 6 are fulfilled remains the exclusive responsibility of the Member State based on all relevant information provided by the holder of the waste.**

- (9) Extended producer responsibility schemes form an essential part of efficient waste management, but their effectiveness and performance differ significantly between Member States. Thus, it is necessary to set minimum operating requirements for extended producer responsibility. Those requirements should reduce costs and boost performance, as well as ensure a level-playing field, including for small and medium sized enterprises, and avoid obstacles to the smooth functioning of the internal market. They should also contribute to the incorporation of end-of-life costs into product prices and provide incentives for producers to take better into account recyclability and reusability when designing their products. The requirements should apply to both new and existing extended producer responsibility schemes **including those established under this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU**. A transitional period is however necessary for existing extended producer responsibility schemes to adapt their structures and procedures to the new requirements.
- (9a) **Public authorities play an important role in the organisation of municipal waste collection and treatment and related communication with citizens. Provisions relating to the financial responsibility of producers introduced as part of the general requirements for extended producer responsibility schemes shall apply without prejudice to the competence of public authorities as regards the collection and treatment of municipal waste.**
- (10) Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is important therefore that Member States take appropriate measures to prevent waste generation **including measures that facilitate innovative production, business and consumption models and that reduce the presence of hazardous substances in materials and products** and monitor and assess progress in the implementation of such measures. In order to ensure a uniform measurement of the overall progress in the implementation of waste prevention measures, common indicators **and targets** should be established.

(11) Plant based substances from the agri-food industry and food of non-animal origin no longer intended for human consumption, which are destined **for oral animal feeding should, in order to avoid duplication of rules, be excluded from the scope of this Directive if in full compliance with feed legislation [...].** Directive 2008/98/EC should therefore not apply to those products and substances when used for feed, and the scope of that Directive needs to be clarified accordingly. **Without prejudice to other Community provisions applicable in the field of animal nutrition, animal by-products destined to be used as feed materials in accordance with Regulation (EC) No 767/2009 of the European Parliament and of the Council<sup>4</sup> are already excluded from the scope of this Directive 2008/98/EC to the extent they are covered by other Union legislation.**

(11a) Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC<sup>5</sup> provides for, *inter alia*, **controls for ships falling within the scope of the Regulation throughout their life-cycle and aims to ensure their safe and environmentally sound recycling. It is therefore necessary to clarify the link with Regulation (EU) No 1257/2013 and to avoid duplication of rules by excluding ships falling within the scope of that Regulation, from the scope of this Directive when in possession of a valid ready-for-recycling certificate, up until the point when the ship enters a facility included in the European List established pursuant to that Regulation. Ships that do not fall within the scope of either the Hong Kong Convention or Regulation (EU) No 1257/2013, as well as any waste being transported on board of a ship as cargo and waste generated in the course of the ship recycling activities, should continue to be subject to this Directive 2008/98/EC.**

<sup>4</sup> Regulation (EC) 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (OJ L 229, 1.9.2009, p. 1).'

<sup>5</sup> OJ L 330, 10.12.2013, p.1.



- (12) Member States should take measures to promote prevention of food waste in line with the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly on 25 September 2015, and in particular its target of halving food waste by 2030. These measures should aim to prevent food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households. Having regard to the environmental and economic benefits of preventing food waste, Member States should establish specific food waste prevention measures and should measure progress in food waste reduction. To facilitate exchange of good practice across the EU both between Member States and between food business operators, uniform methodologies for such measurement should be established. **Based on such methodologies** reporting on food waste levels should take place on a biennial basis.
- (13) Industrial, certain parts of commercial waste and extractive waste are extremely diversified in terms of composition and volume, and very different depending on the economic structure of a Member State, the structure of the industry or commerce sector that generates the waste and the industrial or commercial density in a given geographical area. Hence, for most industrial and extractive waste, an industry-oriented approach using Best Available Techniques reference documents and similar instruments to address the specific issues related to the management of a given type of waste is a suitable solution<sup>6</sup>. However, industrial and commercial packaging waste should continue to be covered by the requirements of Directive 94/62/EC and Directive 2008/98/EC, including their respective improvements.
- (14) The targets for **preparing for re-use and recycling** of municipal waste should be increased in order to deliver substantial environmental, economic and social benefits.

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<sup>6</sup> Industrial activities are covered by Best Available Techniques (BAT) reference documents (BREFs) drawn up under the Industrial Emissions Directive 2010/75/EU (OJ L 334, 17.12.2010, p. 17) that include information on the prevention of resource use and waste generation, re-use, recycling and recovery. The on-going revision of the BREFs and the adoption by the Commission of BAT Conclusions will strengthen the impact of these BREFs on industrial practices leading to further resource efficiency gains and increased waste recycling and recovery.

**(14a) Member States should take measure to reduce waste generation, which may include continuous communication and education initiatives to raise awareness on the issues surrounding waste prevention and littering, the use of deposit return schemes, setting up of quantitative targets and provide, as appropriate, adequate economic incentives to producers.**

(15) Through a progressive increase of the existing targets for **preparing for re-use and recycling of municipal waste**, it should be ensured that economically valuable materials are re-used and waste effectively recycled, and that valuable materials found in waste are channelled back into the European economy, thus advancing the Raw Materials Initiative<sup>7</sup> and the creation of a circular economy.

