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MI 490  
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**NOTE**

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From: General Secretariat of the Council

To: Delegations

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No. prev. doc.: 10525/16 ENV 446 COMPET 390 MI 467 AGRI 364 IND 144 CONSUM  
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No. Cion doc.: 14973/15 ENV 769 ENT 258 MI 780 CODEC 1660  
14974/15 ENV 770 CODEC 1661  
14975/15 ENV 771 COMPET 559 MI 782 AGRI 646 IND 203 CONSUM  
214 ENT 260 CODEC 1662 + ADD 1  
14976/15 ENV 772 IND 202 CODEC 1663 + ADD 1

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Subject:

- Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment
- Proposal for a Directive of the European Parliament and of the Council amending Council Directive 1999/31/EC on the landfill of waste
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste
- Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste

= Comments from delegations on the Presidency compromise text

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Delegations will find in the Annex comments on the abovementioned Presidency compromise text (doc. 10525/16) received from DK.

**DENMARK****Reading guide:**

Amendments made by the Presidency to the Commission proposal are indicated in **bold** and deletions in [text].

Danish amendments are marked with yellow. Amendments to the Presidency text will be presented in a table.

## RECITALS

## Recital 5

| <b>Presidency text</b>   | <b>DK proposal</b>  |
|--|---|
| 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. | 5) Definitions of municipal waste, construction and demolition waste, the final recycling process, <b>other material recovery</b> and backfilling need to be included in Directive 2008/98/EC so that the scope of these concepts is clarified. |

Comments to recital 5: Under ‘material recovery’ there exists other recovery methods than recycling and backfilling. Furthermore, ‘other material recovery’ is mentioned in the presidency’s amendment of Article 11 (2) (b). Therefore DK suggests to include ‘other material recovery’ in Recital 5.

| <b>Presidency text</b> | <b>DK proposal</b>   |
|------------------------|--|
|                        | <b>5a) Definition of a specific recovery code for backfilling is needed to be included in Directive 2008/98/EC so that the amount of recovery operation can be reported correctly.</b> |

Comments to recital 5a: This Directive includes in Article 37(3) an obligation for Member States to report separately the amount of construction and demolition waste backfilled. However, no recovery code for backfilling is given in Annex II of this Directive. Therefore, there is a need to define a specific recovery code in Annex II of the Directive.

- (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. **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.
- (8a) 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 all the conditions laid down in Article 5(1) of this Directive are met. Member States shall 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.**

Comments to recital 8a: Denmark can support this recital.

- (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.

| Presidency text  | DK proposal   |
|--|---|
| <p>(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 <b>including measures that reduce the presence of harmful substances in materials and products</b> 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.</p> | <p>(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 <b>including re-use and measures that reduce the presence of harmful substances in materials and products</b> 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.</p> |

Comments to recital 10: If waste prevention shall not be only rhetoric but reality, it is important to increase re-use. Therefore, it is important to mention re-use in recital 10

(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.

Comments to recital 12: DK can support the amendment

| Presidency text   | DK proposal   |
|---|---|
| (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. | (14) The targets for <b>re-use</b> , preparation for re-use and recycling of municipal waste should be increased in order to deliver substantial environmental, economic and social benefits. |

Comments to recital 14: There is a general agreement in the Council that the definition in Article 3 point 16 of ‘pre -paring for re-use’ shall only refer to products or components of products that have become waste and not to products and components that are not waste. Consequently, there is a need in the recitals to put more emphasize on re-use of products and components that are not waste. DK therefore suggests to insert “re-use” in recital 14 and to make a new recital 15a.

(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 waste materials are re-used and effectively recycled, and that valuable materials found in waste are channelled back into the European economy, thus advancing the Raw Materials Initiative<sup>1</sup> and the creation of a circular economy.

| Presidency text | DK proposal   |
|-----------------|---|
|                 | <b>(15a) Through inclusion of re-use of products and components that have not become waste, in the attainment of the targets for preparation for re-use and recycling of municipal waste, the Union is now giving strong incentives to reduce waste generation and to ensure substantial environmental, economic and social benefits.</b> |

Comments to a new recital 15a: See commenst to recital 14.

<sup>1</sup> COM(2008)699 and COM(2014)297.

(17) In order to ensure the reliability of the data gathered **[on preparation for re-use it is essential to establish common rules for reporting. Similarly]**, 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 **[final] actual recycling operation [process]**. **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.** In order to limit administrative burdens, Member States should **by way of derogation from the general rule** be allowed, under strict conditions, to report recycling rates on the basis of the output of **any sorting operation [sorting facilities]**. **Significant losses of materials between this output and the waste amounts entering the actual recycling operation, for instance due to further sorting, should not be included in the waste amounts reported as recycled. On the other hand,** losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the **[final] recycling [process] 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.

