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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a Directive of the European Parliament and of the Council
amending Directive 94/62/EC on packaging and packaging waste.
- Outcome of the European Parliament's first reading
(Strasbourg, 16 to 19 April 2018)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Ms Simona BONAFÈ (S&D, IT), presented one compromise amendment (amendment 90) to the proposal for a Directive, on behalf of the Committee on the Environment, Public Health and Food Safety. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 18 April 2018, the plenary adopted one compromise amendment (amendment 90) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Packaging and packaging waste *I**

European Parliament legislative resolution of 18 April 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (COM(2015)0596 – C8-0385/2015 – 2015/0276(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0596),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0385/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 27 April 2016³,
 - having regard to the opinion of the Committee of the Regions of 15 June 2016⁴,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 23 February 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Industry, Research and Energy (A8-0029/2017),
1. Adopts its position at first reading hereinafter set out⁵;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

³ OJ C 264, 20.7.2016, p. 98.

⁴ OJ C 17, 18.1.2017, p. 46.

⁵ This position replaces the amendments adopted on 14 March 2017 (Texts adopted, P8_TA(2017)0072).

- Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 18 April 2018 with a view to the adoption of Directive (EU) 2018/... of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging 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 114 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 Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure⁸,

⁶ OJ C 264, 20.7.2016, p. 98.

⁷ OJ C 17, 18.1.2017, p. 46.

⁸ Position of the European Parliament of 18 April 2018.

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 *efficient* and rational utilisation of natural resources, promoting *the principles of the circular economy, enhancing the use of renewable energy, increasing energy efficiency, reducing the dependence of the Union on imported resources, providing new economic opportunities and contributing to long-term competitiveness. The more efficient use of resources would also bring substantial net savings for Union businesses, public authorities and consumers, while reducing total annual greenhouse gas emissions.*
- (2) The targets laid down in European Parliament and Council Directive 94/62/EC⁹ for the recovery and recycling of packaging and packaging waste should be amended by increasing the **■** recycling of packaging waste to make them better reflect the Union's ambition to move to a circular economy.
- (3) Furthermore, in order to ensure greater coherence in *Union waste law*, the definitions in Directive 94/62/EC should be aligned, *where relevant*, with those of Directive 2008/98/EC of the European Parliament and of the Council¹⁰ which is applicable to waste in general.

⁹ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

¹⁰ 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).

- (4) *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 encourage the increase in the share of reusable packaging placed on the market and the reuse of packaging. Such measures can include the use of deposit-return schemes and other incentives, such as setting quantitative targets, taking reuse into account for the attainment of recycling targets, and differentiated financial contributions for reusable packaging under extended producer responsibility schemes for packaging. Member States should take measures to incentivise the take-up of reusable packaging and to achieve a reduction in consumption of packaging that is not recyclable and of excessive packaging.*
- (5) *As reuse entails the avoidance of placing new packaging on the market and increasing the volumes of packaging waste generated, reusable sales packaging that is placed on the market for the first time and wooden packaging that is repaired for reuse should be taken into account for the purposes of attaining the respective packaging recycling targets.*

- (6) *Member States should put in place adequate incentives for the application of the waste hierarchy including economic instruments and other measures. Such measures should aim at minimising the environmental impacts of packaging and packaging waste from a life-cycle perspective, taking into account, where appropriate, the benefits of using bio-based materials and materials suitable for multiple recycling. Measures to increase public awareness of the benefits deriving from packaging made from recycled materials can contribute to expanding the recycling sector for packaging waste. Where single use packaging is indispensable to guarantee food hygiene and the health and safety of consumers, Member States should take measures to ensure recycling of such packaging.*
- (7) *Fostering a sustainable bio-economy can contribute to decreasing the Union's dependence on imported raw materials. Bio-based recyclable packaging and compostable biodegradable packaging could represent an opportunity to promote renewable sources for the production of packaging, where shown to be beneficial from a life-cycle perspective.*