(16) Large differences exist between Member States with respect to their waste management performance, particularly as regards recycling of municipal waste. In order to take account of those differences, those Member States which in 2013 **prepared for re-use and recycled less than 20 % of their municipal waste or landfilled more than 60 % of their municipal waste in 2013** according to [...] data reported under the Joint Questionnaire of the OECD and Eurostat should be given additional time to comply with the preparing for re-use and recycling targets established for 2025 and 2030. In light of average annual progression rates observed in Member States over the past fifteen years, those Member States would need to increase their recycling capacity at levels that are well-above past averages to meet those targets. In order to ensure that steady progress towards the targets is made and that implementation gaps are tackled in due time, Member States that are given additional time should meet interim-targets and establish an implementation plan.

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<sup>7</sup> COM(2008) 699 final and COM(2014) 297 final.

(17) In order to ensure the reliability of the data [...], it is important to lay down more **precisely the rules according to which** Member States should report what is effectively recycled and **prepared for re-use and** can be counted towards the attainment of the [...] targets. [...] As a general rule, the reporting on the attainment of the recycling targets must be based on the input to the [...] **recycling operation** [...].

(17a) In order to limit administrative burdens, Member States should **by way of derogation from the general rule** be allowed, under strict conditions, to report recycling rates on the basis of [...] the output of [...] **any sorting operation**. [...] **Losses of materials occurring before the waste enters the [...] recycling operation, for instance due to [...] sorting or other preliminary operations, should not be included in the waste amounts reported as recycled**. These losses can be established on the basis of **electronic registries, technical specifications, detailed rules on the calculation of [...] average loss rates for various [...] waste streams [...] or other equivalent measures**. Member States should report on such measures in the quality check reports, accompanying the data reported to the Commission on waste recycling. [...] **The average loss rates should preferably be established at the level of individual sorting facilities and be linked to the different main types of waste, different sources (household, commercial etc.), different collection schemes and different types of sorting processes**. Average loss rates should only be used **in cases where no other reliable data are available, in particular in the context of shipment and export of waste**. Losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the [...] recycling [...] **operation where waste materials are actually reprocessed into products, materials or substances** should not be deducted from the weight of the waste reported as recycled.

- (17b) With the alignment of the definitions in this Directive 2008/98/EC, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU the provision in Article 6 of this Directive 2008/98/EC on considering waste that ceases to be waste for the purposes of the recovery and recycling targets set in these Directives is no longer necessary. Materials that cease to be waste through a recovery or recycling operation will be counted for the attainment of the respective recovery or recycling targets set in these Directives in line with the applicable calculation methods. Where waste materials cease to be waste as a result of a preparatory operation before being actually reprocessed, such materials may be counted as recycled provided that they are destined for subsequent reprocessing into products, materials or substances, [...] whether for the original or other purposes. End-of-waste materials which are to be used as fuels or other means to generate energy, backfilled, or in any operation that has the same purpose as recovery of waste other than recycling and preparing for re-use or disposal, cannot be counted towards the recycling targets.
- (17c) Where the calculation of the recycling rate is applied to aerobic or anaerobic treatment of biodegradable waste, the waste amounts that enter aerobic or anaerobic treatment may be counted as recycled provided that such treatment generates [...] output which is to be used as a recycled product, material or substance. While the output of such treatments is most commonly compost or digestate, other output could also be taken into account provided that it contains comparable quantities of recycled content in relation to the amounts of the treated biodegradable waste. In other cases, in line with the definition of recycling, the reprocessing of biodegradable waste into materials which are to be used as fuels or other means to generate energy, or in any operation that has the same purpose as recovery of waste other than recycling and preparing for re-use or as disposal, cannot be counted towards the recycling targets.
- (18) Member States should, for the purposes of calculating whether the **preparing for re-use and recycling** targets are achieved, be able to take into account [...] the recycling of metals that takes place in conjunction with incineration. In order to ensure a uniform calculation of this data, the Commission will adopt detailed rules [...] on the quality criteria for recycled metals and on the collection, verification and reporting of data.

- (19) In order to ensure better, timelier and more uniform implementation of this Directive and anticipate implementation weaknesses, an early warning system should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.
- (20) Compliance with the obligation to set up separate collection systems for paper, metal, plastic and glass is essential in order to increase preparing for re-use and recycling rates in Member States. In addition bio-waste should be collected separately to contribute to an increase in preparing for re-use and recycling rates and the prevention of contamination of dry recyclable materials. **Where appropriate, hazardous bio-waste and packaging waste containing hazardous substances should be subject to specific collection requirements.**
- (21) Proper management of hazardous waste still presents a problem in the Union, and data on its treatment are partly missing. It is therefore necessary to strengthen record keeping and traceability mechanisms through the establishment of electronic registries for hazardous waste in the Member States. Electronic data collection should be extended to other types of waste, where appropriate, in order to simplify record-keeping for businesses and administrations and improve the monitoring of waste flows in the Union.
- (22) This Directive sets long-term objectives for the Union's waste management and gives economic operators and Member States a clear direction for the investments needed to attain the objectives of this Directive. In developing their national waste management strategies and planning investments in waste management infrastructure, Member States should make a sound use of the European Structural and Investment Funds by promoting prevention, re-use and recycling, in line with the waste hierarchy.

