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NOTE

From: General Secretariat of the Council

To: Delegations

No. prev. doc.: 11436/16 ENV 508 COMPET 429 MI 516 AGRI 426 IND 167 CONSUM
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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

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 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 texts

Delegations will find in the Annex comments on the Presidency compromise texts (docs. 14228/16, 14169/16, 14198/16 and 14152/16) on the abovementioned proposals received from BE, CZ, DK, DE, IE, ES, EE, FR, HR, IT, LV, HU, NL, AT, SI, FI, SE and UK, a joint non-paper from DK, DE and FR on the Average Loss Rates (ALR) and a joint proposal from DK, IE, EE, FR, HR and FI on the reward of re-use in the recycling target.

BELGIUM**BE preliminary comments on doc. 14152/16 in addition to previous BE comments –
Presidency Compromise text on the Waste Framework Directive**

- Recital (8a)

BE proposes the following amendment :

Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, **and procedures **and case by case decisions** for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.**

Justification : see art. 6, para 4a.

- Article 2(2)

'(e) substances which do not consist of or contain animal by-products that are destined for use as "feed materials" in accordance with Regulation (EC) No 767/2009;

BE has in this respect a crucial question: can a product (e.g. old bread or other former foodstuff) that is categorized as “waste” by a food operator, after processing/treatment be re-categorized as “feed” ? Or can a product, once categorized as “waste”, never re-enter the feed chain ? This should be clarified.

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

BE has a scrutiny reserve on alinea (f)

- Article 3.1a

"municipal waste" means

- (a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, **packaging**, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses **and** furniture;

[...]

- (b) mixed waste and separately collected waste from other sources **including market and street cleaning services** that is comparable to household waste in nature **and** composition [...];

- (c) [...]

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

BE has a scrutiny reserve

- Art 3.4.

"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 [...].';

BE supports this definition of biowaste

- Art 3.15a

“Other material recovery” means any recovery operation other than energy recovery;

BE does not see the added value of this definition.

- Art 3.17b

"backfilling" means any recovery operation where suitable **non-hazardous** waste is used for purposes of **reclamation** in excavated areas and **mines** or for engineering purposes in landscaping **and infrastructure and construction foundation** [...]. **Waste used for backfilling must substitute non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes.'**

BE does not support the insertion of mines, infrastructure and construction foundation in this definition. Backfilling should be defined in a strict way to avoid downcycling of valuable materials. The COM should clarify what is meant with 'suitable waste' in a guidance document.

- Art 3.20a

‘20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle.’

BE proposal in case this definition is retained

‘20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for **waste prevention measures, the management of the waste stage of a product's life cycle and the increased use of reusables and recycles.**

Justification : a definition of EPR schemes is not a necessity for BE and can only be accepted when it is sufficiently broad. The proposed definition of EPR scheme is limited to responsibilities in the end of life phase, where Belgium wants to see it extended to a broader spectrum such as producer responsibility on using more secondary raw materials in products, greening the input of raw materials, reusability, repairability of products, extension of lifetime of products. To take these elements more into account, BE proposes some amendments. In case this definition is not extended to a broader spectrum than waste management, BE prefers to delete the definition as a whole.

- Article 4. 3

Member States shall make use of [...] economic instruments to provide incentives for the application of the waste hierarchy;

[...]

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

BE agrees with those MS who say that the COM should take a more active role in this exchange by making use of its overview of the different situations in the MS, to facilitate tailor-made exchange, pooling the experiences into guidance documents, listing the economic instruments.

- Article 6. 2

The Commission **may [...]** adopt **implementing** acts [...] in order to establish detailed criteria on the **uniform** application of the conditions laid down in paragraph 1 to certain **types of waste** . Those detailed criteria shall [...] take into account any possible adverse environmental **and human health impacts [...]** of the substance or object **and shall include:**

BE proposes the following amendment :

The Commission **shall [...]** adopt **implementing** acts [...] in order to establish detailed criteria on the **uniform** application of the conditions laid down in paragraph 1 to certain **types of waste** **and more specifically by 2020 for biomass, plastic, aggregates and textile.**

Justification

BE wants a clear demand for the COM to develop European EoW criteria for biomass, plastic, granulates and textile, by [2020]. BE therefore proposes an amendment

- Art 6.4.

Where criteria have not been set at Community level under the procedure set out in paragraph 2, Member States may establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain types of waste. Those detailed criteria [...] shall take into account any possible adverse environmental and human health impacts [...] of the substance or object and shall include:

a) permissible waste input material for the recovery operation;

b) allowed treatment processes and techniques;

BE understands this criterium b) as the treatment processes and techniques that are applied to produce the raw materials and not the treatment processes and techniques used to process the raw materials into products. Under that condition we can support this criterium.

c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;

d) requirements for quality management, self-monitoring and accreditation

e) requirement for a statement of conformity.

Member States shall notify the Commission of [...] **these criteria** in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of 9 September 2015 **laying down a procedure for the provisions of information in the field of technical regulations and of the rules on information Society services** where so required by that Directive.

- Art 6.4a.

Where criteria have not been set at Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be notified to the Commission according to Directive 2015/1535/EC.

BE proposal

Art 6.4a. Where criteria have not been set at Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be notified to the Commission according to Directive 2015/1535/EC - 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 end of waste criteria and procedures for their implementation, guidance documents, procedures and case by case decisions for the ad-hoc application of the conditions laid down in paragraph 1.

Justification:

BE wants to amend art 6.4a. so that not only case by case decisionmaking but also other appropriate measures can be taken to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste complying with all the conditions laid down in Article 6(1) of this Directive.

4b. The natural or legal person who places a material on the market for the first time after it ceases being waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.

The application of of this Article shall be without prejudice to the application of other provisions of Union law, particularly regarding chemicals and legislation concerning the placing on the market of certain products.

BE proposal

4b. The natural or legal person who places a material on the market for the first time after it ceases being waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. If applicable, the natural or legal person shall assemble and keep available all the information he requires to carry out his duties under art.2.7.d REACH for a period of at least 10 years after he places a material on the market after it ceases being waste. He shall submit this information or make it available without delay upon request to any competent authority of the Member State in which he is established. The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.

Justification

In order to assure that the owner of the recycled material that has ceased to be waste can provide the appropriate information, that formed the basis of the decision on the end of waste status according to art 6.1c, it would be an added value to provide explicitly that this information should be maintained, thus linking the WFD with the chemicals / product legislation. BE proposes therefore to modify 4b

- Art 8.1

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

BE sees EPR as a crucial instrument to reach the targets. We support, after 10 years of experience with this instrument throughout the EU, a more harmonized approach for these voluntary schemes.

- Art 8.2

'Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable **and reparable** and that are, after having become waste, suitable for preparation for reuse and recycling in order to facilitate proper implementation of the waste hierarchy. The measures **shall** take into account the impact of products throughout their life cycle.'

BE supports to change 'may' in 'shall' and to add in this alinea the reference to recycled content.

'Such measures **shall** encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, **that contain recycled materials**, that are technically durable **and reparable (...)**

- Art 8a.4.

Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

- (a) cover the entire costs of waste management for the products it puts on the [...] market **in that Member State**, including all the following:
 - costs of separate collection, [...], sorting and treatment operations, **and where appropriate of reuse and preparation for reuse**, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;
 - costs of providing adequate information to waste holders in accordance with paragraph 2;
 - costs of data gathering and reporting in accordance with paragraph 1, third indent.

BE supports art 8a4a with a non exhaustive list of the entire costs of waste management to be covered by an EPR scheme and with inclusion of reuse and preparation for reuse.

- Art 9.1

BE proposal to add a new indent in art 9.1:

-ensure the achievement of a European reuse target of [5]kg per capita per year of re-used products such as electrical and electronic equipment, textiles, and furniture

Justification

BE wants stronger incentives at the EU level to promote prevention and the reuse of products. Therefore BE supports to insert a clear European target for reuse under the prevention article. We propose more specifically an additional indent under art 9.1

- Art 9.2

Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the [...] quantity **of waste that is generated,** [...] disposed of, or subject to energy recovery.

BE proposal to add:

By 31 December [2020], the Commission shall, on the basis of these reports, propose a quantitative EU prevention target on the total weight of generated waste per capita per year to be met by 2030. To that end, the Commission shall draw up a report, accompanied by a legislative proposal which shall be sent to the European Parliament and the Council.

Justification:

BE is not against indicators and targets on residual waste as such, but to adequately monitor prevention, a choice for indicators on waste that goes to disposal or waste that is subject to energy recovery does not suffice. The generated waste should be monitored and targeted. BE supports the development of a European target on the prevention of waste and proposes additional text under art 9.2

- Article 11.1, 2nd alinea

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors [...];

BE proposal

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where ~~technically, environmentally and economically practicable and~~ appropriate to meet the necessary quality standards for the relevant recycling sectors [...];

Justification

BE: The current wording on separate waste collection systems for specific types of materials has produced widely differing results as regards its implementation in the different Member States. The introduction of technical, environmental and economic (TEEP) limits has allowed numerous exemptions, rendering application of this principle impossible.