- (8) *Litter, whether in cities, on land, in rivers and seas, or elsewhere, has direct and indirect detrimental impacts on the environment, the well-being of citizens and the economy, and the costs to clean it up present an unnecessary economic burden for society. Many of the most commonly found items on beaches include packaging waste and have long-term impacts on the environment while affecting tourism and the public benefit of these natural areas. Additionally, the presence of packaging waste in the marine environment entails subverting the priority order of the waste hierarchy, in particular by avoiding reuse, recycling and other recovery.*
- (9) *Clear environmental, economic and social benefits would be derived from further increasing the targets laid down in Directive 94/62/EC for recycling of packaging waste. It should be ensured that economically valuable waste materials are progressively and effectively recovered through proper waste management and in line with the waste hierarchy as laid down in Directive 2008/98/EC, **and** are channelled back into the European economy, **thereby** making progress in the implementation of the **Commission Communication of 4 November 2008 on “The raw materials initiative: meeting our critical needs for growth and jobs in Europe”** and the creation of a circular economy.*

(10) Many Member States have not yet completely developed the necessary waste management infrastructure. It is therefore essential to set clear long-term policy objectives in order to avoid locking recyclable materials at the *lower levels* of the waste hierarchy.



(11) 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 achieve those objectives. In developing their national waste management plans and planning investments in waste management infrastructure, Member States should make sound use of investments, including through Union Funds, by prioritising prevention including reuse, and recycling, in line with the waste hierarchy.

(12) *As a result of* the combination of recycling targets and landfill restrictions laid down in Directive 2008/98/EC and Council Directive 1999/31/EC¹¹, setting targets for recovery and *maximum targets for recycling of* packaging waste is no longer necessary.



¹¹ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

- (13) Separate recycling targets should be set for ferrous metals and aluminium in order to achieve significant economic and environmental benefits because more aluminium would be recycled leading to significant *savings in* energy and reduction of carbon dioxide emissions. The existing recycling target for metal packaging should therefore be split into separate targets for those two types of waste.
- (14) *The 2030 recycling targets for packaging should be examined with a view to maintaining or, if appropriate, increasing them. During that review, attention should also be paid to specific packaging waste streams such as household, commercial and industrial packaging waste as well as composite packaging waste.*

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(15) *The calculation of the recycling targets should be based on the weight of packaging waste which enters recycling. As a general rule, the actual measurement of the weight of packaging waste counted as recycled should be at the point where packaging waste enters the recycling operation. Nevertheless, in order to limit administrative burdens, Member States should, under strict conditions and by way of derogation from the general rule, be allowed to establish the weight of packaging waste recycled on the basis of measuring the output of any sorting operation. Losses of materials which occur 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. Those 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 which they report to the Commission on waste recycling. The average loss rates should preferably be established at the level of individual sorting facilities and should be linked to the different main types of waste, different sources (such as household or commercial), 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 or chemical transformation processes inherent in the recycling operation where packaging waste is actually reprocessed into products, materials or substances should not be deducted from the weight of the waste reported as recycled.*

- (16) *Where packaging waste materials cease to be waste as a result of a preparatory operation before being actually reprocessed, such materials can be counted as recycled provided that they are destined for subsequent reprocessing into products, materials or substances, whether for their original or other purposes. End-of-waste materials which are to be used as fuels or other means to generate energy, which are backfilled or disposed of, or which are to be used in any operation that has the same purpose as recovery of waste other than recycling, should not be counted towards the attainment of the recycling targets.*

(17) *Where the calculation of the recycling rate is applied to aerobic or anaerobic treatment of biodegradable packaging waste, the amount of waste that enters aerobic or anaerobic treatment can 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 treatment 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 amount of the treated biodegradable packaging waste. In other cases, in line with the definition of recycling, the reprocessing of biodegradable packaging waste into materials which are to be used as fuels or other means to generate energy, which are disposed of, or which are to be used in any operation that has the same purpose as recovery of waste other than recycling, should not be counted towards the attainment of the recycling targets.*