- (23) Certain raw materials are of a high importance to the economy of the Union and their supply is associated with a high risk. In order to ensure security of supply of those raw materials and in line with the Raw Materials Initiative<sup>8</sup> and the objectives and targets of the European Innovation Partnership on Raw Materials, Member States should take measures to achieve the best possible management of waste containing significant amounts of those raw materials, taking economic and technological feasibility and environmental benefits into account. The Commission has established a list of critical raw materials for the EU. This list is subject to regular review by the Commission.
- (24) To further support effective implementation of the Raw Materials Initiative, Member States should also promote the reuse of products constituting the main sources of raw materials. They should also include in their waste management plans nationally appropriate measures regarding collection and recovery of waste containing significant amounts of these raw materials. The measures should be included in the waste management plans when they are updated for the first time following the entry into effect of this Directive. The Commission will provide information about the relevant product groups and waste streams at EU level. This provision does not preclude the Member States to take measures for other raw materials considered as important to their national economy.
- (25) Littering has direct detrimental impacts on the environment and the wellbeing of citizens, and high clean-up costs are an unnecessary economic burden for society. The introduction of specific measures in waste management plans and proper enforcement by competent authorities should help eradicate this problem.
- (26) To reduce regulatory burdens on small establishments or undertakings, simplification of registration requirements for small establishments or undertakings collecting or transporting small quantities of non-hazardous waste should be introduced. The threshold for quantities of such waste may need to be adapted by the Commission.

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<sup>8</sup> **COM (2014) 297 final.**

- (27) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring good implementation, and are generating unnecessary administrative burdens. It is therefore appropriate to repeal provisions obliging Member States to produce such reports. Instead compliance monitoring should be exclusively based on the statistical data which Member States report every year to the Commission.
- (28) Statistical data reported by Member States are essential for the Commission to assess compliance with waste legislation across the Member States. The quality, reliability and comparability of statistics should be improved by introducing a single entry point for all waste data, deleting obsolete reporting requirements, benchmarking national reporting methodologies and introducing a data quality check report. Therefore, when reporting on the achievement of the targets set out in waste legislation, Member States shall use the most recent methodology developed by the Commission and the national [...] **competent authorities** of the Member States, **responsible for implementing this Directive**.
- (28a) To facilitate adequate interpretation and implementation of the requirements set out in Directive 2008/98/EC, it is appropriate to develop guidelines for and ensure the exchange of information between Member States. Such guidelines and information exchange should inter alia facilitate a common understanding and application in practice of the definition of "waste" including the term "discard" and should take into account circular business models in which for instance a substance or object is transferred from one holder to another holder without the intention to discard.**
- (29) In order to supplement or amend Directive 2008/98/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Articles [...] 26, 38(1) and 38(2). It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, **and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.**

- (30) In order to ensure uniform conditions for the implementation of Directive 2008/98/EC, implementing powers should be conferred on the Commission in respect of Articles [9(4), 9(5), 33(2), 35(5) and 37(6)]. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>9</sup>.
- (31) Directive 2008/98/EC should therefore be amended accordingly.
- (32) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>10</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (33) Since the objectives of this Directive, namely to improve waste management in the Union, and thereby contributing to the protection, preservation and improvement of the quality of the environment, the health of the oceans and the safety of seafood by reducing marine litter, and to the prudent and rational utilisation of natural resources across the Union, cannot be sufficiently achieved by the Member States, but can, by reason of the scale or effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

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<sup>9</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28/02/2011, p. 13).

<sup>10</sup> OJ C 369, 17.12.2011, p. 14.



HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments**

Directive 2008/98/EC is amended as follows:

(1) in Article 2(2), the following points (e) and (f) are added:

**'(e) substances which do not consist of or contain animal by-products that are destined for use as "feed materials" in accordance with Regulation (EC) No 767/2009;**

**(f) ships [...] falling within the scope of Regulation (EU) 1257/2013, and holding a valid ready-for-recycling certificate pursuant to Article 9(9) of that Regulation, up until the point when the ship enters the facility. However, waste transported as cargo on-board such a ship and waste generated from the ship recycling activity shall be subject to this Directive.**

(2) Article 3 is amended as follows:

(a) the following point 1a is inserted:

'1a. "municipal waste" means

(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, **packaging**, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses **and** furniture;

[...]

(b) mixed waste and separately collected waste from other sources [...] **to the extent to which such waste is similar in nature and composition to** household waste [...];

(c) [...]

Municipal waste does not include waste from **large commerce and industry, production, agriculture, forestry, fishing, septic tanks and** sewage network and treatment, including sewage sludge, **end-of-life vehicles** and construction and demolition waste [...]. [...]

(b) **the following point 2a is inserted:**

**'2a. "non-hazardous waste" means waste which displays none of the hazardous properties listed in Annex III;'**

(c) point 4 is replaced by the following:

**'4. "bio-waste" means [...] biodegradable garden and park waste, food and kitchen waste from households, offices, restaurants, wholesale, canteens, caterers and retail premises and comparable waste from food processing plants [...].'**

(d) the following point 4a is inserted:

**'4a. "construction and demolition waste means waste [...] generated from construction and demolition activities;'**

**(dd) indent (c) of point 12 is replaced by the following:**

**'(c) the content of hazardous substances in materials and products;'**

(e) **the following point 15a is inserted:**

**'15a. "material recovery" means any recovery operation other than energy recovery, including the reprocessing into materials that are to be used as fuels or other means to generate energy. It includes, preparation for re-use, recycling and other material recovery such as backfilling;**

(f) the following point [...] 17b is inserted:

[...]