Comments to recital (17): Denmark has several times mentioned the issue regarding manual sorting at the source and pointed out that countries using separate collection of waste at the source should be allowed to use this output operation as a measure point, if the country can document that the weight of subsequent losses on the way to the final recycling process remains below 10%.

As earlier mentioned Denmark has several examples where source separated waste is collected in a quality that fulfils quality requirements for the recycling facilities, and therefore the collected waste is sent directly to the recycling facility.

Denmark would like to ask, how we shall be able to report on the above mentioned examples, when no sorting (other than manual sorting at the source) is taking place before input to an actual recycling plant? The only existing data on those examples are the collected amount delivered to the recycling plant.

| Presidency text  | DK proposal   |
|--|---|
| <p><b>17a) With the alignment of the definitions in this Directive, 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 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.</b></p> | <p><b>17a) With the alignment of the definitions in this Directive, 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 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. <del>End-of-waste materials which are to be used as fuels, backfilled, incinerated or landfilled cannot be counted towards the recycling targets.</del></b></p> |

Comments to recital 17a: Denmark finds that waste cannot cease to be waste justified by a use as fuel, backfilling, incineration or landfilling. The sentence is therefore misleading. End of Waste that is actually reprocessed can be counted as recycled according to the Presidency's amendment of Article 11a point 4a. On the condition that such an Article is also integrated into the four other Directives mentioned in the beginning of recital 17a, DK can support the Presidency's proposal.

**(17b) 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 or landfilled cannot be counted towards the recycling targets.**

Comments to recital (17b): DK supports the amendment.

| Presidency text  | DK proposal   |
|--|---|
| <p>(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 <b>[products and components that are prepared for re-use by recognised re-use operators and by deposit-refund schemes and]</b> 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 <b>[on the determination of recognised preparation for re-use operators and deposit-refund schemes]</b> on the quality criteria for recycled metals and on the collection, verification and reporting of data.</p> | <p>(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 <b>products and components that are re-used or prepared for re-use by recognised re-use operators and by deposit-refund schemes and</b> 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 <b>on the determination of recognised preparation for re-use operators and deposit-refund schemes</b> on the quality criteria for recycled metals and on the collection, verification and reporting of data.</p> |

Comments to recital 18: There is a general agreement in the Council that the definition in Article 3 point 16 of ‘pre -paring for re-use’ shall only refer to products or components of products that have become waste and not to products and components that are not waste. Consequently, there is a need in the recitals to clarify the differences between ‘re-use’ and ‘preparing for re-use’. There is also a need to clarify the difference between ‘re-use’ and ‘preparing for re-use’ because the discussion in Council has reflected that some countries, for example regard refillable bottles with deposit as waste and ‘preparing for re-use’, whereas other countries regard such refillable bottles as non-waste and consequently it is ‘re-use’. The presidency’s proposal to delete some of the lines in the text suggested by the Commission will not solve such problems. We need clarification and DK therefore suggests to keep the text in recital 18 as suggested by the Commission but to insert the wording “are re-used or” just before ‘prepared for re-use’.

**(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 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.**

Comments to recital 28a: DK supports the amendment suggested by the Presidency.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments**

Directive 2008/98/EC is amended as follows:

(1) in Article 2(2), the following point (e) is added:

'(e) feed materials as defined in Article 3(2)(g) of Regulation (EC) No 767/2009 of the European Parliament and of the Council<sup>2</sup> **except if they are destined for incineration, landfilling or use in a biogas or composting plant.**'

Comments to Art. 2(2): DK can support the amendment, as it would not make any change to the interpretation of the article. If the material is used for feed, the material will not be incinerated, landfilled or used in a biogas or composting plant. DK would like to ask why the sentence is suggested added?

(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 [**white goods**] mattresses; **and** furniture;

**[garden waste, including leaves, grass clipping;]**

(b) mixed waste and separately collected waste from other sources that is comparable to household waste in nature **and** composition [**and quality**];

(c) [**market cleansing waste and waste from street cleaning services, including street sweepings, the content of litter containers, waste from park and garden maintenance.**]

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<sup>2</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).'

