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**NOTE**

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To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste - Presidency compromise text

With a view to the Working Party on Environment on 14 and 15 November 2016, delegations will find in the Annex a Presidency compromise text on the above.

Amendments to the Commission proposal are indicated in **bold** and deletions in [...]. Changes compared to doc. 10525/16, as revised by doc. 11094/16, are indicated in **bold underlined**.

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.
- (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.

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

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

<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).

- (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, the final recycling process, and backfilling need to be included in Directive 2008/98/EC so that the scope of these concepts is clarified.
- (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 similar waste from other sources, inter alia from market and street cleaning services, including street sweepings and the content of litter containers, and from park and garden maintenance, such as leaves, grass and trees clipping.** 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.

- (6a) 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 and mines 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 fulfill 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.**
- (6b) While the definition of construction and demolition waste refers to waste resulting from construction and demolition activities in a general way, it includes all waste falling under the construction and demolition waste categories referred to in chapter 17 of Decision 2000/532/EC establishing a list of wastes.**
- (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 delegated acts establishing detailed criteria on the application of such harmonized conditions to certain waste, including for a specific use.

- (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, and procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.**
- (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 . 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 reduce the presence of harmful 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 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 in full compliance with the feed legislation** are not regarded as waste [...]. 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. **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.**
- 11(a) **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 controls, with regard to ships within its scope, throughout their life-cycle and aims to ensure their safe and environmentally sound recycling. It is therefore necessary to clarify the link with that Regulation and to avoid duplication of rules by excluding ships flying the flag of a Member State falling under the scope of that Regulation from the scope of this Directive 2008/98/EC. Ships neither covered by the Hong Kong Convention nor by that Regulation and any waste on board of a ship other than operationally generated waste, should continue to be subject to this Directive 2008/98/EC.**

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<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 preparation 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.

- (15) Through a progressive increase of the existing targets for preparation 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 recycled less than 20 % of their municipal waste **or landfilled more than 60 % of their municipal waste in 2013** according to Eurostat data 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.
- (17) In order to ensure the reliability of the data gathered [...], it is important to lay down more precise rules on how Member States should report what is effectively recycled and can be counted towards the attainment of the recycling targets. To that effect, as a general rule, the reporting on the attainment of the recycling targets must be based on the input to the [...] **actual recycling operation [...]. This operation starts after completion of the necessary checking, sorting and other preliminary operations aimed at removing materials that are not targeted by the subsequent reprocessing into products, materials or substances and at ensuring high-quality recycling.**

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



- (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 separately collected waste which undergoes no further sorting or of the output of [...] any sorting operation. [...] Losses of materials occurring before the waste enters the actual recycling operation, for instance due to further 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 standard average loss rates for various types of waste, collection and treatment systems and practices, or other equivalent measures. Member States should report on such measures in the quality check reports, accompanying the data on waste recycling. [...] 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 and 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 subsequently reprocessed into products, materials or substances. End-of-waste materials which are to be used as fuels, backfilled, incinerated or landfilled 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 compost or digestate which is to be used as a recycled product, material or substance. In line with the definition of recycling, the reprocessing of biodegradable waste into materials which are to be used as fuels, backfilled, incinerated or landfilled cannot be counted towards the recycling targets.**
- (18) Member States should, for the purposes of calculating whether the preparation 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.
- (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.

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

- (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.
- (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 statistical offices of the Member States.
- (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 [5(2), 6(2), 7(1), **11a(2)**, 11a(6), 26, 27(1), 27(4), 38(1), 38(2) and 38(3)]. 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.

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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.

- (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

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 flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to any waste on board of a ship other than operationally generated waste.'**

- (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 **including market and street cleaning services** that is comparable to household waste in nature **and** composition [...];

- (c) [...]

Municipal waste does not include waste from **production, agriculture, forestry, septic tanks and** sewage network and treatment, including sewage sludge, **end-of-life vehicles** and construction and demolition waste ....'

(b) [...]

*[Note: definition of non-hazardous waste to be kept in the Landfill Directive]*

(c) point 4 is replaced by the following:

'4. "bio-waste" means biodegradable garden and park waste, food and kitchen waste from households, 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;**"

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

**'15a. "Other material recovery" means any recovery operation other than energy recovery;**

(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 and mines 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 legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational 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 paragraph 3 is added:

**'3. Where criteria have not been set at Community 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.

- (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** used for specific purposes.

- (ii) the second subparagraph is deleted;

- (b) paragraphs 2, 3 and 4 are 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 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;**

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

**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 quality management, self-monitoring and accreditation;**

**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 Community 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 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 quality management, self-monitoring and accreditation**

**e) requirement for a statement of conformity.**

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 Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions 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. 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.**

**The application of of this Article shall be without prejudice to the application of other provisions of Union law, particularly regarding 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-paragraph is added:

**'Where the measures [...] referred to in this paragraph take the form of extended producer responsibility schemes [...] the general requirements in article 8a shall apply.';**

- (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 are technically durable **and reparable** 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 paragraph 5 is added:

'5. 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 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**;
  - **ensure that the schemes** contribute to the incorporation of [...] end-of-life costs into [...] **production cost** and provide **thereby** incentives for producers [...] **for improved product design**.