‘17b. "backfilling" means any recovery operation where suitable [...] **non-hazardous waste is used for purposes of reclamation in excavated areas [...] or for engineering purposes in landscaping and infrastructure and construction foundation. Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve these purposes.**’

(g) **the following point 20a is inserted:**

**‘20a “Extended producer responsibility scheme” means a set of [...] measures taken by Member States to ensure that producers of products bear financial or financial and organisational responsibility for the management of the [...] waste stage of a product’s life cycle.**

(3) In Article 4, the following paragraph 3 is added:

‘3. Member States shall make use of [...] economic instruments to provide incentives for the application of the waste hierarchy;

[...]

**The Commission shall organise a regular exchange of information between Member States on their experiences with the development and implementation of these instruments.**

(4) Article 5 is amended as follows:

(a) in paragraph 1, the introductory phrase is replaced by the following:

‘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:**’;

(b) paragraph 2 is replaced by the following:

'2. The Commission **may** [...] adopt **implementing** acts [...] in order to establish detailed criteria on the **uniform** application of the conditions laid down in paragraph 1 to specific substances or objects. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).'**

(c) the following paragraphs 3 and 4 are added:

'3. **Where criteria have not been set at Union level under the procedure set out in paragraph 2, Member States may establish detailed criteria on the application of the conditions laid down in paragraph 1 to specific substances or objects.** Member States shall notify the Commission of [...] **these criteria** in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services<sup>11</sup> where so required by that Directive.

**4. The application of this Article shall be without prejudice to the application of other provisions of Union law, particularly regarding shipments of waste, chemicals and legislation concerning the placing on the market of certain products.'**

(5) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory phrase and point (a) are replaced by the following:

'1. Member States shall **take appropriate measures** to ensure that waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions:

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

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<sup>11</sup> OJ L 241, 17.9.2015, p.1.

- (ii) the second subparagraph is deleted;
- (b) paragraphs 2, 3 and 4 are replaced by the following:

- 2. **The Commission shall monitor the development of national criteria in Member States, and where appropriate, shall [...] adopt implementing acts [...] in order to establish detailed criteria on the uniform application of the conditions laid down in paragraph 1 to certain types of waste. Those detailed criteria shall [...] take into account any possible adverse environmental and human health impacts [...] of the substance or object and shall include:**
  - a) **permissible waste input material for the recovery operation;**
  - b) **allowed treatment processes and techniques;**
  - c) **quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;**
  - d) **requirements for management and third party verification system [...];**
  - e) **requirement for a statement of conformity.**

**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**

- 3. [...]
- 4. **Where criteria have not been set at Union level under the procedure set out in paragraph 2, Member States may establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain types of waste. Those detailed criteria shall take into account any possible adverse environmental and human health impacts of the substance or object and be in accordance with the requirements defined in points (a) to (e) of paragraph 2.**

[...]

Member States shall notify the Commission of [...] **these criteria** in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of **9 September 2015 laying down a procedure for the provisions of information in the field of technical regulations and of the rules on information Society services** where so required by that Directive.

- 4a. **Where criteria have not been set at Union or national level under the procedures set out in paragraphs 2 or 4, a Member State may decide, on a case by case basis or by taking measures to verify, whether certain waste has ceased to be waste on the basis of the conditions of paragraph 1 [...] and, where necessary, reflecting the requirements defined in points (a) to (e) of paragraph 2 and taking into account limit values for pollutants and any possible adverse environmental and human health impacts. Such case by case decisions shall apply only within the territory of the Member State and do not have to be notified to the Commission according to Directive 2015/1535/EC.**
- 4b. **The natural or legal person who places a material on the market for the first time after it ceases being waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. To this end such persons shall be deemed to be “recipients” for the purposes of Articles 31 or 32 of REACH. The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.**
- 4c. **The application of this Article shall be without prejudice to the application of other provisions of Union law, particularly regarding shipments of waste, chemicals and legislation concerning the placing on the market of certain products.**

(6) Article 7 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

**'1. In order to ensure the uniform application of this Directive, the Commission shall adopt implementing acts to establish, and review in accordance with paragraphs 2 and 3, a list of waste. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).';**

(b) paragraph 5 is deleted;

(7) Article 8 is amended as follows:

(a) in paragraph 1, the following sub-paragraphs are added:

**Without prejudice to existing Union waste stream specific legislation, Member States that establish extended producer responsibility schemes for the purposes of this paragraph, may decide whether producers should be able to choose to fulfil their obligations individually or collectively.**

**Where extended producer responsibility schemes established by Member States take the form of legislative or non-legislative measures, the general requirements in article 8a shall apply.'**

**Extended producer responsibility schemes that are established on a voluntary basis may be exempted from the general requirements in article 8a.**

(b) the second sentence of paragraph 2 is replaced by the following:

'Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, **that contain recycled materials and** that are technically durable **and repairable** and that are, after having become waste, suitable for preparation for reuse and recycling in order to facilitate proper implementation of the waste hierarchy. The measures **shall** take into account the impact of products throughout their life cycle.';

(c) the following paragraphs 5 and 5a are added:

**'5. Each Member State shall ensure that a producer of products established on its territory, which sells products by means of distance communication to another Member State in which extended producer responsibility schemes are established pursuant to Union legislation for those products, appoints a legal or natural person in that Member State as the authorised representative that is responsible for fulfilling the obligations of that producer on the territory of that Member State.'**

**'5a. The Commission shall organise an exchange of information between Member States and the actors involved in producer responsibility schemes on the practical implementation of the requirements defined in Article 8a [...]. This includes, inter alia, exchange of information on best practices to ensure adequate governance, cross-border cooperation of extended producer responsibility schemes, the organisational features, the monitoring of producer responsibility organisations, the modulation of fees and optimised costs, the selection of waste management operators and the prevention of littering. The Commission shall publish the results of the exchange of information and may provide guidelines on these and other relevant aspects.'**