Comments to art. 3.1a “municipal waste”: In general DK supports the Presidency’s proposal, because the definition apart from one point will be in accordance with the existing Eurostat and OECD definition of Municipal waste on one hand and on the other hand the proposed definition in fact includes some good clarifications. The only point we cannot support is to include construction and demolition waste from households. The existing Eurostat and OECD definition explicitly excludes construction and demolition waste. This type of waste is very heavy and therefore it will have a large impact on the total recycling percentage. By including construction and demolition waste in the definition, we are not harmonising the understanding of municipal waste. Further, DK would prefer that the definition includes a reference to the relevant codes in the European List of Waste, because this would harmonise the understanding of the definition. Finally, DK can support the Swedish proposal to replace the wording 'municipal waste' with 'Household waste and similar commercial, industrial and institutional wastes'.

| Presidency text   | DK proposal  |
|---|--|
| <p>Municipal waste does not include waste from <b>production, agriculture, forestry, septic tanks and</b> sewage network and treatment, including sewage sludge, <b>end-of-life vehicles</b> and construction and demolition waste (<b>except waste arising from minor construction and demolition activities by individual households</b>).'</p> | <p>Municipal waste does not include waste from <b>production, agriculture, forestry, septic tanks and</b> sewage network and treatment, including sewage sludge, <b>end-of-life vehicles</b> and construction and demolition waste (<del>except waste arising from minor construction and demolition activities by individual households</del>).</p> |

- (b) [**“non-hazardous waste” means waste which displays none of the hazardous properties listed in Annex III;**]

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

Comments to art. 3.2a “non-hazardous waste”: DK can support to keep the definition 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 [**and other waste with similar biodegradability properties that is comparable in nature, composition and quantity**].';

Comments to art. 3.4 “bio-waste”: DK can support the amendment suggested by the Presidency.

(d) the following point 4a is inserted:

'4a. "construction and demolition waste" means waste falling under the construction and demolition waste categories referred to in the list of waste adopted pursuant to Article 7;'

Comments to art. 3.4a "construction and demolition waste": DK can support the amendment.

(e) [**”preparing for re-use” means checking, cleaning or repairing recovery operations, by which waste, products or components of products that have been collected by a recognised preparation for re-use operator or deposit-refund scheme are prepared so that they can be re-used without any other pre-processing;**]

Comments to art. 3.16 “preparing for re-use”: DK can support the amendment suggested by the Presidency. Preparing for reuse, shall not include products and components, but only products and components that have become waste. The text in art. 11a should be rewritten to contain reuse.

Because “preparing for reuse”, now does not mean the same, as when the Commission made their proposal, consequential amendments in several recitals and articles are needed in order to underline the importance of re-use. This will mean that for example recital 14 should be amended, by adding reuse.

Furthermore a new recital 15a is suggested by DK, that underlines the importance of reuse in relation to circular economy.

Also an amendment to recital 18 is suggested by DK. Reuse shall be added for the purpose of how to calculate the attainment of the target.

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

[**“final recycling process” means the recycling process which begins when no further mechanical sorting operation is needed and waste materials enter a production process and are effectively reprocessed into products, materials or substances;**]

Comments to art. 3.17 “final recycling process”: DK can support the amendment suggested by the Presidency, and delete the definition of final recycling process. The text that the Presidency is suggesting to add to art. 11a para. 1(a) will make the definition of final recycling process unnecessary.

‘17b. "backfilling" means any recovery operation where suitable **non-hazardous** waste is used for purposes **of reclamation** in excavated areas or for engineering purposes in landscaping [**or construction instead of other non-waste materials which would otherwise have been used for that purpose**]. **Waste used for backfilling should substitute non-waste materials, be suitable for the afore-mentioned purposes and be limited to the amount strictly necessary to achieve these purposes.**’

Comments to art. 3.17b “backfilling”: DK can support the amendment and that non-hazardous waste used for engineering purposes in construction is not considered as a backfilling operation. However there is still a need for defining 'other material recovery' or 'material recovery', because other types of material recovery than recycling and backfilling exist. The concept ‘other material recovery’ is included in the wording of Article 11.2(b). At the meeting on 1<sup>st</sup> July 2016 DK proposed a written definition of 'other material recovery', whereas Italy suggested a written definition of 'material recovery'. Denmark and Italy have now agreed about a written definition of material recovery, which we find will clarify that backfilling is a subcategory of 'other material recovery'. DK suggest to include such a definition of 'material recovery' as a new Article 3.15(b) and to mention ‘other material recovery’ in Recital 5.

| Presidency text | DK proposal   |
|-----------------|---|
|                 | <p><u>Art. 3.15 (b): 'Material recovery means any recovery operation different from energy recovery. It includes preparation of waste for re-use, recycling and other material recovery including backfilling and recovery of sewage sludges in agriculture'.</u></p> |

## Annex II

Furthermore, this Directive includes in Article 37(3) an obligation for Member States to report separately the amount of construction and demolition waste backfilled. However, no recovery code for backfilling is given in Annex II of this Directive. Therefore, there is a need to define a specific recovery code in Annex II of the Directive.

| Presidency text | DK proposal   |
|-----------------|---|
|                 | <p><u>Annex II of Directive 2008/98/EC</u></p> <p><u>After R 11 the following code is added:</u></p> <p><u>R 11a Backfilling of construction and demolition waste</u></p> |

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

'3. Member States shall make use of adequate economic instruments to provide incentives for the application of the waste hierarchy;

**[Member States shall report to the Commission the specific instruments put in place in accordance with this paragraph *[insert date fifteen months after the entry into force of this Directive]* and every five years following that date.]**

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

Comments to art. 4.3: DK supports to change the required reporting to a regular exchange of information between Member States.