The collection of pre-sorted waste is one of the tools supporting the creation of a high-quality recycling market and the attainment of high levels of recycling, which is equally undermined by insertion of the TEEP principle.

Belgium proposes therefore to delete the reference to the TEEP principle in this art 11.1, 3rd paraf as well as in art 10.2 and art 22 1st paraf. Art 4 of the WFD provides for the necessary flexibility.

- Art 11.1, 3th alinea

'Member States shall take measures to promote **selective demolition in order to enable removal and safe handling of hazardous substances and materials, as well as** sorting systems for construction and demolition waste for at least the following: wood, [...] **mineral fractions (concrete, bricks, tiles and ceramics), metal, glass, plastics and plaster, in order to attain the target set out in paragraph 2(b).;**

BE proposal

'Member States shall take measures to promote systems for **selective demolition of the main material streams at the demolition site, in order to enable removal and safe handling of hazardous substances and materials, to facilitate reuse as well as high quality recycling, while ensuring that the content of the selected non-hazardous substances does not hamper the recycling of the material**

Member States shall take measures to promote the use of sorting systems for construction and demolition waste for at least the following: wood, [...] **mineral fractions (including concrete, bricks, tiles, ceramics, stone), metal, glass, plastics and plaster, in order to attain the target set out in paragraph 2(b)**

Justification

The aim of selective demolition of C&D waste should not only be the removal and safe handling of hazardous substances and material, but also the reuse and recycling of construction materials. BE also wants the inclusion of stone as a mineral in the list of C&D waste that has to be sorted.

- Art 11.2b

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

BE wants to add a new art 11.2 b bis:

'By 2025, the preparing for re-use, recycling of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight.'

Justification:

Construction and demolition waste is one of the largest waste stream in the EU, which due to demographic changes will not change. C&D waste contain valuable resources that are too often lost or down cycled. Therefore BE supports a preparation for reuse and recycling target on C&D waste after 2020.

BE proposal to add a new art Art 11.2 b ter

“by 2025, at least [50%] of municipal biowaste shall be recycled. By 2030, at least [80%] of municipal bio-waste shall be recycled.

Justification:

BE supports a separate recycling target for municipal biowaste. Added value in terms of climate change, efficient use of nutrients,... can only be valorized if a separate target is inserted.

- Art 11. 2 c and d, art 11.3 and Art 11.4

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

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

3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the respective deadlines laid down in paragraphs 2(c) and (d). In the event of an extension, the Member State shall take the necessary measures to increase the preparing for re-use and the recycling of municipal waste to a minimum of 50% and **55** % by weight, by 2025 and 2030 respectively

The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts

4. By 31 December 2024 at the latest, the Commission shall examine the target laid down in paragraph 2(d) with a view to **[...] reviewing** it and considering the setting of targets for other waste streams. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

BE does not agree with the weakening of the targets, especially not because it is combined with increased time extensions by adding a new criteria and an increased flexibility in terms of the review of the targets. BE cannot support a review procedure to lower the targets. The decrease of ambitions on several points is not acceptable for BE.

- Article 11a 3 and 4

3. By way of derogation from paragraph 1(a), the weight **of separately collected waste which needs no further sorting or of** the output of any sorting operation may be reported as the weight of the municipal waste recycled provided that:
 - (a) such output waste is **[...] subsequently recycled;**
 - (b) the weight of materials or substances that are **[...] removed by further operations preceding the actual recycling operation and are not subsequently recycled [...] is not included in the [...] weight of waste [...] reported as recycled.**
4. Member States shall establish an effective system of quality control and traceability of the municipal waste to ensure that conditions laid down in paragraphs **1(a), 3(a) and 3(b) of this Article** are met. The system may consist of electronic registries set up pursuant to Article 35(4), technical specifications for the quality requirements of sorted waste, **standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices** or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.

BE holds a scrutiny reserve for art 11a.3 en 11a.4. BE supports a uniform and harmonized calculation method that stimulates qualitative recycling. The current proposal does to our understanding however not move entirely in that direction:

- First, the 'strict conditionality' as mentioned in recital 17a in this 'derogation' has de facto been completely removed from the proposal.

-The deletion of 10% in alinea 3 would in principle mean that the effective losses should be measured, which is the most fair way and it stimulates qualitative recycling. BE could support that

-However, the introduction under alinea 4 of the standard loss rates per MS as a method of measuring the losses, puts this again in another light. Each MS decides what its loss rates are. It is not clear who will assess the accuracy of these national standard loss rate. Unless this is clarified, no harmonization will be achieved.

- Art 11a 4a and 4b

4a. For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance.

4b. The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.

In connection to arts 11a.4a and b, BE refers to recitals 17b en 17c, where it is clarified that both for municipal waste and for biodegradable waste that have reached an End of Waste status and that is subsequently used as fuels, backfilled, incinerated or landfilled, can not be counted towards the recycling targets. Belgium supports this principle and wants to see it explicitly reflected respectively in the art 11a 4a and b.

- Article 22

'Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost, **digestate and other recycled products, materials or substances** [...].

Waste with similar biodegradability and compostability properties may be collected together with bio-waste.

BE Proposal

'Member States shall ensure the separate collection of bio-waste where ~~technically, environmentally and economically practicable and~~ appropriate to ensure the relevant quality standards for compost, **digestate and other recycled products, materials or substances** [...].

~~Waste with similar biodegradability and compostability properties may be collected together with bio-waste.~~

Justification

BE understands that a minimum flexibility is necessary when applying art 22 (as well as art 11.1 and art 10). BE believes that art 4 WFD on the waste hierarchy provides already for that overall flexibility throughout the Directive. An explicit reference to TEEP is not necessary. Therefore BE supports the deletion of the TEEP in art 22.

BE does not support the fact that it is allowed to collect together with biowaste waste with similar biodegradability properties (such as bioplastics). It is confusing for consumers, the risks for environment and health are not yet clear and there can be many complications for recovery operations as well. Therefore BE wants this sentence to be deleted

BE preliminary comments on doc. 14169/16 - Presidency compromise text on the landfill Directive

BE proposes a NEW RECITAL (accompanying amendments in art 1 and art 13)

(8a) This reduction on landfilled waste should be accompanied by an incentive on the rehabilitation of former landfills. The estimated number of 500.000 landfills in the EU represent an unaddressed reserve of valuable resources such as materials, energy and land. The sustainable resource management of landfills should focus on a comprehensive inventorisation of landfills and the management of this stock in a long-term perspective and the interim use.

BELGIUM proposes the following amendment in art 1

Article 1

Overall objective

1. With a view to meeting the requirements of Directive 75/442/EEC, and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill **and in approaching closed landfills from a circular economy perspective, to identify and manage their potential resources such as materials, energy and land in a sustainable way.**

2. In respect of the technical characteristics of landfills, this Directive contains, for those landfills to which Directive 96/61/EC is applicable, the relevant technical requirements in order to elaborate in concrete terms the general requirements of that Directive. The relevant requirements of Directive 96/61/EC shall be deemed to be fulfilled if the requirements of this Directive are complied with.

Justification

Currently, closed landfills are seen as static features which solely need to be managed in terms of potential environmental and health risks. Approaching landfills from a circular economy perspective, however, reveals that these sites have the potential to offer resources such as materials, energy and land. The estimated number of 500.000 landfills in the EU represent an unaddressed reserve. Bringing landfills back in a circular economy as a resource is a main challenge.

Article 5.3

'(f) waste that has been separately collected **for recycling** pursuant to Article 11(1) and 22 of Directive 2008/98/EC;

(g) all waste, including biodegradable waste which, following appropriate collection and treatment, is suitable for preparing for reuse, recycling or other recovery by 2030.'

BE gives strong support to this paragraph f) and g)

Art 5.5

Member States shall take the necessary measures to ensure that by 2030, the amount of municipal waste landfilled is reduced to, **either:**

- a) 10% of the total amount of municipal waste **generated, or,**
- b) 50 kg per capita per year.**

BE is not convinced that this additional target is necessary. It provides for too much flexibility, especially when it is combined with an additional flexibilities in time extensions

Art 5.6.

[...] A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 % of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5.

BE is not convinced that an additional criterium for time extensions is needed. BE wants to delete this.

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the deadline laid down in paragraph 5. In the event of an extension, the Member State shall take the necessary measures to reduce by 2030 the amount of municipal waste landfilled to, either:

- a) **25%** of the total amount of municipal waste **generated; or**
- b) 125 kg per capita per year**

BE does not support the lowering of the target from 20 to 25%, nor do we support the additional target of 125 kg per capita target. It doesn't build in a sufficient incentive to reduce landfilling.

The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall **be drafted on the basis of an evaluation of the existing waste management plans and shall** also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts.

Art 5.7.

