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

Subject: Draft Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (**first reading**)
- Adoption of the legislative act
- Statements

**DECLARATION BY THE COMMISSION ON
A POLICY FRAMEWORK FOR THE CIRCULAR ECONOMY**

The Commission is committed to ensuring full implementation of the EU action plan for the Circular Economy¹. To keep track of progress towards the circular economy, the Commission has adopted a monitoring framework² building on the existing Resource Efficiency and Raw Materials Scoreboards. The Commission also draws attention to its ongoing work on a footprint indicator for products and organisations.

¹ COM(2015) 614 final

² COM(2018) 29 final

Actions undertaken under the EU action plan for the Circular Economy also contribute to fulfilling the Union's objectives on sustainable consumption and production, in the context of Sustainable Development Goal 12. This is the case, for example, of the strategy on plastics³ or the recently amended proposal on the legal guarantee for consumer goods⁴.

As regards consistency between the Union's regulatory frameworks, the Commission has also recently adopted a Communication setting out options to address the interface between chemical, product and waste legislation⁵. In 2018, the Commission will also examine options and actions for a more coherent policy framework of the different strands of work on EU product policy in their contribution to the circular economy. The interactions between legislation and industry cooperation on the use of by-products and the preparation for re-use and recycling of waste will also be considered in the framework of these initiatives and their follow-up.

As regards eco-design, the Commission, in line with the Eco-design Working Plan for the years 2016-2019⁶, confirms its strong commitment to ensuring that eco-design makes a more significant contribution to the circular economy, for example by more systematically tackling material efficiency issues such as durability and recyclability.

DECLARATION BY THE COMMISSION ON INITIATIVES ON THE COLLABORATIVE ECONOMY

In line with the Circular Economy Action Plan⁷, the Commission has launched a number of initiatives on the collaborative economy. As announced in its Communication on a European agenda for the collaborative economy⁸ in June 2016, the Commission will continue to monitor the economic and regulatory developments of the collaborative economy, in order to encourage the development of new and innovative business models, while ensuring adequate consumer and social protection.

³ COM (2018) 28 final
⁴ COM(2017) 637 final
⁵ COM (2018) 32 final
⁶ COM(2016) 773 final
⁷ COM(2015) 614 final
⁸ COM(2016) 356 final

DECLARATION BY THE COMMISSION ON MICRO-PLASTICS

In the context of the recently adopted European Strategy for Plastics in the Circular Economy⁹, the Commission has presented an integrated approach to address concerns about micro-plastics, including micro-bead ingredients. It focuses on preventive actions and aims at reducing the release of micro-plastics from all main sources – whether from products in which they are intentionally added (such as personal care products and paints) or originating from the production or use of other products (such as oxo-plastics, tyres, plastic pellets, and textiles).

DECLARATION BY THE COMMISSION ON THE REVIEW OF THE WASTE SHIPMENT REGULATION AND END-OF-WASTE MATERIALS

In the context of the planned review of Regulation (EU) No 1013/2006 on shipments of waste to be conducted by the end of 2020, the Commission will consider the feasibility of providing for further measures regarding shipments of end-of-waste materials where end-of-waste criteria have not been set at Union level according to Article 6, paragraph 2, of the Waste Framework Directive.

DECLARATION BY THE COMMISSION ON MEASURES TO ENSURE TREATMENT OF WASTE PRIOR TO LANDFILLING

In accordance with Article 6 (a) of Directive 1999/31/EC on the landfill of waste Member States shall take measures to ensure that only waste that has been subject to treatment is landfilled, while making sure that such measures do not compromise the achievement of the objectives of Directive 2008/98/EC on waste (Waste Framework Directive) as revised, notably with respect to the waste hierarchy, the separate collection of waste and the preparing for re-use and recycling targets as set out in that Directive.