- (18) *In the case of exports of packaging waste from the Union for recycling, Member States should make effective use of the inspection powers provided for in Article 50(4c) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council¹² to require documentary evidence to ascertain whether a shipment is destined for recovery operations which are in compliance with Article 49 of that Regulation and therefore managed in an environmentally sound manner at a facility operating in accordance with human health and environmental protection standards that are broadly equivalent to standards established in Union legislation. In carrying out that task, Member States could cooperate with other relevant actors, such as the competent authorities in the country of destination, independent third-party verification bodies or organisations implementing extended producer responsibility obligations on behalf of producers of products established under extended producer responsibility schemes, which could carry out physical and other checks of facilities in third countries. In the quality check report accompanying the data on the attainment of the targets, Member States should report on the measures to implement the obligation to ensure that waste exported from the Union is treated in broadly equivalent conditions to those required under relevant Union environmental law.*
- (19) In order to ensure better, more timely and more uniform implementation of this Directive and anticipate *any* implementation weaknesses, a *system of* early warning *reports* should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.

¹² *Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).*

- (20) *As the amount and type of packaging used generally depends on choices made by the producer rather than the consumer, extended producer responsibility schemes should be established. Effective extended producer responsibility schemes can have a positive environmental impact by reducing the generation of packaging waste and increasing its separate collection and recycling. While extended producer responsibility schemes for packaging already exist in most Member States, there are wide disparities in the way they are set up, in their efficiency and in the scope of responsibility of producers. The rules on extended producer responsibility laid down in Directive 2008/98/EC should therefore apply to extended producer responsibility schemes for producers of packaging.*
- (21) *In order to boost the prevention of packaging waste, reduce its impact on the environment and promote recycling materials of high quality, while ensuring the functioning of the internal market, avoiding obstacles to trade and avoiding distortion and restriction of competition within the Union, the essential requirements of Directive 94/62/EC and Annex II thereto should be reviewed, and if necessary amended in order to strengthen the requirements with a view to enhancing the design for reuse and a high quality recycling of packaging.*

- (22) Data reported by Member States are essential for the Commission to assess compliance with *Union* waste *law by* Member States. The quality, reliability and comparability of data 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.
- (23) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance **or** 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 data which Member States report every year to the Commission.
- (24) Reliable reporting of data concerning waste management is paramount to efficient implementation and to ensuring comparability of data among Member States. Therefore, when reporting on the attainment of the targets set out in Directive 94/62/EC as amended by this Directive, Member States should use the most recent rules developed by the Commission and methodologies developed by the respective national *competent authorities responsible for implementing this Directive*.

- (25) In order to supplement or amend Directive 94/62/EC, the power to adopt acts in accordance with Article 290 of the Treaty *on the Functioning of the European Union* should be delegated to the Commission in respect of Articles **11(3) and 19(2)** and **Article 20** of that Directive, *as amended by this Directive*. It is of particular importance that the Commission carry 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 of 13 April 2016 on Better Law-Making*¹³. *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.*
- (26) In order to ensure uniform conditions for the implementation of Directive 94/62/EC, implementing powers should be conferred on the Commission in respect of **Articles 5(4), 6a(9), 12(3d) and 19(1)** thereof *as amended by this Directive*. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁴.

¹³ *OJ L 123, 12.5.2016, p. 1.*

¹⁴ 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).

- (27) Since the objectives of this Directive, namely on the one hand, to prevent any impact from packaging and packaging waste on the environment or to reduce such impact, *thereby* providing a high level of environmental protection, and, on the other, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale and 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.
- (28) Directive 94/62/EC should therefore be amended accordingly.