By 31 December 2024 at the latest, the Commission shall examine the targets laid down in paragraph 5 with a view to **reviewing them [...]**. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

BE does not agree with this amendment. The review in 2024 should be with the aim of strengthening the targets, not to lower them. Such possibility would cause uncertainty in the market and for investment in alternative technologies and infrastructure.

Article 5a

Rules on the calculation of the attainment of the targets laid down in Article 5

'1. For the purpose of calculating whether the targets laid down in Article 5 (5) (a) and (b) have been attained,

(a) the weight of the municipal waste generated and directed to landfilling shall be calculated in a given calendar year;

(b) the weight of municipal waste entering treatment with a view to its subsequent landfilling, such as mechanical biological treatment or incineration without energy recovery, shall be considered as landfilled;

BE has a reserve on this alinea b) as far as it should be understood as if the waste that goes in pretreatment (other than landfill), should be considered for 100% as landfilling. Disposal such as MBT treatment generates streams that undergo further recovery or other disposal (other than landfill). So, it is not all disposed into landfills.

BE does agree that MBT and incineration without energy recovery are to be discouraged. BE sees them as a contra productive incentive for separate collection and for high quality recycling. BE believes however that the calculation method of the Landfill directive is not the proper place to integrate this concern. BE believes that the way to integrate this concern is by integrating it in the WFD eg in a paragraph on the state of the art requirements for MBT or other Disposal operations.

BELGIUM Proposes the following amendments in art 13

Article 13

Closure, and after-care procedures and resource management

Member States shall take measures in order that, in accordance, where appropriate, with the permit:

(a) a landfill or part of it shall start the closure procedure:

(i) when the relevant conditions stated in the permit are met; or

(ii) under the authorisation of the competent authority, at the request of the operator; or

(iii) by reasoned decision of the competent authority;

(b) a landfill or part of it may only be considered as definitely closed after the competent authority has carried out a final on-site inspection, has assessed all the reports submitted by the operator and has communicated to the operator its approval for the closure. This shall not in any way reduce the responsibility of the operator under the conditions of the permit;

(c) after a landfill has been definitely closed, the operator shall be responsible for its maintenance, monitoring and control in the after-care phase for as long as may be required by the competent authority, taking into account the time during which the landfill could present hazards.

The operator shall notify the competent authority of any significant adverse environmental effects revealed by the control procedures and shall follow the decision of the competent authority on the nature and timing of the corrective measures to be taken;

(d) for as long as the competent authority considers that a landfill is likely to cause a hazard to the environment and without prejudice to any Community or national legislation as regards liability of the waste holder, the operator of the site shall be responsible for monitoring and analysing landfill gas and leachate from the site and the groundwater regime in the vicinity of the site in accordance with Annex III.

(e) Member states produce an inventory of all existing landfills 2 years after entry into force of this Directive. By 2030, the data collection should reach a 90% coverage of the existing landfills. A decision support tool and long-term resource management plan should be available in 2024, allowing the member states to estimate the resource potential and environmental risks.

By 2030, the equivalent of 10% of the yearly volume of landfilled waste should be compensated by the rehabilitation of closed landfills. In 2040, this rate should reach 25% and 50% in 2050.

Justification

The first steps in sustainable resource management of landfills should focus on the comprehensive inventorisation of landfills, the management of this stock in a long-term perspective and the interim use. A compensation rule is introduced, resulting in the obligation for rehabilitation (in terms of enhanced landfill mining, sustainable site reuse, energy production) in relation to newly permitted landfill capacity. The ultimate objective is achieving a landfilling rate which is significant lower than the rehabilitation rate.

BE preliminary written comments on DOC 14189/16
Presidency compromise text on Packaging and Packaging Waste Directive 09/12/16

- **Article 5**

Reuse

1. Member States shall take measures to increase the share of re-useable packaging placed on the market and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such measures may include:

(a) the use of deposit return schemes;

(b) the setting of quantitative targets;

(c) the use of economic incentives.

2. By 31 December 2024 the Commission shall examine data on reuse 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 and any further measures to promote reuse of packaging. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

BE can support this article.

- Article 6

(a) **[...]**;

(b) in paragraph 1, the following points (f) to (i) 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) **50** % of wood;

(iii) 75 % of **[...]** metals;

- (iv) [...];
- (v) 75 % of glass;
- (vi) 75 % of paper and cardboard;
- (h) no later than 31 December 2030 a minimum of 75% 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 wood;
 - (ii) 85% of [...] metals;
 - (iii) [...];
 - (iv) 85% % of glass;
 - (v) 85% of paper and cardboard';

BE does not support lowering of the targets. BE also supports a separat target for aluminium, as a valuable resource. Belgium has a specific target for drinking cartons. I helped to develop a high recycling performance for this stream. In this context, Belgium would support a separate target for drinking cartons.

Belgium also considers that both household waste and industrial packaging waste should reach the recycling objectives. In this context we recommend a separate global target for household and industrial packaging waste for (f) and (h).

(ba) the following paragraph 1a is inserted:

'1a. By 31 December 2024 at the latest, the Commission shall examine the targets laid down in paragraph 1 points (f) to (i) with a view to reviewing them. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.'

BE does not agree with the amendment of the review. The review clause should be inserted with the view to increase the targets. We should not create the possibility to decrease them again in 2024.

- Article 6a

Rules on the calculation of the attainment of the targets laid down in Article 6

1. For the purpose of calculating whether the targets laid down in Article 6(1)(f) to (i) have been attained:
 - (a) the weight of the packaging waste recycled shall be understood as the weight of [...] waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances;
 - (b) [...]
 - (c) [...]
2. [...]
3. By way of derogation from paragraph 1(a), the weight of separately collected waste which needs no further sorting or of the output of any sorting operation may be reported as the weight of the packaging waste recycled provided that:
 - (a) such output waste is [...] subsequently recycled;
 - (b) the weight of materials or substances that are [...] removed by further operations preceding the actual recycling operation and are not subsequently recycled is not included in the weight [...] of waste reported as recycled.
4. Member States shall establish an effective system of quality control and traceability of the packaging waste to ensure that conditions laid down in paragraphs 1(a) and 3(a) and (b) are met. The system may consist of either electronic registries set up pursuant to Article 35(4) of Directive 2008/98/EC, technical specifications for the quality requirements of sorted waste, standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.

BE holds a scrutiny on art 6a3 and 4. BE supports a uniform and harmonized calculation method that stimulates qualitative recycling. The current proposal does to our understanding however not move entirely in that direction:

- First, the 'strict conditionality' as in this 'derogation' has de facto been removed from the proposal.

-The deletion of 10% in alinea 3 would in principle mean that the effective losses should be measured, which is the most fair way and it stimulates qualitative recycling. BE could support that

-However, the introduction under alinea 4 of the standard loss rates per MS as a method of measuring the losses, puts this again in another light. Each MS decides what its loss rates are. It is not clear who will assess the accuracy of these national standard loss rate. Unless this is clarified, no harmonization will be achieved.

4a. The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels

BE proposal art 6a4a

The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels, **backfilling, incineration or landfilling**

Justification:

Packaging waste that has reached an End of Waste status and that is subsequently used as fuel, backfilled, incinerated or landfilled, can not be counted towards the recycling targets. Belgium supports this principle and wants to see it explicitly reflected respectively in the art 6a4a.

CZECH REPUBLIC

WASTE FRAMEWORK DIRECTIVE

- (1) Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, ensuring prudent and rational utilisation of natural resources and promoting a more circular economy.
- (2) The targets laid down in Directive 2008/98/EC of the European Parliament and of the Council¹ for preparing for re-use and recycling of waste should be amended to make them better reflect the Union's ambition to move to a circular economy.
- (3) Many Member States have yet to develop the necessary waste management infrastructure. It is therefore essential to set long-term policy objectives in order to guide measures and investments, notably by preventing the creation of structural overcapacities for the treatment of residual waste and lock-ins of recyclable materials at the bottom of the waste hierarchy.
- (4) Municipal waste constitutes approximately between 7 and 10% of the total waste generated in the Union; however, this waste stream is amongst the most complex ones to manage, and the way it is managed generally gives a good indication of the quality of the overall waste management system in a country. The challenges of municipal waste management result from its highly complex and mixed composition, direct proximity of the generated waste to citizens, and a very high public visibility. As a result, its management involves a need for a highly complex waste management system including an efficient collection scheme, a need to actively engage citizens and businesses, a need for infrastructure adjusted to the specific waste composition, and an elaborate financing system. Countries which have developed efficient municipal waste management systems generally perform better in overall waste management.
- (5) Definitions of municipal waste, construction and demolition waste, the final recycling process, and backfilling need to be included in Directive 2008/98/EC so that the scope of these concepts is clarified.

¹ 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).