(8) The following Article 8a is inserted:

*'Article 8a*

**General requirements for extended producer responsibility schemes**

1. **Where [...]** extended producer responsibility schemes **are** established in accordance with Article 8, paragraph 1, Member States shall:
  - define in a clear way the roles and responsibilities of producers of products placing [...] **products** on the market of the [...] **Member State**, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, [...] **reuse and** preparation for re-use operators and social enterprises;



- define [...] waste management targets, in line with the waste hierarchy, aiming to attain at least the quantitative targets relevant for the scheme as laid down in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU, **and other quantitative targets and / or qualitative objectives that are considered relevant for the extended producer responsibility scheme;**
  - **ensure that** a reporting system is **established** to gather data on the products placed on the [...] market **of the Member State** by the producers subject to extended producer responsibility [...] **and data [...]** on the collection and treatment of [...] waste **resulting from these products** specifying, where appropriate, the waste material flows;
  - ensure equal treatment [...] **of producers of products [...]** **regardless of their origin or size without placing a disproportionate regulatory burden on producers of small quantities of products;**
  - [...]
2. Member States shall take the necessary measures:
- to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8, paragraph 1, are informed, about [...] **waste prevention measures, centres for reuse and preparation for reuse [...], take back and collection systems** and the prevention of littering. Member States shall also take measures to create incentives for the waste holders to take part in the separate collection systems in place, notably through economic incentives or regulations, when appropriate.

**This provision is without prejudice to the specific obligations to provide information to end-users as laid down in Articles 8 and 9 of Directive 2000/53/EC, Articles 16 and 20 of Directive 2006/66/EC and Article 14 of Directive 2012/19/EU.**

3. Member States shall take the necessary measures to ensure that any organisation [...] implementing extended producer responsibility schemes obligations [...]:
- (a) has a clearly defined geographical, product and material coverage [...] **without limiting these areas to the territories in which the collection and management of waste are most profitable;**
  - (aa) **provides an appropriate availability of waste collection systems within the areas defined in paragraph 3(a);**
  - (b) has the necessary operational and financial means to meet its extended producer responsibility obligations;
  - (c) puts in place an adequate self-control mechanism, supported, **where relevant** by regular independent audits, to appraise:
    - the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b);
    - the quality of data collected and reported in accordance with paragraph 1, third indent, and the requirements of Regulation (EC) No 1013/2006.
  - (d) makes publicly available the information about:
    - its ownership and membership;
    - the financial contributions paid by the producers;
    - the selection procedure for waste management operators.

[...] *(Note: moved to the end of this Article)*

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:
- (a) cover [...] **at least the following** costs of waste management for the products it puts on the [...] market **in that Member State [...]**:
    - costs of separate collection, [...], sorting and **other waste** treatment operations, **and where appropriate of reuse [...]**, required to meet **at least** the waste management targets **established in Union legislation and to meet the other targets and objectives** referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;
    - costs of providing adequate information to waste holders in accordance with paragraph 2;
    - costs of data gathering and reporting in accordance with paragraph 1, third indent.
  - (b) **are modulated, where possible, for individual products or groups of similar products by taking into account their reusability and reparability as a contribution to waste prevention and preparation for reuse, and their recyclability;**
  - (c) are based on the [...] **necessary** cost of the services provided in cases where [...] waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.
  - (d) [...] **Where justified by the need to ensure the proper functioning of waste management, Member States may depart from the division of financial responsibility for separate collection as laid down in 4(a) while ensuring that the producers bear the predominant share of the related costs [...].**

[...]

**Paragraph (a) is without prejudice to the specific obligations on the financial responsibility of the producers of products laid down in Article 5 of Directive 2000/53/EC, Article 16 of Directive 2006/66/EC and Articles 7, 12, 13 and 14 of Directive 2012/19/EU.**

4a) [...]

5. Member States shall establish an adequate monitoring and enforcement framework with a view to ensuring that the producers of products, [...] **including authorised representatives appointed pursuant to Article 8(5) and organisations implementing extended producer responsibility obligations on behalf of the producers, implement** their extended producer responsibility obligations, the financial means [...] are properly used, and all actors involved in the implementation of the schemes report reliable data.

Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, **the Member State concerned shall [...]** appoint an [...] authority **independent of private interests** to oversee the implementation of extended producer responsibility obligations.

6. Member States shall [...] ensure a regular dialogue between [...] **relevant** stakeholders involved in the implementation of extended producer responsibility [...].
7. Member States shall take measures to ensure that extended producer responsibility schemes that have been established before [*insert date eighteen months after the entry into force of this Directive*] comply with the provisions of this article within **thirty-six** months of that date.?’;
- 7a. The provision of information to the public under this Article shall be without prejudice to preserving the confidentiality of commercially sensitive information in conformity with the relevant Union and national law.**

(9) Article 9 is replaced by the following:

*'Article 9*

**Prevention of waste**

1. Member States shall take measures to prevent waste generation. These measures shall:
  - encourage the **design, manufacturing and** use of products that are resource efficient, durable, repairable, **reusable, [...] and upgradable [...]**;
  - [...] target products **containing critical raw [...] materials [...] to prevent that those materials become waste;**
  - **encourage the re-use of products and [...]** setting up of systems promoting **repair and** reuse activities [...], including in particular for electrical and electronic equipment, textiles, and furniture, **as well as packaging and construction materials and products;**
  - reduce waste generation in processes related to industrial production, [...], **manufacturing**, construction and demolition, taking into account best available techniques;
  - reduce the generation of food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households;
  - **promote the reduction of the content of hazardous substances in materials and products and the communication about hazardous substances in the supply chain;**

- identify products that are the main sources of littering notably in the natural and marine environments and take appropriate measures to prevent and reduce litter from such products. Where Member States decide to implement this obligation through consumption restrictions, they shall ensure that such restrictions are proportionate and non-discriminatory.
  - [...]
2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the [...] **quantity of waste that is generated [...]**.
  - 2a. Member States shall monitor and assess the implementation of their measures on reuse by measuring reuse on the basis of methodologies established in accordance with paragraph 4.
  3. Member States shall monitor and assess the implementation of their food waste prevention measures by measuring food waste on the basis of methodologies established in accordance with paragraph 4.
  4. The Commission may adopt implementing acts to establish indicators to measure the overall progress in the implementation of waste prevention measures **and shall, by 1 January 2019 adopt an implementing act to establish a common methodology to report reuse of products.** In order to ensure uniform measurement of the levels of food waste, the Commission shall adopt an implementing act to establish a common methodology, including minimum quality requirements. The implementing acts referred to in this paragraph shall be adopted in accordance with the examination procedure referred to in Article 39(2).
  - 4a. By 31 December 2024 the Commission shall examine data on reuse provided by Member States in accordance with Article 37(2) with a view to considering the feasibility of setting quantitative targets on reuse of products. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

5. Every **second** year, the European Environment Agency shall publish a report describing the evolution as regards the prevention of waste generation for each Member State and for the Union as a whole, including on decoupling of waste generation from economic growth and on the transition towards a circular economy.';

(10) Article 11 is amended as follows:

(a') **the title is replaced by the following:**

**'[...] Preparing for re-use and recycling'**

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

'1. Member States shall take measures, [...] to promote [...] preparing for re-use activities, notably by encouraging the establishment of and support for **preparation for re-use and repair networks, by encouraging collection schemes or facilities to grant [...], where appropriate, access to** such networks to waste **which can be prepared for re-use**, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors [...];

(b) in paragraph 1, the following sub-paragraphs are inserted:

- 'Member States shall take measures to promote **selective demolition in order to enable removal and safe handling of hazardous substances and facilitate reuse and high quality recycling by selective removal of materials**, as well as sorting systems for construction and demolition waste for at least the following: wood, [...] **mineral fractions (concrete, bricks, tiles and ceramics, stones)**, metal, glass, **plastics** and plaster [...].;

[...]

(c) in paragraph 2, the first subparagraph is replaced by the following:

**'In order to comply with the objectives of this Directive, and move towards a circular economy with a high level of resource efficiency through adherence to the waste hierarchy, Member States shall take the necessary measures designed to achieve the following targets:'**;

(d) [...]

(e) in paragraph 2, the following points (c), (cc), (d) and (dd) are added:

'(c) by 2025, the **preparing for re-use and recycling** of municipal waste shall be increased to a minimum of **55 %** by weight;

**(cc) [...]**

(d) by 2030, the **preparing for re-use and recycling** of municipal waste shall be increased to a minimum of **60 %** by weight;

**(dd) [...]**

(f) paragraphs 3 and 4 are replaced by the following:

[...]

**'3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 as reported under the Joint Questionnaire of the OECD and Eurostat may obtain five additional years for the attainment of the target referred to in points (c) and (d) of paragraph 2.**

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the respective deadlines laid down in paragraphs 2(c) [...] and (d). In the event of **the notification** of an extension, the Member State shall take the necessary measures to increase the **preparing for re-use and recycling** of municipal waste to a minimum of 50% and 55 % by weight, by 2025 and 2030 respectively [...].



The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts

[...]

4. By 31 December 2024 at the latest, the Commission shall [...] **review** the target laid down in paragraph 2(d) [...] **with a view to maintain or, if appropriate, to increase them** and consider the setting of targets for other waste streams, **including for construction and demolition waste and its material-specific fractions and for textile waste**. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

(g) paragraph 5 is deleted.

(11) The following Article 11a is inserted:

*'Article 11a*

**Rules on the calculation of the attainment of the targets laid down in Article 11**

- '1. For the purpose of calculating whether the targets laid down in Article 11(2)(c) and (d) and 11(3) have been attained,
  - (a') **Member States shall calculate the weight of the municipal waste generated and prepared for re-use or recycled in a given calendar year;**
  - (a) the weight of the municipal waste prepared for reuse shall be understood as the weight of **products or components of products that have become** municipal waste [...] and **have** undergone all necessary checking, cleaning **or** repairing operations to enable reuse without further sorting or pre-processing;

