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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	31 August 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2021) 6295 final
Subject:	COMMISSION DELEGATED DECISION of 31.8.2021 supplementing Directive 2008/98/EC of the European Parliament and of the Council with regard to rules for the calculation and verification of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled, based on average loss rates for sorted waste

Delegations will find attached document C(2021) 6295 final.

Encl.: C(2021) 6295 final

Brussels, 31.8.2021
C(2021) 6295 final

COMMISSION DELEGATED DECISION

of 31.8.2021

**supplementing Directive 2008/98/EC of the European Parliament and of the Council
with regard to rules for the calculation and verification of the weight of materials or
substances which are removed after a sorting operation and which are not subsequently
recycled, based on average loss rates for sorted waste**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste¹ hereafter called “the Waste Framework Directive”) as amended by Directive 2018/851/EU² establishes targets for the preparation for re-use and recycling of municipal waste to be achieved by 2025, 2030 and 2035, respectively.

This Directive requires that only the input to the recycling operation shall be taken into account for the purposes of calculating the recycling targets for municipal waste and that as a rule the actual measurement of the amount of the waste has to be done at that point. By way of derogation, Member States can calculate the recycling targets also by measuring the output of sorting operations. If Member States use this derogation, in accordance with Article 11a(3) of the Directive, they have to ensure that certain safeguards are met, namely that further losses due to preliminary treatment before the specific waste material enters the recycling operation are deducted and that the output waste is actually recycled. Average loss rates for sorted waste is one of the options Member States may use to calculate further losses in order to establish the amount of waste reported as recycled.

This Commission Delegated Decision establishes uniform rules for the calculation, verification and reporting of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled based on average loss rates for sorted waste as required under Article 11a(10) of the Directive.

Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste³ as amended by Directive 2018/852/EU⁴ applies the same rules for the calculation of the recycling targets rates for packaging waste and, in particular, makes reference to this Delegated Decision.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission carried out targeted stakeholder consultations with the packaging and recycling sector as part of a dedicated study⁵ during the development stage of this act as well as on the draft Delegated Decision in 2019.

The Commission discussed this Delegated Decision with the Member States in expert group on waste meetings in 2018, 2019 and 2020.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Article 11a(10) of the Directive 2008/98/EC on waste, the Commission is empowered to establish rules for the calculation, verification and reporting of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled based on average loss rates for sorted waste.

Articles 1 refers to the definitions of Implementing Decision 2019/1004 that are applicable to the act. Article 2 specifies the rules for the calculation and application of average loss rates.

¹ OJ L 312, 22.11.2008, p. 3.

² OJ L 150, 14.6.2018, p. 100–140.

³ OJ L 365 31.12.1994, p. 10.

⁴ OJ L 150 14.6.2018, p.141-154.

⁵ <https://op.europa.eu/en/publication-detail/-/publication/3d72ef00-bcac-11e9-9d01-01aa75ed71a1>

Article 3 specifies the requirements on data collection for the purpose of calculating and verifying average loss rates. Article 4 addresses the exchange of information on average loss rates and administrative cooperation between Member States and the Commission. Article 5 identifies Member States as addressees of the Decision.

COMMISSION DELEGATED DECISION

of 31.8.2021

supplementing Directive 2008/98/EC of the European Parliament and of the Council with regard to rules for the calculation and verification of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled, based on average loss rates for sorted waste

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives⁶, and in particular Article 11a(10) thereof,

Whereas:

- (1) Article 11a(3) of Directive 2008/98/EC requires Member States to establish an effective system of quality control and traceability of municipal waste to ensure that the conditions for the calculation and measurement of the municipal waste recycled are met. The measurement of the amount of municipal waste recycled at the output of a sorting operation is subject inter alia to the condition that the weight of materials and substances which are removed after a sorting operation by other preliminary treatment and which are not subsequently recycled is not included in the weight of waste reported as recycled. Pursuant to Article 11a(3) and (10) of Directive 2008/98/EC, Member States may use average loss rates for sorted waste within the system of quality control and traceability of municipal waste as a method to determine the amount of those materials and substances.
- (2) Average loss rates are to be used only where reliable data on the amount of waste recycled cannot be obtained otherwise. This situation can occur where sorted waste undergoes a series of further sorting or other preliminary treatment operations in several waste treatment facilities whereby fractions of the sorted waste are separated or mixed with other types of waste, with waste from other sources or with waste from other countries before reaching the calculation point. It can also occur where sorted waste is shipped to another Member State or is exported outside the Union for further processing. Member States are therefore to verify whether reliable data can be obtained directly from the waste operators in whose facilities the waste reached the calculation point.
- (3) In order to ensure reliability and comparability of data on waste reported as recycled in cases where the actual measuring occurs at the output of a sorting operation and no reliable data can be obtained on the amounts of waste entering the recycling operation, it is necessary to set out detailed rules for the calculation of average loss rates for sorted waste at waste treatment facility level based on treatment practices that process significant shares of sorted waste.

⁶ OJ L 312 22.11.2008, p. 3.

- (4) In order to ensure the reliability and accuracy of the data and other information necessary for the proper implementation of the rules on the calculation of average loss rates, it is necessary to lay down requirements on the collection of data to be used for the calculation and their regular update for the purpose of verification. In order to reflect changes in waste composition and waste management practices, it is appropriate to set out the criteria for adjusting the established average loss rates.
- (5) Requirements for reporting of data on the use of average loss rates have been established in Commission Implementing Decision (EU) 2019/1004⁷.
- (6) In order to promote high quality sorting and recycling and to enable the waste management operators and Member States that ship sorted waste for sorting and recycling to determine the applicable average loss rates for their waste, it is necessary to lay down rules on the accessibility of these rates and on the exchange of information between Member States.

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision, the definitions in Article 1, points (a) to (f), of Implementing Decision 2019/1004 shall apply.

Article 2

Calculation and application of average loss rates

1. The average loss rate shall be calculated as the amount of the losses in relation to the amount of the sorted waste.
2. Average loss rates shall only be calculated for sorted waste which is of a specific type and has specific characteristics and which results from sorting or other preliminary treatment operations performed by waste operators to process significant shares of sorted waste (“common practices in preliminary treatment”).
3. The amount of the losses shall be calculated as the sum of the amount of non-targeted materials and other substances that are removed from the sorted waste or from fractions of the sorted waste between a measurement point at the output of a sorting operation and the calculation point for the sorted waste or its fractions.

Where sorted waste contains multiple targeted and non-targeted materials, the losses of a specific non-targeted material may be excluded from the amount of the losses provided that the individual component materials do not constitute:

- (a) more than 5 % of the total amount of the sorted waste; and

⁷ Commission Implementing Decision (EU) 2019/1004 of 7 June 2019 laying down rules for the calculation, verification and reporting of data on waste in accordance with Directive 2008/98/EC of the European Parliament and of the Council and repealing Commission Implementing Decision C(2012) 2384 (OJ L 163, 20.6.2019, p. 66).

- (b) more than 5 % of the amount of the fraction of the sorted waste resulting from further sorting operations preceding the calculation point for the targeted material.
- 4. The methodology to calculate average loss rates shall include the sequence of steps set out in paragraphs 5 to 8.
- 5. An assessment of the sorted waste to which average loss rates are to be applied shall be carried out to identify the key characteristic features of the sorted waste related to its qualitative and quantitative composition in terms of targeted materials, non-targeted materials and other substances and the common practices in preliminary treatment applied to that sorted waste and/or to each fraction of that sorted waste.
- 6. Losses of targeted and non-targeted materials and other substances in common practices in preliminary treatment of the sorted waste referred to in paragraph 5 of this Article and shares of sorted waste that undergo those common practices in preliminary treatment shall be identified based on data collected in accordance with Article 3, paragraphs 1 to 5.