- (29) *According to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹⁵, the recasting technique is an appropriate means of ensuring the readability of Union legislation on a permanent and universal basis, by preventing the proliferation of isolated amending acts which often make legal acts difficult to understand. Moreover, in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the three institutions confirmed their commitment to using the legislative technique of recasting for the modification of existing legislation more frequently. Therefore, in view of the fact that Directive 94/62/EC has already been amended six times, it would be appropriate to recast Directive 94/62/EC in the near future.*
- (30) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁶, 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,

HAVE ADOPTED THIS DIRECTIVE:

¹⁵ *OJ C 77, 28.3.2002, p. 1.*

¹⁶ *OJ C 369, 17.12.2011, p. 14.*

Article 1

Amendments

Directive 94/62/EC is amended as follows:

(1) in Article 1, paragraph 2 is replaced by the following:

“2. To that end, this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, therefore, at reducing the final disposal of such waste in order to contribute to the transition towards a circular economy.”;

(2) Article 3 is amended as follows:

(a) in point 1, the following text is deleted:

“The Commission shall, as appropriate, examine and, where necessary, review the illustrative examples for the definition of packaging given in Annex I. As a priority, the following items shall be addressed: CD and video cases, flower pots, tubes and cylinders around which flexible material is wound, release paper of self-adhesive labels and wrapping paper. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 21(3).”;

(b) point 2 is replaced by the following:

“2. ‘packaging waste’ shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3 of Directive 2008/98/EC, *excluding production residues*”;

(c) *the following points are inserted:*

“2a. ‘reusable packaging’ shall mean packaging which has been conceived, designed and placed on the market to accomplish within its lifecycle multiple trips or rotations by being refilled or reused for the same purpose for which it was conceived;

2b. ‘composite packaging’ shall mean packaging made of two or more layers of different materials which cannot be separated by hand and form a single integral unit, consisting of an inner receptacle and an outer enclosure, that it is filled, stored, transported and emptied as such;

2c. the definitions of ‘waste’, ‘waste management’, ‘collection’, ‘separate collection’, ‘prevention’, ‘reuse’, ‘treatment’, ‘recovery’, ‘recycling’, ‘disposal’, and ‘extended producer responsibility scheme’ laid down in Article 3 of Directive 2008/98/EC shall apply;”;

(d) points 3 to 10 are deleted;

(3) *Article 4 is amended as follows:*

(a) paragraph 1 is replaced by the following:

“1. Member States shall ensure that, in addition to the measures taken in accordance with Article 9, other preventive measures are implemented in order to prevent generation of packaging waste and to minimise the environmental impact of packaging.

Such other *preventive* measures may consist of national programmes, incentives through extended producer responsibility schemes to minimise the environmental impact of packaging, or similar actions adopted, if appropriate, in consultation with economic operators, *and consumer and environmental organisations*, and designed to bring together and take advantage of the many initiatives taken within Member States as regards prevention.

Member States shall make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy such as those indicated in Annex IVa to Directive 2008/98/EC or other appropriate instruments and measures.”;

(b) paragraph 3 is deleted;

(4) Article 5 is replaced by the following:

“Article 5

Reuse

- 1. In line with the waste hierarchy laid down in Article 4 of Directive 2008/98/EC, Member States shall take measures to encourage the increase in the share of reusable packaging placed on the market and of systems to reuse packaging in an environmentally sound manner and in conformity with the Treaty, without compromising food hygiene or the safety of consumers. Such measures may include, inter alia:**
 - (a) the use of deposit-return schemes;**
 - (b) the setting of qualitative or quantitative targets;**
 - (c) the use of economic incentives;**
 - (d) the setting up of a minimum percentage of reusable packaging placed on the market every year for each packaging stream.**

2. *A Member State may decide to attain an adjusted level of the targets referred to in points (f) to (i) of Article 6(1) for a given year by taking into account the average share, in the preceding three years, of reusable sales packaging placed on the market for the first time and reused as part of a system to reuse packaging.*

The adjusted level shall be calculated by subtracting:

- (a) from the targets laid down in points (f) and (h) of Article 6(1), the share of the reusable sales packaging referred to in the first subparagraph of this paragraph in all sales packaging placed on the market, and*
- (b) from the targets laid down in points (g) and (i) of Article 6(1), the share of the reusable sales packaging referred to in the first subparagraph of this paragraph, composed of the respective packaging material, in all sales packaging composed of that material placed on the market.*

No more than five percentage points of such share shall be taken into account for the calculation of the respective adjusted target level.