- (b) the weight of the municipal waste recycled shall be understood as the weight of [...] waste **which, having undergone all necessary checking, sorting and other preliminary operations to ensure high quality recycling, enters the [...] recycling operation whereby waste materials are actually reprocessed into products, materials or substances;**
- (c) [...]
2. [...]
3. By way of derogation from paragraph 1**(b)**, the weight of [...] the output of any sorting operation may be reported as the weight of the municipal waste recycled provided that:
- (a) such output waste is [...] **subsequently recycled;**
- (b) the weight of materials or substances that are [...] **removed by further operations preceding the recycling operation and are not subsequently recycled is not included in the [...] weight of waste [...] reported as recycled.**
4. Member States shall establish an effective system of quality control and traceability of the municipal waste to ensure that conditions laid down in paragraphs 1**(b)**, 3(a) and 3**(b) of this Article** are met. The system may consist of electronic registries set up pursuant to Article 35(4), technical specifications for the quality requirements of sorted waste, [...] **average loss rates for sorted waste for various waste types and waste management practices or any equivalent measure** to ensure the reliability and accuracy of the data gathered on recycled waste.
- 4a. **For the purpose of calculating the targets laid down in Article 11 (2) (c) [...] and (d) and Article 11 (3) the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate, or other output with similar quantity of recycled content, which is to be used as a recycled product, material or substance. Where the output is used on land [...], it may only be counted as recycled if resulting in benefit to agriculture or ecological improvement.**

- 4b. **The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being reprocessed may be counted as recycled provided that such materials are destined for subsequent reprocessing into products, materials or substances to be used for the original or other purposes. However, end-of-waste materials to be used as fuels or other means to generate energy, be incinerated, backfilled or landfilled, cannot be counted towards the recycling targets.**
5. For the purposes of calculating whether the targets laid down in Article 11(2)(c) and (d) and Article 11(3) have been achieved, Member States may take into account:
- a) **the recycling of metals [...] separated after [...] incineration of municipal waste provided that the recycled metals meet certain quality requirements; and**
  - b) **the recycling of minerals derived from municipal waste as part of co-incineration where that recycling takes place simultaneously with energy recovery.**
6. Waste sent to another Member State for the purposes of preparing for re-use, recycling or backfilling in that other Member State may only be counted towards the attainment of the targets laid down in Articles 11(2) and (3) by the Member State in which that waste was collected.
7. Waste exported from the Union for preparation for re-use or recycling shall only count towards the attainment of the targets laid down in Articles 11(2) and (3) **of this Directive** by the Member State in which it was collected if the requirements of paragraph 4 **of this Article** are met and if, in accordance with Regulation (EC) No 1013/2006, the exporter can prove that the shipment of waste complies with the requirements of that Regulation and that the treatment of waste outside the Union took place in conditions that are **broadly** equivalent to the requirements of the relevant Union environmental legislation.';

8. In order to ensure harmonised conditions for the application of **this Article**, the Commission shall adopt **implementing acts** [...] establishing [...] **rules for the calculation, verification and reporting of data, in particular as regards the average loss rates for sorted waste taking into account various waste types and waste management practices, and** a common methodology for the calculation of the weight of metals that have been recycled in conjunction with incineration, including quality criteria for the recycled metals. **Those implementing acts shall be adopted before 1 July 2019 in accordance with the examination procedure referred to in Article 39(2).**

(12) the following Article 11b is inserted:

*'Article 11b*

**Early warning report**

1. The Commission shall, in cooperation with the European Environment Agency, draw up reports on the progress towards the achievement of the targets laid down in Articles 11(2)(c) and (d) and (3) three years before each time-limit laid down in those provisions at the latest.
2. The reports referred to in paragraph 1 shall include the following:
  - (a) an estimation of the achievement of the targets by each Member State;
  - (b) a list of Member States at risk of not achieving the targets within the respective time limits accompanied by appropriate recommendations for the Member States concerned.!

(12a) Article 14(2) is replaced by the following:

2. Without prejudice to Article 8a(4)(d), Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.

**(12b) The following paragraph is added to Article 21:**

**(4) By 31 December 2024 the Commission shall examine data on waste oils provided by Member States in accordance with Article 37(1) with a view to considering the feasibility of setting quantitative targets on regeneration of waste oils and any further measures to promote the regeneration of waste oils. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.**

(13) Article 22 is replaced by the following:

**[...] Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost, digestate and other recycled products, materials or substances [...]. Articles 17, 18, 19 and 35 shall apply for hazardous bio-waste.**

**Member States may allow waste with similar biodegradability and compostability properties which complies with relevant European standards, and any equivalent national standards, for packaging recoverable through composting and biodegradation to be collected together with bio-waste.**

They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:

- (a) the recycling, including composting and digestion, of bio-waste;
- (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection;
- (c) the use of environmentally safe materials produced from bio-waste.;

(14) the following subparagraphs are added to Article 26:

'Member States may exempt the competent authorities from keeping a register of **the establishments or undertakings referred to in point (a) insofar as they collect or transport [...]** non-hazardous waste [...] not exceeding 20 tonnes annually;

The Commission may adopt delegated acts in accordance with Article 38a in order to adapt the threshold for quantities of non-hazardous waste.;

(15) Article 27 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Commission **may** [...] adopt **implementing** acts [...] setting out technical minimum standards for treatment activities which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards, **in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**';

(b) paragraph 4 is replaced by the following:

'4. The Commission **may** [...] adopt **implementing** acts [...] setting out the minimum standards for activities that require registration pursuant to points (a) and (b) of Article 26 where there is evidence that a benefit in terms of the protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards, **in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**';

(16) Article 28 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) point (b) is replaced by the following:

'(b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste, waste containing significant amounts of raw materials that are of a high importance to the economy of the Union and whose supply is associated with a high risk, or waste streams addressed by specific Union legislation;';

(ii) the following point (f) is added:

'(f) measures to combat all forms of littering and to clean up all types of litter.';

(b) paragraph 5 is replaced by the following:

'5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC, the targets laid down in Article 11(2) and (3) of this Directive and the requirements in Article 5 of Directive 1999/31/EC.';

(17) Article 29 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. Member States shall establish waste prevention programmes setting out waste prevention measures in accordance with Articles 1, 4 and 9.';

(b) paragraphs 3 and 4 are deleted;

**(17a) Article 30(2) is deleted;**

(18) Article 33 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The Commission shall adopt implementing acts to establish the format [...] **with which Member States shall provide the URL through which information regarding their plans and programmes can be found, and inform the Commission on their date of adoption and any substantial revisions of plans and programmes.** Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).'