- (6) To ensure that recycling targets are based on reliable and comparable data and to enable more effective monitoring of progress in attaining those targets, the definition of municipal waste in Directive 2008/98/EC should be in line with the definition used for statistical purposes by the European Statistical Office and the Organisation for Economic Co-operation and Development, on the basis of which Member States have been reporting data for several years. **Municipal waste should be defined as waste from households and similar waste from other sources, inter alia from market and street cleaning services, including street sweepings and the content of litter containers, and from park and garden maintenance, such as leaves, grass and trees clipping.** Member States may use relevant categories in the List of Waste for statistical purposes. The definition of municipal waste in this Directive is neutral with regard to the public or private status of the operator managing waste.

CZ Position

- **Czech Republic can support changes proposed by PRES in this recital, but there is a strong need for harmonization of definitions across different pieces of EU legislation and definitions in other legislative instruments should be based on definitions in Waste Framework Directive.**

- (6a) **The definition of backfilling should be introduced to clarify that it means any recovery operation of suitable non-hazardous waste for the purposes of reclamation in excavated areas and mines or for engineering purposes in landscaping and infrastructure and construction foundation such as for roads. The waste used for backfilling should be limited to the amount strictly necessary to achieve these purposes. The definition of backfilling does not exclude that reprocessing of waste into secondary raw materials for engineering purposes in construction of roads or other infrastructures may fulfill the definition of recycling, if the use of materials is based on proper quality control and meets all relevant standards, norms, specifications and environmental and health protection requirements for the specific use.**

CZ Position

- **Czech Republic can support PRES proposal.**

- (6b) **While the definition of construction and demolition waste refers to waste resulting from construction and demolition activities in a general way, it includes all waste falling under the construction and demolition waste categories referred to in chapter 17 of Decision 2000/532/EC establishing a list of wastes.**

CZ Position

- **Czech Republic does not agree with this PRES proposal and prefers original EC definition of construction and demolition waste.**

- (7) Member States should put in place adequate incentives for the application of the waste hierarchy, in particular, by means of financial incentives aimed at achieving the waste prevention and recycling objectives of this Directive, such as landfill and incineration charges, pay as you throw schemes, extended producer responsibility schemes and incentives for local authorities.
- (8) In order to provide operators in markets for secondary raw materials with more certainty as to the waste or non-waste status of substances or objects and promote a level playing field, it is important to establish at the Union level harmonized conditions for substances or objects to be recognised as by-products and for waste that has undergone a recovery operation to be recognised as having ceased to be waste. Where necessary to ensure the smooth functioning of the internal market or a high level of environmental protection across the Union, the Commission should be empowered to adopt delegated acts establishing detailed criteria on the application of such harmonized conditions to certain waste, including for a specific use.
- (8a) Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, and procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.**
- (9) Extended producer responsibility schemes form an essential part of efficient waste management, but their effectiveness and performance differ significantly between Member States. Thus, it is necessary to set minimum operating requirements for extended producer responsibility. Those requirements should reduce costs and boost performance, as well as ensure a level-playing field, including for small and medium sized enterprises, and avoid obstacles to the smooth functioning of the internal market. They should also contribute to the incorporation of end-of-life costs into product prices and provide incentives for producers to take better into account recyclability and reusability when designing their products. The requirements should apply to both new and existing extended producer responsibility schemes . A transitional period is however necessary for existing extended producer responsibility schemes to adapt their structures and procedures to the new requirements.
- (9a) Public authorities play an important role in the organisation of municipal waste collection and treatment and related communication with citizens. Provisions relating to the financial responsibility of producers introduced as part of the general requirements for extended producer responsibility schemes shall apply without prejudice to the competence of public authorities as regards the collection and treatment of municipal waste.**

CZ Position

- Czech Republic does not see the necessity for this new recital.

- (10) Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is important therefore that Member States take appropriate measures to prevent waste generation **including measures that reduce the presence of harmful substances in materials and products** and monitor and assess progress in the implementation of such measures. In order to ensure a uniform measurement of the overall progress in the implementation of waste prevention measures, common indicators should be established.
- (11) Plant based substances from the agri-food industry and food of non-animal origin no longer intended for human consumption, which are destined **for oral animal feeding in full compliance with the feed legislation** are not regarded as waste [...]. Directive 2008/98/EC should therefore not apply to those products and substances when used for feed, and the scope of that Directive needs to be clarified accordingly. **Animal by-products destined to be used as feed materials in accordance with Regulation (EC) No 767/2009 of the European Parliament and of the Council² are already excluded from the scope of this Directive 2008/98/EC.**

CZ Position

- Czech Republic supports exclusion of these materials from the scope of Directive.

- 11(a) **Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC³ provides for controls, with regard to ships within its scope, throughout their life-cycle and aims to ensure their safe and environmentally sound recycling. It is therefore necessary to clarify the link with that Regulation and to avoid duplication of rules by excluding ships flying the flag of a Member State falling under the scope of that Regulation from the scope of this Directive 2008/98/EC. Ships neither covered by the Hong Kong Convention nor by that Regulation and any waste on board of a ship other than operationally generated waste, should continue to be subject to this Directive 2008/98/EC.**

² **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).'**

³ **OJ L 330, 10.12.2013, p.1**

CZ Position

- Czech Republic has a scrutiny reservation for this new recital.
- (12) Member States should take measures to promote prevention of food waste in line with the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly on 25 September 2015, and in particular its target of halving food waste by 2030. These measures should aim to prevent food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households. Having regard to the environmental and economic benefits of preventing food waste, Member States should establish specific food waste prevention measures and should measure progress in food waste reduction. To facilitate exchange of good practice across the EU both between Member States and between food business operators, uniform methodologies for such measurement should be established. **Based on such methodologies** reporting on food waste levels should take place on a biennial basis.
- (13) Industrial, certain parts of commercial waste and extractive waste are extremely diversified in terms of composition and volume, and very different depending on the economic structure of a Member State, the structure of the industry or commerce sector that generates the waste and the industrial or commercial density in a given geographical area. Hence, for most industrial and extractive waste, an industry-oriented approach using Best Available Techniques reference documents and similar instruments to address the specific issues related to the management of a given type of waste is a suitable solution⁴. However, industrial and commercial packaging waste should continue to be covered by the requirements of Directive 94/62/EC and Directive 2008/98/EC, including their respective improvements.
- (14) The targets for preparation for re-use and recycling of municipal waste should be increased in order to deliver substantial environmental, economic and social benefits.
- (15) Through a progressive increase of the existing targets for preparation for re-use and recycling of municipal waste, it should be ensured that economically valuable materials are re-used and waste effectively recycled, and that valuable materials found in waste are channelled back into the European economy, thus advancing the Raw Materials Initiative⁵ and the creation of a circular economy.

⁴ Industrial activities are covered by Best Available Techniques (BAT) reference documents (BREFs) drawn up under the Industrial Emissions Directive 2010/75/EU (OJ L 334, 17.12.2010, p. 17) that include information on the prevention of resource use and waste generation, re-use, recycling and recovery. The on-going revision of the BREFs and the adoption by the Commission of BAT Conclusions will strengthen the impact of these BREFs on industrial practices leading to further resource efficiency gains and increased waste recycling and recovery.

⁵ COM(2008) 699 final and COM(2014) 297 final.

(16) Large differences exist between Member States with respect to their waste management performance, particularly as regards recycling of municipal waste. In order to take account of those differences, those Member States which in 2013 recycled less than 20 % of their municipal waste **or landfilled more than 60 % of their municipal waste in 2013** according to Eurostat data should be given additional time to comply with the preparing for re-use and recycling targets established for 2025 and 2030. In light of average annual progression rates observed in Member States over the past fifteen years, those Member States would need to increase their recycling capacity at levels that are well-above past averages to meet those targets. In order to ensure that steady progress towards the targets is made and that implementation gaps are tackled in due time, Member States that are given additional time should meet interim-targets and establish an implementation plan.

CZ Position

- **Czech Republic does not agree with PRES proposal for this recital.**

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

(17a) In order to limit administrative burdens, Member States should **by way of derogation from the general rule** be allowed, under strict conditions, to report recycling rates on the basis of **separately collected waste which undergoes no further sorting or of the output of [...] any sorting operation. [...] Losses of materials occurring before the waste enters the actual recycling operation, for instance due to further sorting or other preliminary operations, should not be included in the waste amounts reported as recycled. These losses can be established on the basis of electronic registries, technical specifications, detailed rules on the calculation of standard average loss rates for various types of waste, collection and treatment systems and practices, or other equivalent measures. Member States should report on such measures in the quality check reports, accompanying the data on waste recycling. [...] Losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the [...] recycling [...] operation where waste materials are actually reprocessed into products, materials and substances should not be deducted from the weight of the waste reported as recycled.**