Building on the exchange of views that took place during the Waste Framework Directive Experts' Group meeting held on 30 June 2017 and in the light of the ruling of the Court of Justice of the European Union in case C-323/13, in the coming months the Commission will step up its dialogue with Member States on the policy measures to be taken in this area.

⁹ COM (2018) 28 final

DECLARATION BY THE COMMISSION ON
THE PROCEDURE OF ADOPTION OF IMPLEMENTING ACTS

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5§4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission *may* adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established in Article 5§4 recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.

DECLARATION BY THE COMMISSION ON
THE AVAILABILITY OF DATA AND REPORTING OBLIGATIONS

In view of monitoring progress towards the new targets for municipal and packaging waste and in view of relevant review clauses, in particular to set targets for food waste prevention and for the recycling of waste oils, the Commission underlines the importance of the common understanding reached between the co-legislators that Member States will ensure that the reporting of data under Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste and 1999/31/EC on the landfill of waste as amended, will cover the year 2020.

STATEMENT BY POLAND

I. Frequency of reporting by Member States

Poland was disappointed to note the information concerning the increase in the frequency of reporting by Member States.

The draft directives increase the frequency of reporting by Member States from every two years to annually, which was never accepted in the mandate. The solutions put forward constitute a significant administrative burden for the Member States. Poland supported the mandate in May 2017 on condition that it took into account Poland's request regarding reporting frequency.

II. Plausibility and feasibility of certain recycling targets

As regards the recycling of plastic packaging waste, Poland notes that the target of 55 % in 2030 may be technically difficult to achieve given the properties of certain materials.

STATEMENT BY GREECE

Greece supports the overall compromise achieved during the negotiations for the “Waste Package”, acknowledging the painstaking efforts it took to reach an agreement, as well as the importance of the package within the Circular Economy Strategy.

However, a number of important provisions have been included in the course of the negotiations that are not legally coherent, or that have not been based on proper impact assessment, in particular:

Art. 9(1) indent nine & Art.9(1a) on the interface between REACH and waste, as well as the lack of reference to Art. 10(2) & 10(3) of WFD in:

Art. 11(1) on selective demolition,

Art. 18.3 on mixed hazardous waste,

Art. 20 on separate collection of household hazardous waste and

Art. 22(1) on biowaste.

In our view, the implementation of the said provisions is likely to prove so challenging in practice for businesses, the public administration and for citizens, that it will even be counterproductive as to the overall objective of promoting circular economy in a sustainable manner.

Furthermore, we are of the opinion that the full financial responsibility shall be borne by the EPR systems and we note that the 10% landfill target of municipal waste by 2035/2040 does not sufficiently take into account the different social conditions or population density and characteristics between MSs and leads inevitably to increased incineration, which is a sub-optimal outcome.

Moreover, we encourage the Commission to address in a systematic and coherent manner the specific characteristics of small remote islands as part of the implementing measures of the package and notably of the revised Landfill Directive as well as of Art. 10(1) to 10(3) and the aforementioned related provisions.

STATEMENT BY FINLAND

Finland supports the aims and objectives as well as the overall compromise on the “Waste Package”, which paves the way for increased recycling and an enhanced circular economy.

However, Finland wishes to reiterate its concern about the inconsistency of the overall recycling targets for packaging waste with respect to its material-specific targets (Article 6, paragraph 1, point (f) and (h) of the Directive on Packaging and Packaging Waste).

More precisely, Finland considers that the reduction in material-specific targets were not sufficiently reflected in the overall recycling targets. Compared to the Commission’s proposal, for example, the recycling target for wood packaging waste was reduced by 35 percentage points (from 60% to 25%) in 2025 and by 45 percentage points (from 75% to 30%) in 2030. Despite this, the overall target for 2025 remained the same (65%) as in the Commission’s proposal, and the target for 2030 was decreased by only 5 percentage points (from 75% to 70%).