3. *A Member State may take into account the amounts of wooden packaging that is repaired for reuse in the calculation of the targets laid down in point (f), point (g)(ii), point (h) and point (i)(ii) of Article 6(1).*
4. *In order to ensure uniform conditions for the application of paragraphs 2 and 3 of this Article, the Commission shall adopt by 31 March 2019 implementing acts establishing rules for the calculation, verification and reporting of data, and for the calculation of the targets pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).*
5. *By 31 December 2024, the Commission shall examine data on reusable packaging provided by Member States in accordance with Article 12 and Annex III with a view to considering the feasibility of setting quantitative targets on reuse of packaging, including the calculation rules, and any further measures to promote reuse of packaging. To that end, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.”;*

(5) Article 6 is amended as follows:

(a) in paragraph 1, the following points are added:

“(f) no later than 31 December 2025 a minimum of 65 % by weight of all packaging waste will be ■ recycled;

(g) no later than 31 December 2025 the following minimum targets by weight for ■ recycling will be met regarding the following specific materials contained in packaging waste:

(i) **50** % of plastic;

(ii) **25** % of wood;

(iii) **70** % of ferrous metals;

(iv) **50** % of aluminium;

(v) **70** % of glass;

(vi) **75** % of paper and cardboard;

- (h) no later than 31 December 2030 a minimum of **70 %** by weight of all packaging waste will be **■** recycled;
- (i) no later than 31 December 2030 the following minimum targets by weight for **■** recycling will be met regarding the following specific materials contained in packaging waste:
 - (i) 55 % of plastic;**
 - (ii) 30 % of wood;**
 - (iii) 80 % of ferrous metals;**
 - (iv) 60 % of aluminium;**
 - (v) 75 % of glass;**
 - (vi) 85 % of paper and cardboard.”;**

(b) the following paragraphs are inserted:

“1a. Without prejudice to points (f) and (h) of paragraph 1, a Member State may postpone the deadlines for attaining the targets referred to in point (g)(i) to (vi) and point (i)(i) to (vi) of paragraph 1 by up to five years, under the following conditions:

- (a) the derogation is limited to a maximum of 15 percentage points from a single target or divided between two targets,**
- (b) as a result of the derogation, the recycling rate for a single target is not reduced below 30 %,**
- (c) as a result of the derogation, the recycling rate for a single target referred to in point (g)(v) and (vi) and point (i)(v) and (vi) of paragraph 1 is not reduced below 60 %, and**
- (d) at the latest 24 months before the respective deadline laid down in point (g) or (i) of paragraph 1 of this Article, the Member State notifies the Commission of its intention to postpone the respective deadline and submits an implementation plan in accordance with Annex IV to this Directive. The Member State may combine that plan with an implementation plan submitted pursuant to point (b) of Article 11(3) of Directive 2008/98/EC.**

1b. Within three months of receipt of the implementation plan submitted pursuant to point (d) of paragraph 1a , the Commission may request a Member State to revise that plan if the Commission considers that the plan does not comply with the requirements set out in Annex IV. The Member State concerned shall submit a revised plan within three months of receipt of the Commission’s request.

1c. By 31 December 2024, the Commission shall review the targets laid down in points (h) and (i) of paragraph 1 with a view to maintaining or, if appropriate, increasing them. To that end, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.”;

(c) paragraphs 2, 3, 5, 8 and 9 are *deleted*;

(6) the following Article is inserted:

Article 6a

Rules on the calculation of the attainment of the targets

1. For the purpose of calculating whether the targets laid down in points (f) to (i) of Article 6(1) have been attained:

(a) *Member States shall calculate the weight of packaging waste generated and recycled in a given calendar year. Packaging waste generated in a Member State may be deemed to be equal to the amount of packaging placed on the market in the same year within that Member State;*

(b) the weight of packaging waste recycled shall be calculated as the weight of **█** *packaging that has become 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;*

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2. **■** *For the purposes of point (a) of paragraph 1, the weight of **packaging waste recycled shall be measured when the waste enters the recycling operation.***

By way of derogation from the first subparagraph, the weight of the packaging waste recycled may be measured at the output of any sorting operation 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.