CZ Position

- **Czech Republic has a scrutiny for this recital.**

- (17b) **With the alignment of the definitions in this Directive 2008/98/EC, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU the provision in Article 6 of this Directive 2008/98/EC on considering waste that ceases to be waste for the purposes of the recovery and recycling targets set in these Directives is no longer necessary. Materials that cease to be waste through a recovery or recycling operation will be counted for the attainment of the respective recovery or recycling targets set in these Directives in line with the applicable calculation methods. Where waste materials cease to be waste as a result of a preparatory operation before being actually reprocessed, such materials may be counted as recycled provided that they are subsequently reprocessed into products, materials or substances. End-of-waste materials which are to be used as fuels, backfilled, incinerated or landfilled cannot be counted towards the recycling targets.**
- (17c) **Where the calculation of the recycling rate is applied to aerobic or anaerobic treatment of biodegradable waste, the waste amounts that enter aerobic or anaerobic treatment may be counted as recycled provided that such treatment generates compost or digestate which is to be used as a recycled product, material or substance. In line with the definition of recycling, the reprocessing of biodegradable waste into materials which are to be used as fuels, backfilled, incinerated or landfilled cannot be counted towards the recycling targets.**

CZ Position

- **Czech Republic has a scrutiny reservation for these recitals.**

- (18) Member States should, for the purposes of calculating whether the preparation for re-use and recycling targets are achieved, be able to take into account [...] the recycling of metals that takes place in conjunction with incineration. In order to ensure a uniform calculation of this data, the Commission will adopt detailed rules [...] on the quality criteria for recycled metals and on the collection, verification and reporting of data.
- (19) In order to ensure better, timelier and more uniform implementation of this Directive and anticipate implementation weaknesses, an early warning system should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.
- (20) Compliance with the obligation to set up separate collection systems for paper, metal, plastic and glass is essential in order to increase preparing for re-use and recycling rates in Member States. In addition bio-waste should be collected separately to contribute to an increase in preparing for re-use and recycling rates and the prevention of contamination of dry recyclable materials.

- (21) Proper management of hazardous waste still presents a problem in the Union, and data on its treatment are partly missing. It is therefore necessary to strengthen record keeping and traceability mechanisms through the establishment of electronic registries for hazardous waste in the Member States. Electronic data collection should be extended to other types of waste, where appropriate, in order to simplify record-keeping for businesses and administrations and improve the monitoring of waste flows in the Union.
- (22) This Directive sets long-term objectives for the Union's waste management and gives economic operators and Member States a clear direction for the investments needed to attain the objectives of this Directive. In developing their national waste management strategies and planning investments in waste management infrastructure, Member States should make a sound use of the European Structural and Investment Funds by promoting prevention, re-use and recycling, in line with the waste hierarchy.
- (23) Certain raw materials are of a high importance to the economy of the Union and their supply is associated with a high risk. In order to ensure security of supply of those raw materials and in line with the Raw Materials Initiative⁶ and the objectives and targets of the European Innovation Partnership on Raw Materials, Member States should take measures to achieve the best possible management of waste containing significant amounts of those raw materials, taking economic and technological feasibility and environmental benefits into account. The Commission has established a list of critical raw materials for the EU. This list is subject to regular review by the Commission.
- (24) To further support effective implementation of the Raw Materials Initiative, Member States should also promote the reuse of products constituting the main sources of raw materials. They should also include in their waste management plans nationally appropriate measures regarding collection and recovery of waste containing significant amounts of these raw materials. The measures should be included in the waste management plans when they are updated for the first time following the entry into effect of this Directive. The Commission will provide information about the relevant product groups and waste streams at EU level. This provision does not preclude the Member States to take measures for other raw materials considered as important to their national economy.
- (25) Littering has direct detrimental impacts on the environment and the wellbeing of citizens, and high clean-up costs are an unnecessary economic burden for society. The introduction of specific measures in waste management plans and proper enforcement by competent authorities should help eradicate this problem.
- (26) To reduce regulatory burdens on small establishments or undertakings, simplification of registration requirements for small establishments or undertakings collecting or transporting small quantities of non-hazardous waste should be introduced. The threshold for quantities of such waste may need to be adapted by the Commission.

⁶ **COM (2014) 297 final**

- (27) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring good implementation, and are generating unnecessary administrative burdens. It is therefore appropriate to repeal provisions obliging Member States to produce such reports. Instead compliance monitoring should be exclusively based on the statistical data which Member States report every year to the Commission.
- (28) Statistical data reported by Member States are essential for the Commission to assess compliance with waste legislation across the Member States. The quality, reliability and comparability of statistics should be improved by introducing a single entry point for all waste data, deleting obsolete reporting requirements, benchmarking national reporting methodologies and introducing a data quality check report. Therefore, when reporting on the achievement of the targets set out in waste legislation, Member States shall use the most recent methodology developed by the Commission and the national statistical offices of the Member States.

CZ Position

- **Methodology for collection, interpretation and reporting of data should be developed by the Commission, national statistical offices of the Member States and national waste management authorities of the Member States. It is important for possible future harmonization of reported data from the Member States.**
 - **There is also a need for better harmonization across different pieces of EU legislation (waste framework directive, waste statistic regulation etc.).**
- (28a) **To facilitate adequate interpretation and implementation of the requirements set out in Directive 2008/98/EC, it is appropriate to develop guidelines for and ensure the exchange of information between Member States. Such guidelines and information exchange should inter alia facilitate a common understanding and application in practice of the definition of "waste" including the term "discard" and should take into account circular business models in which for instance a substance or object is transferred from one holder to another holder without the intention to discard.**

CZ Position

- **Czech Republic can support this new recital.**

(29) In order to supplement or amend Directive 2008/98/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Articles [5(2), 6(2), 7(1), **11a(2)**, 11a(6), 26, 27(1), 27(4), 38(1), 38(2) and 38(3)]. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, **and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.** [...].

CZ Position

- **Czech Republic has a scrutiny for this new recital.**

(30) In order to ensure uniform conditions for the implementation of Directive 2008/98/EC, implementing powers should be conferred on the Commission in respect of Articles [9(4), 9(5), 33(2), 35(5) and 37(6)]. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.

(31) Directive 2008/98/EC should therefore be amended accordingly.

(32) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁸, 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.

(33) Since the objectives of this Directive, namely to improve waste management in the Union, and thereby contributing to the protection, preservation and improvement of the quality of the environment, the health of the oceans and the safety of seafood by reducing marine litter, and to the prudent and rational utilisation of natural resources across the Union, cannot be sufficiently achieved by the Member States, but can, by reason of the scale or effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28/02/2011, p. 13).

⁸ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2008/98/EC is amended as follows:

(1) in Article 2(2), the following points (e) **and (f) are** added:

'(e) substances which do not consist of or contain animal by-products that are destined for use as "feed materials" in accordance with Regulation (EC) No 767/2009;

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

CZ Position

- **Czech Republic prefers original EC proposal regarding "feed materials" for animals.**
- **Czech Republic has a scrutiny for new paragraph (f) regarding regulation 1257/2013.**

(2) Article 3 is amended as follows:

(a) the following point 1a is inserted:

'1a. "municipal waste" means

(e) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, **packaging**, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses **and** furniture;

[...]

(f) mixed waste and separately collected waste from other sources **including market and street cleaning services** that is comparable to household waste in nature **and** composition [...];

(g) [...]

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

CZ Position

- **Czech Republic can generally agree with this definition of municipal waste, but prefers to keep “garden waste” in definition (in point (a)).**

(b) [...]

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

CZ Position

- **Czech Republic prefers original EC proposal and would like to keep definition of “non-hazardous waste” in Waste Framework 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 [...].';

CZ Position

- **Czech Republic can agree with this definition.**

(d) the following point 4a is inserted:

'4a. "construction and demolition waste means **waste [...] generated from construction and demolition activities;**"

CZ Position

- **Czech Republic prefers original EC proposal.**

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

‘15a. “Other material recovery” means any recovery operation other than energy recovery;

CZ Position

- **Czech Republic prefers to define term “material recovery” than “other material recovery”.**

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

[...]

‘17b. "backfilling" means any recovery operation where suitable **non-hazardous** waste is used for-purposes **of reclamation** in excavated areas and **mines** or for engineering purposes in landscaping **and infrastructure and construction foundation** [...]. Waste used for backfilling **must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve these purposes.**’

CZ Position

- **Czech Republic can generally agree with proposed changes in definition of “backfilling”.**

(g) the following point 20a is inserted:

‘20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle.’

CZ Position

- **Definition of “extended producer responsibility” should be more precise and should be in line with Article 8 and new Article 8a in WFD.**

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

‘3. Member States shall make use of [...] economic instruments to provide incentives for the application of the waste hierarchy;

[...]

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

CZ Position

- **Czech Republic is flexible regarding exchange of information instead of regular reporting about economic instruments.**

(4) Article 5 is amended as follows:

(a) in paragraph 1, the introductory phrase is replaced by the following:

'1. Member States shall **take appropriate measures to** ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if the following conditions are met:';

(b) paragraph 2 is replaced by the following:

'2. The Commission **may [...]** adopt **implementing** acts **[...]** in order to establish detailed criteria on the **uniform** application of the conditions laid down in paragraph 1 to specific substances or objects. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).'**

(c) the following paragraph 3 is added:

'3. Where criteria have not been set at Community level under the procedure set out in paragraph 2, Member States may establish detailed criteria on the application of the conditions laid down in paragraph 1 to specific substances or objects. Member States shall notify the Commission **of [...]** **these criteria** in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services⁹ where so required by that Directive.