(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:';

Comments to art. 5.1: DK supports the suggested amendment by the Presidency

(b) paragraph 2 is replaced by the following:

'2. The Commission shall be empowered to adopt [delegated] acts in accordance with Article [38a] in order to establish detailed criteria on the application of the conditions laid down in paragraph 1 to specific substances or objects.';

Comments to art. 5.2: DK supports art. 5.2

(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 [of technical regulations adopted under paragraph 1] 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>3</sup> where so required by that Directive.

Comments to art. 5.3: DK can support the amendment suggested by the Presidency. But would suggest to add the word “of” in the text. See above.

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<sup>3</sup> OJ L 241, 17.9.2015, p.1

Comments to art. 6:

| Presidency text  | DK proposal  |
|--|--|
| <p>Article 6 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the introductory phrase and point (a) are replaced by the following:<br/>           '1. Member States shall <b>take appropriate measures to</b> ensure that waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions:</p> <p>(a) the substance or object can be used for specific purposes;';</p> <p>(ii) the second subparagraph is deleted;</p> <p>(b) paragraphs 2, 3 and 4 are replaced by the following:</p> <p>'2. The Commission shall be empowered to adopt [delegated] acts in accordance with Article [38a] in order to establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain <b>types of</b> waste. Those detailed criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental <b>and human health impacts [effects]</b> of the substance or object.</p> <p><b>3. [Waste which is considered to have ceased to be waste in accordance with paragraph 1 may be considered to be prepared for reuse, recycled or recovered for the purpose of the calculation of the achievement of the targets set out in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EC of the European Parliament</b></p> | <p>Article 6 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the introductory phrase and point (a) are replaced by the following:<br/>           '1. Member States shall <b>take appropriate measures to</b> ensure that <b>non-hazardous</b> waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions <b>based on a specific decision taken by the competent authority:</b></p> <p>(a) the substance or object <b>can be is commonly</b> used for specific purposes but not as <b>fuel, backfilling, incineration or landfilling;</b>';</p> <p>(ii) the second subparagraph is deleted;</p> <p>(b) paragraphs 2, 3 and 4 are replaced by the following:</p> <p>'2. The Commission shall be empowered to adopt [delegated] acts in accordance with Article [38a] in order to establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain types of waste. Those detailed criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental <b>and human health impacts [...]</b> of the substance or object.<br/> <b>End of waste criteria shall be developed, for the most relevant waste streams within 36 months after the entry into force of this Directive</b></p> <p>3. [...]</p> |

|  |  |
|--|--|
| <p><b>and of the Council(*) respectively if it has been subject to a preparing for reuse, recycling or recovery in accordance with those Directives]</b></p> <p><b>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 include limit values for pollutants where necessary and shall take into account any possible adverse environmental and human health impacts [effects?]of the substance or object. Member States shall notify the Commission of [technical regulations adopted under paragraph 1] 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.</b></p> | <p>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 include limit values for pollutants where necessary and shall take into account any possible adverse environmental and human health impacts [...] of the substance or object. 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.</p> |
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DK can support the wording “Member States shall **take appropriate measures to ensure**” in paragraph 1. Furthermore, DK finds it is important that the concept of End-of-Waste status is linked to non-hazardous wastes.

DK finds it relevant still to secure the practice of End-of-Waste by concrete decisions taken by the competent authority before the substance or object is considered to be end of waste. Therefore Denmark still finds it relevant to have a clear provision in art. 6(1).

Denmark does not support the suggestion from the Commission that change “is commonly used” to “can be used”. Denmark support the original wording “is commonly used”.

The possibility for End-of-Waste status and developing of criteria for such a status were introduced in the WFD in 2008 in order to improve recycling markets and the quality of recycling. Backfilling and energy recovery operations are definitely better operations than landfilling, but from a circular economy perspective recycling operations are much better ones, because the waste-material can be used again and again and not only once. Therefore, from circular economy thinking we find that it makes sense to exclude used as fuel, backfilled, incineration or landfilled as a valid purpose to fulfill 6(1)(a). Consequently DK suggests an amendment of Article 6 (1)(a)

Denmark can support the deletion of paragraph 3 in Article 6 only if art. 11a (4b) as suggested by the Presidency is enacted in the WFD and an identical rule is enacted in the other waste-directives.

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