3. Member States shall establish an effective system of quality control and traceability of the packaging waste to ensure that the conditions laid down in point (a) of paragraph 1 of this Article and points (a) and (b) of paragraph 2 of this Article are met. *To ensure the reliability and accuracy of the data gathered on recycled packaging waste, the system may consist of electronic registries set up pursuant to Article 35(4) of Directive 2008/98/EC, technical specifications for the quality requirements of sorted waste, or average loss rates for sorted waste for various waste types and waste management practices respectively. Average loss rates shall only be used in cases where reliable data cannot be otherwise obtained and shall be calculated on the basis of the calculation rules established in the delegated act adopted pursuant to Article 11a(10) of Directive 2008/98/EC.*

4. *For the purposes of calculating whether the targets laid down in points (f) to (i) of Article 6(1) have been attained, the amount of biodegradable packaging waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost, digestate, or other output with a similar quantity of recycled content in relation to input, which is to be used as a recycled product, material or substance. Where the output is used on land, Member States may count it as recycled only if this use results in benefits to agriculture or ecological improvement.*

5. *The amount of packaging 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, or to be incinerated, backfilled or landfilled, shall not be counted towards the attainment of the recycling targets.*

6. For the purposes of calculating whether the targets laid down in points (f) to (i) of Article 6(1) have been attained, Member States may take into account the recycling of metals *separated after incineration of waste* in proportion to the share of the packaging waste incinerated provided that the recycled metals meet certain quality *criteria laid down in the implementing act adopted pursuant to Article 11a(9)* of Directive 2008/98/EC.
7. *Packaging waste sent to another Member State for the purposes of recycling in that other Member State may only be counted towards the attainment of the targets laid down in points (f) to (i) of Article 6(1) by the Member State in which that packaging waste was collected.*
8. *Packaging waste exported from the Union shall count towards the attainment of the targets laid down in Article 6(1) of this Directive by the Member State in which it was collected only if the requirements of paragraph 3 of this Article are met and if, in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council*, the exporter can prove that the shipment of waste complies with the requirements of that Regulation and that the treatment of packaging waste outside the Union took place in conditions that are broadly equivalent to the requirements of the relevant Union environmental law.*

9. *In order to ensure uniform conditions for the application of paragraphs 1 to 5 of this Article, the Commission shall adopt by 31 March 2019 implementing acts establishing rules for the calculation, verification and reporting of data, in particular as regards the weight of packaging waste generated. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).*

- * *Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).”;*

(7) the following Article is inserted:

“*Article 6b*

Early warning report

1. The Commission shall, in cooperation with the European Environment Agency, draw up reports on the progress towards the ***attainment*** of the targets laid down in ***points (f) to (i) of Article 6(1) at the latest*** three years before each ***of the deadlines*** laid down ***therein***.
2. The reports referred to in paragraph 1 shall include the following:
 - (a) an estimation of the attainment of the targets by each Member State;
 - (b) a list of Member States at risk of not attaining the targets within the respective ***deadlines***, accompanied by appropriate recommendations for the Member States concerned;
 - (c) ***examples of best practices that are used throughout the Union which could provide guidance for progressing towards attaining the targets.***”;

(8) Article 7 is replaced by the following:

“Article 7

Return, collection and recovery systems

1. In order to meet the objectives laid down in this Directive, Member States shall take the necessary measures to ensure that systems are set up to provide for:

- (a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;***
- (b) the reuse or recovery including recycling of the packaging and/or packaging waste collected.***

Those systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.