CZ Position

- **Czech Republic can support PRES proposal.**

(5) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory phrase and point (a) are replaced by the following:

'1. Member States shall **take appropriate measures to** ensure that waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions:

(a) the substance or object **[...] is** used for specific purposes.

(ii) the second subparagraph is deleted;

⁹ OJ L 241, 17.9.2015, p.1

(b) paragraphs 2, 3 and 4 are replaced by the following:

'2. The Commission **may [...]** adopt **implementing** acts **[...]** in order to establish detailed criteria on the **uniform** application of the conditions laid down in paragraph 1 to certain **types of** waste . Those detailed criteria shall **[...]** take into account any possible adverse environmental **and human health impacts** **[...]** of the substance or object **and shall include:**

a) permissible waste input material for the recovery operation;

b) allowed treatment processes and techniques;

c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;

d) requirements for quality management, self-monitoring and accreditation;

e) requirement for a statement of conformity.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

3. [...]

4. Where criteria have not been set at Community level under the procedure set out in paragraph 2, Member States may establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain types of waste. Those detailed criteria **[...]** shall take into account any possible adverse environmental **and human health impacts** **[...]** of the substance or object **and shall include:**

a) permissible waste input material for the recovery operation;

b) allowed treatment processes and techniques;

c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;

d) requirements for quality management, self-monitoring and accreditation

e) requirement for a statement of conformity.

Member States shall notify the Commission of **[...]** **these criteria** in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of **9 September 2015 laying down a procedure for the provisions of information in the field of technical regulations and of the rules on information Society services** where so required by that Directive.

4a. Where criteria have not been set at Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be notified to the Commission according to Directive 2015/1535/EC .

4b. The natural or legal person who places a material on the market for the first time after it ceases being waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.

The application of of this Article shall be without prejudice to the application of other provisions of Union law, particularly regarding chemicals and legislation concerning the placing on the market of certain products.

CZ Position

- **Czech Republic has a scrutiny for changes related to end-of-waste criteria.**
- **There is a mistake “chemcial” instead of “chemical” (first sentence in 4b).**

(6) Article 7 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. In order to ensure the uniform application of this Directive, the Commission shall adopt implementing acts to establish, and review in accordance with paragraphs 2 and 3, a list of waste. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).'

CZ Position

- **Czech Republic can support PRES proposal.**

(b) paragraph 5 is deleted;

(7) Article 8 is amended as follows:

(a) in paragraph 1, the following sub-paragraph is added:

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

- (b) the second sentence of paragraph 2 is replaced by the following:

'Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable **and repairable** and that are, after having become waste, suitable for preparation for reuse and recycling in order to facilitate proper implementation of the waste hierarchy. The measures **shall** take into account the impact of products throughout their life cycle.';

- (c) the following paragraph 5 is added:

'5. The Commission shall organise an exchange of information between Member States and the actors involved in producer responsibility schemes on the practical implementation of the requirements defined in Article 8a [...]. This includes, inter alia, exchange of information on **best practices to ensure adequate governance, cross-border cooperation of extended producer responsibility schemes**, the organisational features, the monitoring of producer responsibility organisations, **the modulation of fees and optimised costs**, the selection of waste management operators and the prevention of littering. The Commission shall publish the results of the exchange of information **and may provide guidelines on these and other relevant aspects.**'

CZ Position

- Czech Republic can support PRES proposal.

- (8) The following Article 8a is inserted:

Article 8a

General requirements for extended producer responsibility schemes

1. **Where** [...] extended producer responsibility schemes **are** established in accordance with Article 8, paragraph 1, Member States shall:
 - define in a clear way the roles and responsibilities of producers of products placing [...] **products** on the market of the [...] **Member State**, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, [...] **reuse and** preparation for re-use operators and social enterprises;
 - define [...] waste management targets, in line with the waste hierarchy, aiming to attain at least the quantitative targets relevant for the scheme as laid down in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU, **and other quantitative targets and qualitative objectives that are considered relevant for the extended producer responsibility scheme;**

- **ensure that** a reporting system **is established** to gather data on the products placed on the [...] market **of the Member State** by the producers subject to extended producer responsibility [...] **and** data [...] on the collection and treatment of [...] waste **resulting from these products** specifying, where appropriate, the waste material flows;
- ensure equal treatment [...] **of** producers of products [...] **regardless of their origin or size**;
- **ensure that the schemes contribute to the incorporation of [...] end-of-life costs into [...] production cost and provide thereby incentives for producers [...] for improved product design.**

2. Member States shall take the necessary measures:

- to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8, paragraph 1, are informed about [...] waste **prevention measures, centers for reuse and preparation for reuse [...], take back and** collection systems and the prevention of littering. Member States shall also take measures to create incentives for the waste holders to take part in the separate collection systems in place, notably through economic incentives or regulations, when appropriate.

3. Member States shall take the necessary measures to ensure that any organisation [...] implementing **extended producer responsibility schemes obligations [...]**:

- (a) has a clearly defined geographical, product and material coverage [...] **without limiting these areas to the territories in which the collection and management of waste are most profitable**;
- (aa) provides an appropriate availability of waste collection systems covering the sales area as well as the area where the products are likely to become waste**;
- (b) has the necessary operational and financial means to meet its extended producer responsibility obligations;
- (c) puts in place an adequate self-control mechanism, supported, **where relevant** by regular independent audits, to appraise:
 - the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b);
 - the quality of data collected and reported in accordance with paragraph 1, third indent, and the requirements of Regulation (EC) No 1013/2006.

- (d) makes publicly available the information about:
- its ownership and membership;
 - the financial contributions paid by the producers;
 - the selection procedure for waste management operators.

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

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:
- (a) cover the entire costs of waste management for the products it puts on the [...] market **in that Member State**, including all the following:
- costs of separate collection, [...], sorting and treatment operations, **and where appropriate of reuse and preparation for reuse**, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;
 - costs of providing adequate information to waste holders in accordance with paragraph 2;
 - costs of data gathering and reporting in accordance with paragraph 1, third indent.
- (b) [...]
- (c) are based on the optimised cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.

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

- 4a) Member States shall take measures to encourage that the financial contributions paid by the producer are modulated for individual products or groups of similar products by taking into account their reusability and reparability as a contribution to waste prevention and preparation for reuse, and their recyclability;**

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, **irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU** are implementing their extended producer responsibility obligations, the financial means, [...] are properly used, and all actors involved in the implementation of the schemes report reliable data.

Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, **the Member State concerned shall [...] appoint an [...] authority independent of private interests** to oversee the implementation of extended producer responsibility obligations.

6. Member States shall [...] ensure a regular dialogue between [...] **relevant** stakeholders involved in the implementation of extended producer responsibility [...].
7. Member States shall take measures to ensure that extended producer responsibility schemes that have been established before [*insert date eighteen months after the entry into force of this Directive*] comply with the provisions of this article within **thirty-six** months of that date.;

CZ Position

- **Czech Republic supports detailed description of EPR schemes requirements. Generally Czech Republic can support PRES proposal.**
- **Czech Republic supports proposed period of 36 months for transformation of existing EPR schemes.**
- **We would welcome further clarification of the term “sales area” (3aa).**

- (9) Article 9 is replaced by the following:

Article 9

Prevention of waste

1. Member States shall take measures to prevent waste generation. These measures shall:
 - encourage the **design, manufacturing and** use of products that are resource efficient, durable, repairable, **reusable** and [...] **upgradable**;
 - [...] [...] target products **containing critical raw [...] materials [...] to prevent that those materials become waste**;
 - **encourage the re-use of products and [...] setting up of systems promoting repair and reuse activities as referred to in Article 9a, including in particular for electrical and electronic equipment, textiles, and furniture, **as well as packaging and construction materials and products**;**
 - reduce waste generation in processes related to industrial production, [...], **manufacturing**, construction and demolition, taking into account best available techniques;

- reduce the generation of food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households;
 - **reduce the content of harmful substances in materials and products and promote communication about hazardous substances in the supply chain;**
 - **identify products that are the main sources of littering notably in the natural including the marine environment and take appropriate measures to reduce [...] litter from such products;**
 - **include the development of continuous communication and education campaigns to raise awareness on the issues surrounding waste prevention and littering;**
 - **encourage the use of deposit return schemes;**
 - **incentivise re-use through the setting up of aspirational quantitative targets;**
 - **provide, as appropriate, adequate economic incentives to producers. '**
2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the [...] quantity **of waste that is generated,** [...] disposed of, or subject to energy recovery.
 3. Member States shall monitor and assess the implementation of their food waste prevention measures by measuring food waste on the basis of methodologies established in accordance with paragraph 4.
 4. The Commission may adopt implementing acts to establish indicators to measure the overall progress in the implementation of waste prevention measures. In order to ensure uniform measurement of the levels of food waste, the Commission shall adopt an implementing act to establish a common methodology, including minimum quality requirements. Those implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 39(2).
 5. Every **second** year, the European Environment Agency shall publish a report describing the evolution as regards the prevention of waste generation for each Member State and for the Union as a whole, including on decoupling of waste generation from economic growth and on the transition towards a circular economy.';

CZ Position

- **Czech Republic can generally support PRES proposals.**
- **Directive recital would be a better place for some points (encourage the use of deposit return schemes, incentivise re-use through the setting up of aspirational quantitative targets, provide, as appropriate, adequate economic incentives to producers).**

(10) Article 11 is amended as follows:

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

'1. Member States shall take measures, as appropriate, to promote **the re-use of products and** preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, **by advancing the granting of access** [...] of such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors [...];

(b) in paragraph 1, the following sub-paragraphs **are** inserted:

- 'Member States shall take measures to promote **selective demolition in order to enable removal and safe handling of hazardous substances and materials, as well as** sorting systems for construction and demolition waste for at least the following: wood, [...] **mineral fractions (concrete, bricks, tiles and ceramics)**, metal, glass, **plastics** and plaster, **in order to attain the target set out in paragraph 2(b).;**

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

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

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

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

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

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

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

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

(f) paragraphs 3 and 4 are replaced by the following:

[...]