(b) [...]

(19) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The establishments or undertakings referred to in Article 23(1), the producers of hazardous waste and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a chronological record of the quantity, nature and origin of that waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste. They shall make that data available to the competent authorities through the electronic registry or registries to be established pursuant to paragraph 4.';

(b) the following paragraphs 4 and 5 are added:

'4. Member States shall set up an electronic registry or coordinated registries to record the data on hazardous waste referred to in paragraph 1 covering the entire geographical territory of the Member State concerned. Member States may establish such registries for other waste streams, in particular those waste streams for which targets are set in Union legislation. Member States shall use the data on waste reported by industrial operators in the European Pollutant Release and Transfer Register set up under Regulation (EC) No 166/2006 of the European Parliament and of the Council<sup>12</sup>.

5. The Commission may adopt implementing acts to establish minimum conditions for the operation of such registries. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).

(20) In Article 36, paragraph 1 is replaced by the following:

'1. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste, including littering.';

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<sup>12</sup> Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p.1).



(21) Article 37 is replaced by the following:

*'Article 37*

**Reporting**

1. Member States shall report the data concerning the implementation of Article 11(2)(a) to (d) and Article 11(3) for each calendar year to the Commission. **Member States shall also report the data on mineral, synthetic, lubrication and industrial oils put on the market, waste oils separately collected and treated.** They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting **on waste oils set out in Article 21(4) and the targets set out in Article 11(2) (c) and (d) and Article 11(3) shall start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and shall cover the data for that calendar year.**
2. Member States shall report the data concerning the implementation of Article 9(3) **and Article 9(4a)** to the Commission every [...] **second** year. They shall report this data electronically within 18 months of the end of the reporting period for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting shall **start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and shall cover the [...] data for that calendar year.**
3. For the purpose of verifying compliance with Article 11(2)(b), the amount of waste used for backfilling operations shall be reported separately from the amount of waste prepared for re-use or recycled. The reprocessing of waste into materials that are to be used for backfilling operations shall be reported as backfilling.
4. The data reported by the Member State in accordance with this Article shall be accompanied by a quality check report and a report on the measures taken pursuant to Article 11a(4).

5. The Commission shall review the data reported in accordance with this Article and publish a report on the results of its review. The report shall assess the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up every three years.
6. The Commission shall adopt implementing acts laying down the format for reporting data **on the implementation of Articles 9(3), 11(2)(c) and (d), and 11(3) [...]** and for the reporting on backfilling operations **before 1 January 2019. For the purposes of reporting on the implementation of Article 11(2)(a) and (b) Member States shall use formats established in accordance with Commission Implementing Decision C(2012)2384. For the purpose of reporting on food waste, the methodologies developed under Article 9(4) shall be taken into account when developing the format.** Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).';

(22) Article 38 is replaced by the following:

1. The Commission may develop guidelines for the interpretation of the **requirements set out in this Directive, including on the definition of waste, prevention, re-use, preparation for re-use, recovery, recycling, backfilling and disposal, and on the application of the calculation rules set out in Article 11a.**

The Commission shall be empowered to adopt delegated acts in accordance with Article 38a to specify the application of the formula for incineration facilities referred to in point R1 of Annex II. Local climatic conditions may be taken into account, such as the severity of the cold and the need for heating insofar as they influence the amounts of energy that can technically be used or produced in the form of electricity, heating, cooling or processing steam. Local conditions of the outermost regions as recognised in the third subparagraph of Article 349 of the Treaty on the Functioning of the European Union and of the territories mentioned in Article 25 of the 1985 Act of Accession may also be taken into account.

- 1a. **The Commission shall organize an exchange of information between Member States on the practical implementation of the requirements of this Directive, including on the application of the calculation rules set out in Article 11a, to ensure adequate governance, enforcement, cross-border cooperation and exchange of best practices. This includes, inter alia, the establishment of an electronic register for national by-product and end-of-waste criteria, referred to in point (3) of Article 5 and point (3) of Article 6, [...]. The Commission shall publish the results of the exchange of information.**
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a to amend Annexes **IV and V** in the light of scientific and technical progress.
3. [...];

(23) the following Article 38a is inserted:

*'Article 38a*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt the delegated acts referred to in Articles [...] 26, 38(1) and 38(2) shall be conferred on the Commission for a [...] **period of 5 years** from [*enter date of entry into force of this Directive*].
3. The delegation of power referred to in Articles [...] 26, 38(1) and 38(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

- 3a. **Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.**
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles [...] 26, 38(1), and 38(2) ] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.;

(24) Article 39 is replaced by the following:

*'Article 39*

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and the Council<sup>13</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. **Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation 182/2011 shall apply.'**

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<sup>13</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

**(24a) In Annex II, a new R code for backfilling is inserted:**

**R11a – backfilling**

(25) [...]

### *Article 2*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert date twenty four months after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 3*

#### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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ANNEX VI

[...]