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, centers 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.
3. Member States shall take the necessary measures to ensure that any organisation [...] implementing **ing** 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 covering the sales area as well as the area where the products are likely to become waste;**
  - (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.

**The provision of information under point (d) shall be without prejudice to preserving the confidentiality of commercially sensitive information in conformity with the relevant Union and national law.**

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 the entire costs of waste management for the products it puts on the [...] market **in that Member State**, including all the following:
- costs of separate collection, [...], sorting and treatment operations, **and where appropriate of reuse and preparation for reuse**, required to meet the waste management targets 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) **[...]**
- (c) are based on the optimised cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.

**This provision is without prejudice to the competence of the public authorities with respect to waste management.**



**4a) Member States shall take measures to encourage that the financial contributions paid by the producer are modulated 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**;**

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, **irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU** are implementing 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.’;

(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 as referred to in Article 9a, 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;
- **reduce the content of harmful substances in materials and products and promote communication about hazardous substances in the supply chain;**
- **identify products that are the main sources of littering notably in the natural including the marine environment and take appropriate measures to reduce [...] litter from such products;**
- **include the development of continuous communication and education campaigns to raise awareness on the issues surrounding waste prevention and littering;**
- **encourage the use of deposit return schemes;**
- **incentivise re-use through the setting up of aspirational quantitative targets;**
- **provide, as appropriate, adequate economic incentives to producers. '**

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**, [...] disposed of, or subject to energy recovery.
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. 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. Those implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 39(2).
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) in paragraph 1, the first and second subparagraphs are replaced by the following:

'1. Member States shall take measures, as appropriate, to promote **the re-use of products and** preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, **by advancing the granting of access** [...] of such networks to waste collection points, 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 materials, as well as** sorting systems for construction and demolition waste for at least the following: wood, [...] **mineral fractions (concrete, bricks, tiles and ceramics)**, metal, glass, **plastics** and plaster, **in order to attain the target set out in paragraph 2(b).**;

**- Member state shall take measures to encourage the design, manufacturing, and use of products that are recyclable.'**

(c) **in paragraph 2, the first subparagraph is amended as follows:**

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

(d) in paragraph 2, point (b) is replaced by the following:

'(b) by 2020, the preparing for re-use, recycling **and other material recovery**, **including** backfilling, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight.'

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

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

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

- (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 may obtain five additional years for the attainment of the target referred to in point (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 an extension, the Member State shall take the necessary measures to increase the preparing for re-use and the 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 examine the target laid down in paragraph 2(d) with a view to [...] reviewing it and considering the setting of targets for other waste streams. 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 reuse or recycled in a given calendar year;**
    - (a) 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 remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the [...] recycling operation whereby waste materials are actually reprocessed into products, materials or substances;**
    - (b) 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;
    - (c) [...]
2. [...]
3. By way of derogation from paragraph 1(a), the weight **of separately collected waste which needs no further sorting or 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 actual 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(a)**, 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, **standard average loss rates for separately collected waste which needs no further sorting, or 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 which is to be used as a recycled product, material or substance.**
- 4b. **The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.**
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 the recycling of metals [...] **separated after waste** incineration in proportion to the share of the municipal waste incinerated provided that the recycled metals meet certain quality requirements.
6. In order to ensure harmonised conditions for the application of paragraph 5 **of this Article**, the Commission shall adopt **implementing** acts [...] establishing a common methodology for the calculation of the weight of metals that have been recycled in conjunction with incineration, including, the quality criteria for the recycled metals. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**

7. 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.
8. 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 equivalent to the requirements of the relevant Union environmental legislation.';

(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.';



(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** [...].

**Waste with similar biodegradability and compostability properties may 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 establishments or undertakings which collect or transport quantities of 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:

- (i) 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).'

- (ii) new paragraph 3 is added:

'3. **The Commission shall be empowered to adopt delegated acts in accordance with Article 38a in order to amend paragraph 2 in the light of scientific and technical progress.'**

(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. 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 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 will** cover the data for the period from 1 January 2020 to 31 December 2020.
2. Member States shall report the data concerning the implementation of Article 9(3) to the Commission every [...] 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 will cover the** period from 1 January 2020 to 31 December 2021.
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 July 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 Decision 2011/753/EU. 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 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 **III** to 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 [5(2), 6(2), 7(1), 11a(2), 11a(6), 26, 27(1), 27(4), **33(2)**, 38(1), 38(2) and 38(3)] 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 [5(2), 6(2), 7(1), 11a(2), 11a(6), 26, 27(1), 27(4), **33(2)**, 38(1), 38(2) and 38(3)] 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 [5(2), 6(2), 7(1), 11a(2), 11a(6), 26, 27(1), 27(4), **33(2)**, 38(1), 38(2) and 38(3)] 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

[...]

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