3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the respective deadlines laid down in paragraphs 2(c) and (d). In the event of an extension, the Member State shall take the necessary measures to increase the preparing for re-use and the recycling of municipal waste to a minimum of 50% and **55** % by weight, by 2025 and 2030 respectively

The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts

4. By 31 December 2024 at the latest, the Commission shall examine the target laid down in paragraph 2(d) with a view to **[...] reviewing** it and considering the setting of targets for other waste streams. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

(g) paragraph 5 is deleted.

CZ Position

- **Czech Republic will evaluate new proposed targets for re-use and recycling of municipal waste in the context of the new CZ Waste Management Plan 2015-2024 and expected trends in waste management in the coming years.**
- **Czech Rrepublic still sees necessity of discussion about prerequisites for calculation of the target (definition, calculation method) and after clarification of all prerequisites, the Czech Republic is ready to discuss specific level of targets.**
- **Czech Republic prefers deletion of text: *by advancing the granting of access [...] of such networks to waste collection points.* (Art. 11 (a)).**
- **Czech Republic does not prefer inclusion of landfilling parameter into Art. 11 (f) para. 3.**
- **Czech Republic prefers application of year 2014/2015 for evaluation of the extension of meeting the targets.**
- **Czech Republic supports introduction of new “R” code for backfilling. It is an important point regarding calculation of recycling target.**

(11) The following Article 11a is inserted:

'Article 11a

Rules on the calculation of the attainment of the targets laid down in Article 11

- '1. For the purpose of calculating whether the targets laid down in Article 11(2)(c) and (d) and 11(3) have been attained,
 - (a') **Member States shall calculate the weight of the municipal waste generated and prepared for reuse or recycled in a given calendar year;**
 - (a) the weight of the municipal waste recycled shall be understood as the weight of [...] waste **which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the [...] recycling operation whereby waste materials are actually reprocessed into products, materials or substances;**
 - (b) the weight of the municipal waste prepared for reuse shall be understood as the weight of **products or components of products that have become** municipal waste [...] and **have** undergone all necessary checking, cleaning **or** repairing operations to enable reuse without further sorting or pre-processing;
 - (c) [...]
2. [...]
3. By way of derogation from paragraph 1(a), the weight **of separately collected waste which needs no further sorting or of** the output of any sorting operation may be reported as the weight of the municipal waste recycled provided that:
 - (a) such output waste is [...] **subsequently recycled;**
 - (b) the weight of materials or substances that are [...] **removed by further operations preceding the actual recycling operation and are not subsequently recycled [...] is not included in the [...] weight of waste [...] reported as recycled.**
4. Member States shall establish an effective system of quality control and traceability of the municipal waste to ensure that conditions laid down in paragraphs **1(a)**, 3(a) and **3(b) of this Article** are met. The system may consist of electronic registries set up pursuant to Article 35(4), technical specifications for the quality requirements of sorted waste, **standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices** or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.

- 4a. **For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance.**
- 4b. **The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.**
5. For the purposes of calculating whether the targets laid down in Article 11(2)(c) and (d) and Article 11(3) have been achieved Member States may take into account the recycling of metals [...] **separated after waste** incineration in proportion to the share of the municipal waste incinerated provided that the recycled metals meet certain quality requirements.
6. In order to ensure harmonised conditions for the application of paragraph 5 **of this Article**, the Commission shall adopt **implementing** acts [...] establishing a common methodology for the calculation of the weight of metals that have been recycled in conjunction with incineration, including, the quality criteria for the recycled metals. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**
7. Waste sent to another Member State for the purposes of preparing for re-use, recycling or backfilling in that other Member State may only be counted towards the attainment of the targets laid down in Articles 11(2) and (3) by the Member State in which that waste was collected.
8. Waste exported from the Union for preparation for re-use or recycling shall only count towards the attainment of the targets laid down in Articles 11(2) and (3) **of this Directive** by the Member State in which it was collected if the requirements of paragraph 4 **of this Article** are met and if, in accordance with Regulation (EC) No 1013/2006, the exporter can prove that the shipment of waste complies with the requirements of that Regulation and that the treatment of waste outside the Union took place in conditions that are equivalent to the requirements of the relevant Union environmental legislation.';

CZ Position

- **Czech Republic has a scrutiny for changes in Article 11a.**

(12) the following Article 11b is inserted:

'Article 11b

Early warning report

1. The Commission shall, in cooperation with the European Environment Agency, draw up reports on the progress towards the achievement of the targets laid down in Articles 11(2)(c) and (d) and (3) three years before each time-limit laid down in those provisions at the latest.
2. The reports referred to in paragraph 1 shall include the following:
 - (a) an estimation of the achievement of the targets by each Member State;
 - (b) a list of Member States at risk of not achieving the targets within the respective time limits accompanied by appropriate recommendations for the Member States concerned.';

(13) Article 22 is replaced by the following:

'Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost, **digestate and other recycled products, materials or substances** [...].

Waste with similar biodegradability and compostability properties may be collected together with bio-waste.

They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:

- (a) the recycling, including composting and digestion, of bio-waste;
- (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection;
- (c) the use of environmentally safe materials produced from bio-waste.';

CZ Position

- CZ is of an opinion that it is not sufficiently clear what steps will the Commission take against MS where the risk factors for failure to meet the applicable time limits will be identified.
- It is also not specified in detail what will be the form of EC recommendations. The measures may entail administrative and financial burden for Member States. CZ will require more detailed information on this issue.
- According to CZ it is also necessary to ensure that comparisons between Member States will be based on a uniform methodology and uniform definitions of basic terms.
- For this reason, the Czech Republic is not inclined to modify the Directive in this area, as functional tools already exist for monitoring the objectives of the legislative rules.

(14) the following subparagraphs are added to Article 26:

'Member States may exempt the competent authorities from keeping a register of establishments or undertakings which collect or transport quantities of non-hazardous waste not exceeding 20 tonnes annually.

The Commission may adopt delegated acts in accordance with Article 38a in order to adapt the threshold for quantities of non-hazardous waste.';

CZ Position

- Czech Republic does not support this exemption from the WFD obligation.

(15) Article 27 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Commission **may [...]** adopt **implementing** acts **[...]** setting out technical minimum standards for treatment activities which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards, **in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).'**;

(b) paragraph 4 is replaced by the following:

'4. The Commission **may [...]** adopt **implementing** acts **[...]** setting out the minimum standards for activities that require registration pursuant to points (a) and (b) of Article 26 where there is evidence that a benefit in terms of the protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards, **in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**';

CZ Position

- **Czech Republic can support PRES proposals.**

(16) Article 28 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) point (b) is replaced by the following:

'(b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste, waste containing significant amounts of raw materials that are of a high importance to the economy of the Union and whose supply is associated with a high risk, or waste streams addressed by specific Union legislation;';

(ii) the following point (f) is added:

'(f) measures to combat all forms of littering and to clean up all types of litter.';

(b) paragraph 5 is replaced by the following:

'5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC, the targets laid down in Article 11(2) and (3) of this Directive and the requirements in Article 5 of Directive 1999/31/EC.';

(17) Article 29 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. Member States shall establish waste prevention programmes setting out waste prevention measures in accordance with Articles 1, 4 and 9.';

(b) paragraphs 3 and 4 are deleted;

(17a) Article 30(2) is deleted;

(18) Article 33 is amended as follows:

(i) paragraph 2 is replaced by the following:

2. The Commission shall adopt implementing acts to establish the format [...] **with which Member States shall provide the URL through which information regarding their plans and programmes can be found, and inform the Commission on their date of adoption and any substantial revisions of plans and programmes.** Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).'