2. *Member States shall ensure that, by 31 December of 2024, extended producer responsibility schemes are established for all packaging in accordance with Articles 8 and 8a of Directive 2008/98/EC.*
3. *The measures referred to in paragraphs 1 and 2 shall form part of a policy covering all packaging and packaging waste and shall take into account, in particular, requirements regarding the protection of the environment and consumer health, safety and hygiene, the protection of the quality, the authenticity and the technical characteristics of the packed goods and materials used, and the protection of industrial and commercial property rights.*
4. *Member States shall take measures to promote high quality recycling of packaging waste and to meet the necessary quality standards for the relevant recycling sectors. To that end, Article 11(1) of Directive 2008/98/EC shall apply to packaging waste, including from composite packaging.”;*

(9) *in Article 9, the following paragraph is added:*

- “5. *By 31 December 2020, the Commission shall examine the feasibility of reinforcing the essential requirements with a view to, inter alia, improving design for reuse and promoting high quality recycling, as well as strengthening their enforcement. To that end, the Commission shall submit a report to the European Parliament and to the Council, accompanied, if appropriate, by a legislative proposal.”;*

(10) Article 11(3) is replaced by the following:

“3. The Commission shall ■ adopt delegated acts *in accordance with Article 21a in order to supplement this Directive by determining* the conditions under which the concentration levels referred to in paragraph 1 *of this Article do* not apply to recycled materials and to product loops which are in a closed and controlled chain, as well as by determining the types of packaging which are exempted from the requirement laid down in the third indent of paragraph 1 *of this Article.*”;

(11) Article 12 is amended as follows:

(a) the title is replaced by 'Information systems and reporting';

(b) paragraph 2 is replaced by the following:

“2. The databases referred to in paragraph 1 shall include the data *based on* Annex III and shall provide in particular information on the magnitude, characteristics and evolution of the packaging and packaging waste flows at the level of individual Member States, including information on the toxicity or danger of packaging materials and components used for their manufacture.”;

- (c) paragraph 3 is deleted;
- (d) the following paragraphs are inserted:

“3a. Member States shall report the data concerning the implementation of points (a) to (i) of Article 6(1) **and data on reusable packaging**, for each calendar year to the Commission.

They shall report the 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 **on the basis of Annex III** in accordance with paragraph 3d of this Article.

The first reporting period **concerning the targets set out in points (f) to (i) of Article 6(1) and data on reusable packaging shall start in the first full calendar year after the adoption of the implementing act that establishes the format for reporting, in accordance with paragraph 3d of this Article, and shall cover the data for that reporting period.**

- 3b. The data reported by Member States in accordance with this Article shall be accompanied by a quality check report and a report on the measures taken pursuant to Article 6a(3) and (8), **including detailed information about the average loss rates where applicable.**

- 3c. 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 *after the first reporting of the data by the Member States and every four years thereafter*.
- 3d. *By 31 March 2019*, the Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 3a *of this Article. For the purposes of reporting on the implementation of points (a) to (e) of Article 6(1) of this Directive, Member States shall use the format established in Commission Decision 2005/270/EC**. Those implementing acts shall be adopted in accordance with the *examination* procedure referred to in Article 21(2) of this Directive.

* *Commission Decision 2005/270/EC of 22 March 2005 establishing the formats relating to the database system pursuant to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (OJ L 86, 5.4.2005, p. 6)."*

- (e) paragraph 5 is deleted;

(12) Article 17 is deleted;

(13) Article 19 is replaced by the following:

“Article 19

Adaptation to scientific and technical progress

1. The Commission shall adopt implementing acts necessary for adapting the identification system referred to in Article 8(2) and Article 10, second paragraph, sixth indent, to scientific and technical progress. Those implementing acts shall be adopted in accordance with the *examination* procedure referred to in Article 21(2).
2. The Commission is empowered to adopt delegated acts in accordance with Article 21a to amend the illustrative examples for the definition of packaging listed in Annex I.;

(14) Article 20 is replaced by the following:

“Article 20

Specific measures

The Commission is empowered to adopt delegated acts in accordance with Article 21a in order to supplement this Directive where necessary to deal with any difficulties encountered in applying the provisions of this Directive, in particular, to inert packaging materials placed on the market in very small quantities (i.e. approximately 0,1 % by weight) in the Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.”;

(15) Article 21 is replaced by the following:

“*Article 21*

Committee procedure

1. The Commission shall be assisted by the committee established by Article 39 of Directive 2008/98/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.
2. When reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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 (EU) No 182/2011 shall apply.