Finland also considers that the overall recycling targets for packaging waste do not sufficiently take into account the fact that Member States’ ability to attain the targets depends significantly on the proportion of certain packaging materials that are used. In this regard, the final deal is particularly unfavourable to those Member States where the use of wood packaging is widespread and where the proportion of wood packaging waste of the total amount of packaging waste is significant.

For these Member States, the overall recycling targets can only be achieved in practice if the recycling rates for wood packaging waste can be increased to levels clearly above the material-specific targets. Even extremely efficient recycling of other packaging waste materials (i.e. much higher than their material-specific recycling targets) could not compensate for the dominant impact of the lower recycling rate for wood packaging. This is contradictory given that the recycling targets for wood packaging waste were deliberately set at a lower level due to the limited recycling potential.

Consequently, and yet again stressing the commitment and support for the aims and objectives of the waste package, Finland regrets that the binding overall recycling targets for packaging waste treat Member States unequally according to the proportion of certain packaging materials used in relation to the total amount of all packaging materials.

STATEMENTS BY GERMANY

Separate collection

1. Article 10(2) of the current Waste Framework Directive (WFD) stipulates that, to comply with the recovery requirement under Article 10(1), waste must be collected separately 'if technically, environmentally and economically practicable'. The amendment to Article 10(2) agreed on in the trilogue has removed this proviso and replaced it in the new Article 10(3) with a special derogation clause under which Member States may allow derogations from the separate collection requirement subject to certain conditions. This amendment to Article 10 of the Waste Framework Directive not only impacts direct obligations on producers and holders, it also affects Member States' obligation to ensure separate collection of certain wastes, achieve recycling quotas (Article 11 WFD) and collect bio-waste separately (Article 22 WFD).

Germany supports the objective pursued by the WFD of achieving a sustainable circular economy at both EU and national level. All those concerned should participate in efforts to achieve a circular economy; the circular economy therefore requires a sound legal basis. Germany would point out that, irrespective of the derogation clause in Article 10(3) of the WFD, both the Treaty on the Functioning of the European Union and German constitutional law stipulate that legally binding obligations such as, in particular, separate collection obligations may only be imposed on waste producers and holders if they are proportionate, i.e. suitable, necessary and appropriate with a view to improving recycling.

2. The same applies to the new ban on the incineration of separately collected waste pursuant to Article 10(3a) (new) of the WFD and the ban on landfilling such waste under the new point (f) of Article 5(3) of the Landfill Directive. These bans may only be imposed on waste producers and holders if they are proportionate. Furthermore, Article 13 of the WFD requires the management of such waste to be carried out without endangering human health and without harming the environment.

Regarding the obligation to provide the ECHA with information about articles (ninth indent of Article 9(2) and Article 9(1a) of the Waste Framework Directive)

The provision inserted in the ninth indent of Article 9(1) and in Article 9(1a) during the final phase of the trilogue negotiations, which provides that articles which contain substances of very high concern within the meaning of the REACH Regulation are to be included in a database at the European Chemicals Agency ECHA, raises a number of detailed questions that need to be clarified so that Member States can draw up regulations which are in keeping with the goals of the provision. For example, clarification is required as to how to identify the articles concerned in such a way that they can be entered into a central database in an easily retrievable form. Additionally, common provisions need to be drawn up to deal with the issue of the multiple submissions of data for one and the same article which are to be expected in large numbers as a result of extending the obligations to all suppliers along the supply chain.

Germany considers it regrettable that this provision, which will demand a considerable effort from all parties, was included in the draft without the appropriate preparation in terms of content or the appropriate impact assessment required for such a complex issue. Germany is only able to agree in view of the overall compromise achieved in the trilogue procedure. Germany requests that the Commission, in consultation with the ECHA as the body responsible for maintaining the database, specify the precise details necessary to enable the ECHA and Member States to implement the provision in an appropriate manner while limiting the workload to the necessary minimum. Should the Commission be of the opinion that this requires supplementary amendments to Union law, the Commission is requested to submit corresponding draft provisions.