Where different common practices in preliminary treatment are applied to individual fractions of the sorted waste, the amount of the losses shall be calculated as a weighted average based on the proportions of each fraction of the sorted waste that is subject to common practices in preliminary treatment. Where reliable data on those proportions is not available, assumptions may be used.

- 7. Based on the analysis referred to in paragraph 6, average loss rates shall be calculated for each targeted material in the sorted waste referred to in paragraph 5. The average loss rates shall be calculated for the first reference year for which they are applied.
- 8. The average loss rates calculated in accordance with paragraph 7 shall be verified as follows:
 - (a) for reference year 2025 and every five years thereafter;
 - (b) for other years whenever there are reasons to expect significant changes in the amount of materials that are removed, in particular due to changes to the common practices in preliminary treatment or changes in the qualitative and quantitative composition of the wastes to which average loss rates are applied.

Where necessary, the average loss rates shall be adjusted based on the data collected in accordance with Article 3, paragraphs 1 to 5.

- 9. Average loss rates shall be calculated for each targeted material at the level of each individual waste treatment facility producing sorted waste.

Average loss rates that have been calculated for an individual waste treatment facility may be applied to other facilities producing sorted waste where the sorted waste from those facilities:

- (a) complies with equivalent technical specifications that determine the type and the composition of the sorted waste, in particular the maximum values for the amounts of non-targeted materials and other substances present in the sorted waste; and
 - (b) is destined to undergo further sorting or other preliminary treatment resulting in similar losses.

10. Where waste originating from a Member State is mixed with similar waste from other sources, from other Member States or third countries before it enters a sorting operation following which an average loss rate is applied, the amount of sorted waste to which the average loss rate is applied shall be determined by taking into account the proportion of the waste originating from that Member State entering the sorting operation and its composition in terms of targeted materials and non-targeted materials.

Article 3

Data collection for the purpose of calculating and verifying average loss rates

1. For the purpose of the calculation of average loss rates, data on the composition of the sorted waste, including the amounts of targeted materials, non-targeted materials and other substances shall be collected from waste treatment facilities producing sorted waste to which average loss rates are applied.

Member States shall take appropriate measures to ensure that the data collected has a high level of accuracy as regards the amount of targeted materials, non-targeted materials and other substances present in sorted waste.

2. The data referred to in paragraph 1, first subparagraph, shall be based on technical specifications setting maximum values for non-targeted materials and other substances or on regular sampling of sorted waste produced in individual waste treatment facilities.

Where technical specifications are used, the composition of the sorted waste shall be deemed to be equal to the maximum values of non-targeted materials and other substances, unless the operator of a waste treatment facility provides specific evidence that the sorted waste it produces contains lower values of non-targeted materials and other substances.

3. Member States shall take appropriate measures to ensure that data referred to in paragraph 2 are collected at the output of a sorting operation and at the input and output of preliminary treatment of sorted waste resulting from the application of at least one of the following methods:

- (a) representative sampling of individual batches of sorted waste with regard to targeted materials, non-targeted materials and other substances;
- (b) representative sampling of sorted waste with regard to targeted materials, non-targeted materials and other substances.

4. Member States shall take appropriate measures to verify that the sorted waste produced by the waste treatment facility complies with the technical specifications or the lower values referred to in paragraph 2.

5. Member States shall take appropriate measures to collect data on the targeted materials and non-targeted materials that are removed from the sorted waste and that are subject to landfilling or to subsequent treatment other than recycling, in countries where those operations take place.

Article 4

Exchange of information

1. Member States shall ensure that the information about average loss rates applicable to each waste treatment facility producing sorted waste on their territory is available and easily accessible to the public.
2. Each Member State shall designate a contact point to request and receive requests for information from other Member States concerning the calculation and verification of average loss rates.
3. Each Member State shall inform the Commission of the contact point designated pursuant to paragraph 2 by 31 March 2022 and about any change thereof without delay.
4. The Commission shall establish a list of all contact points and make it publicly available.

Article 5

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 31.8.2021

For the Commission
Virginijus SINKEVIČIUS
Member of the Commission