* *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).”;*

(16) the following Article is inserted:

“*Article 21a*

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 delegated acts referred to in Articles *11(3) and 19(2)* and *Article 20* shall be conferred on the Commission for ■ a period of *five years* from ... [*date of entry into force of this amending Directive*]. *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
3. The delegation of power referred to in *Articles 11(3) and 19(2)* and *Article 20* 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.

4. ***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 of 13 April 2016 on Better Law-Making*.***
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 11(3) ***and*** 19(2) and ***Article*** 20 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to 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.

* ***OJ L 123, 12.5.2016, p. 1.***”;

(17) Annexes II and III are amended as set out in the Annex to this Directive;

(18) Annex IV is added as set out in the Annex to this Directive.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [*24 months after the date of entry into force of this amending Directive*]. They shall **immediately inform** the Commission **thereof**.

When Member States adopt those *measures*, they shall contain a reference to this Directive or *shall* be accompanied by such a reference on the occasion of their official publication. *The methods of making such reference shall be laid down by* Member States **.**

2. Member States shall communicate to the Commission the text of the main *measures* of national law which they adopt in the field covered by this Directive. ***The Commission shall inform the other Member States thereof.***

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 ...,

For the European Parliament

For the Council

The President

The President

ANNEX

1) *Annex II is amended as follows:*

(a) *in point 1, the second indent is replaced by the following:*

“- Packaging shall be designed, produced and commercialised in such a way as to permit its reuse or recovery, including recycling, in line with the waste hierarchy, and to minimise its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.”;

(b) *in point 3, points (c) and (d) are replaced by the following:*

“(c) Packaging recoverable in the form of composting

Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it does not hinder the separate collection and the composting process or activity into which it is introduced.

(d) Biodegradable packaging

Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water. Oxo-degradable plastic packaging shall not be considered as biodegradable.”.

2) *Annex III is amended as follows:*

(a) In Tables 1 and 2, the rows entitled "Metal" are each replaced by two rows entitled "Ferrous metal" and "Aluminium".

(b) *Table 2 is amended as follows:*

(i) *in the second column, the title "Tonnage of packaging consumed" is replaced by "Tonnage of packaging placed on the market for the first time";*

(ii) *in the third column, the title "Packaging reused" is replaced by "Reusable packaging";*

(iii) *after the third column, the following is added:*

“

<i>Reusable sales packaging</i>	
<i>Tonnage</i>	<i>Percentage</i>

”.

(c) In Tables 3 and 4, the rows entitled "Metal packaging" are each replaced by two rows entitled "Ferrous metal packaging" and "Aluminium packaging".

3) *The following Annex is added:*

“Annex IV

Implementation plan to be submitted pursuant to point (d) of Article 6(1a)

The implementation plan to be submitted pursuant to point (d) of Article 6(1a) shall contain the following:

1. *assessment of the past, current and projected rates of recycling, landfilling and other treatment of packaging waste and the streams of which it is composed;*
2. *assessment of the implementation of waste management plans and waste prevention programmes in place pursuant to Articles 28 and 29 of Directive 2008/98/EC;*
3. *reasons for which the Member State considers that it might not be able to attain the relevant target laid down in points (g) and (i) of Article 6(1) within the deadline set therein and an assessment of the time extension necessary to meet that target;*
4. *measures necessary to attain the targets set out in points (g) and (i) of Article 6(1) of this Directive that are applicable to the Member State during the time extension, including appropriate economic instruments and other measures to provide incentives for the application of the waste hierarchy as set out in Article 4(1) of, and Annex IVa to, Directive 2008/98/EC;*
5. *a timetable for the implementation of the measures identified in point 4, determination of the body competent for their implementation and an assessment of their individual contribution to attaining the targets applicable in the event of a time extension;*
6. *information on funding for waste management in line with the polluter-pays principle;*

7. *measures to improve data quality, as appropriate, with a view to better planning and monitoring performance in waste management.”.*
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