(ii) new paragraph 3 is added:

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

CZ Position

- **Czech Republic strongly prefers providing information in electronic format.**

(19) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The establishments or undertakings referred to in Article 23(1), the producers of hazardous waste and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a chronological record of the quantity, nature and origin of that waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste. They shall make that data available to the competent authorities through the electronic registry or registries to be established pursuant to paragraph 4.';

(b) the following paragraphs 4 and 5 are added:

'4. Member States shall set up an electronic registry or coordinated registries to record the data on hazardous waste referred to in paragraph 1 covering the entire geographical territory of the Member State concerned. Member States may establish such registries for other waste streams, in particular those waste streams for which targets are set in Union legislation. Member States shall use the data on waste reported by industrial operators in the European Pollutant Release and Transfer Register set up under Regulation (EC) No 166/2006 of the European Parliament and of the Council¹⁰.

5. The Commission may adopt implementing acts to establish minimum conditions for the operation of such registries. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).

CZ Position

- **Czech Republic strongly prefers providing information in electronic format and using existing sources of information and existing registries or inventories.**

(20) In Article 36, paragraph 1 is replaced by the following:

'1. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste, including littering.';

(21) Article 37 is replaced by the following:

'Article 37

Reporting

1. Member States shall report the data concerning the implementation of Article 11(2)(a) to (d) and Article 11(3) for each calendar year to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting **on the targets set out in Article 11(2) (c) and (d) and Article 11(3) shall start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and will** cover the data for the period from 1 January 2020 to 31 December 2020.

¹⁰ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p.1).

2. Member States shall report the data concerning the implementation of Article 9(3) to the Commission every [...] year. They shall report this data electronically within 18 months of the end of the reporting period for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting shall **start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and will cover the period from 1 January 2020 to 31 December 2021.**
3. For the purpose of verifying compliance with Article 11(2)(b), the amount of waste used for backfilling operations shall be reported separately from the amount of waste prepared for re-use or recycled. The reprocessing of waste into materials that are to be used for backfilling operations shall be reported as backfilling.
4. The data reported by the Member State in accordance with this Article shall be accompanied by a quality check report and a report on the measures taken pursuant to Article 11a(4).
5. The Commission shall review the data reported in accordance with this Article and publish a report on the results of its review. The report shall assess the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up every three years.
6. The Commission shall adopt implementing acts laying down the format for reporting data **on the implementation of Articles 9(3), 11(2)(c) and (d) and 11(3) [...]** and for the reporting on backfilling operations **before 1 July 2019. For the purposes of reporting on the implementation of Article 11(2)(a) and (b) Member States shall use formats established in accordance with Commission Decision 2011/753/EU. For the purpose of reporting on food waste, the methodologies developed under Article 9(4) shall be taken into account when developing the format.** Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).';

CZ Position

- **Introduction of quality check report must not lead to increase of administrative burden of member states.**

(22) Article 38 is replaced by the following:

- '1. The Commission may develop guidelines for the interpretation of the **requirements set out in this Directive, including on the definition of waste, prevention, re-use, preparation for re-use, recovery, recycling and disposal, and on the application of the calculation rules set out in Article 11a.**

The Commission shall be empowered to adopt delegated acts in accordance with Article 38a to specify the application of the formula for incineration facilities referred to in point R1 of Annex II. Local climatic conditions may be taken into account, such as the severity of the cold and the need for heating insofar as they influence the amounts of energy that can technically be used or produced in the form of electricity, heating, cooling or processing steam. Local conditions of the outermost regions as recognised in the third subparagraph of Article 349 of the Treaty on the Functioning of the European Union and of the territories mentioned in Article 25 of the 1985 Act of Accession may also be taken into account.

- 1a. **The Commission shall organize an exchange of information between Member States on the practical implementation of the requirements of this Directive, including on the application of the calculation rules set out in Article 11a, to ensure adequate governance, enforcement, cross-border cooperation and exchange of best practices. This includes, inter alia, the establishment of an electronic register for national by-product and end-of-waste criteria, referred to in point (3) of Article 5 and point (3) of Article 6, [...]. The Commission shall publish the results of the exchange of information.**
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a to amend Annexes **III** to V in the light of scientific and technical progress.
3. [...]';

CZ Position

- **Czech Republic can support PRES proposals.**
- **Czech Republic prefers implemented acts in paragraph 2.**

(23) the following Article 38a is inserted:

'Article 38a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt the delegated acts referred to in Articles [5(2), 6(2), 7(1), 11a(2), 11a(6), 26, 27(1), 27(4), **33(2)**, 38(1), 38(2) and 38(3)] shall be conferred on the Commission for a [...] **period of 5 years** from [*enter date of entry into force of this Directive*].

3. The delegation of power referred to in Articles [5(2), 6(2), 7(1), 11a(2), 11a(6), 26, 27(1), 27(4), **33(2)**, 38(1), 38(2) and 38(3)] may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles [5(2), 6(2), 7(1), 11a(2), 11a(6), 26, 27(1), 27(4), **33(2)**, 38(1), 38(2) and 38(3)] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.;

CZ Position

- **Czech Republic can support PRES proposals.**

(24) Article 39 is replaced by the following:

'Article 39

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and the Council¹¹.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
- 3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation 182/2011 shall apply.'**

¹¹ 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).

CZ Position

- Czech Republic can support PRES proposals.

(24a) In Annex II, a new R code for backfilling is inserted:

R11a – backfilling

CZ Position

- Czech Republic can support PRES proposal.
- There is also a need for introduction another new “R” code for “composting”.

(25) [...]

CZ Position

- Czech Republic can support PRES proposal for deletion this Annex.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert date **twenty four** months after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

CZ Position

- Czech Republic supports 24 months for transposition. Czech republic supports PRES proposal.

ANNEX VI

[...]

CZ Position

- Czech Republic can support PRES proposal for deletion this Annex.

WASTE LANDFILL DIRECTIVE

- (1) Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, ensuring prudent and rational utilisation of natural resources and promoting a more circular economy.
- (2) The targets laid down in Council Directive 1999/31/EC¹² setting landfill restrictions should be amended to make them better reflect the Union's ambition to move to a circular economy and make progress in the implementation of the Raw Materials Initiative¹³ by reducing landfilling of waste destined for landfills for non-hazardous waste.
- (3) To ensure that targets are set based on available data and to enable proper monitoring, municipal waste should be clearly defined 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.
- (4) In order to ensure greater coherence in waste legislation, the definitions in Directives 1999/31/EC should be aligned to those of Directive 2008/98/EC of the European Parliament and of the Council¹⁴.
- (5) Clear environmental, economic and social benefits would be derived from further restricting landfilling, starting with waste streams that are subject to separate collection (e.g. plastics, metals, glass, paper, bio-waste). Technical, environmental or economical feasibility of recycling or other recovery of residual waste resulting from separately collected waste should be taken into account in the implementation of these landfill restrictions.
- (6) Biodegradable municipal waste accounts for a large proportion of municipal waste. Landfilling of untreated biodegradable waste poses significant negative environmental effects in terms of greenhouse gas emissions and pollution of surface water, groundwater, soil and air. While Directive 1999/31/EC already sets landfill diversion targets for biodegradable waste it is appropriate to put in place further restrictions on the landfilling of biodegradable waste by prohibiting the landfilling of biodegradable waste that has been separately collected in accordance with Article 22 of Directive 2008/98/EC.

¹² Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.07.1999, p. 1).

¹³ COM(2008) 699 and COM(2014) 297.

¹⁴ 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).

(6a) In order to ensure proper application of the waste hierarchy, by 2030 restrictions on landfilling should apply to all waste, including bio-degradable waste, that is suitable for recycling and other material or energy recovery. Such restrictions should not apply where it can be demonstrated that waste is not suitable for recycling or recovery and landfilling would result in a better overall environmental outcome, for example, waste containing harmful substances such as substances of very high concern (SVHC).

CZ Position

- **Czech Republic considers, that the new recital 6a is not entirely clear, the cases where restrictions should not apply must be more precisely defined in order to prevent the possibility of weakening the efforts to reduce landfilling. For example incineration is a better environmental solution for hazardous waste than landfilling, but the recital contains only recycling, material and energy recovery.**
- (7) Many Member States have not yet completely developed the necessary waste management infrastructure. The setting of landfill reduction targets will further facilitate separate collection, sorting and recycling of waste and avoid locking potentially recyclable materials at the bottom of the waste hierarchy.
- (8) A progressive reduction of landfilling is necessary to prevent detrimental impacts on human health and the environment and to ensure that economically valuable waste materials are gradually and effectively recovered through proper waste management and in line with the waste hierarchy. This reduction should avoid the development of excessive capacity for the treatment of residual waste facilities, such as through energy recovery or low grade mechanical biological treatment of untreated municipal waste, as this could result in undermining the achievement of the Union's long-term preparation for reuse and recycling targets for municipal waste as laid down in Article 11 of Directive 2008/98/EC. Similarly, and to prevent detrimental impacts on human health and the environment, while Member States should take all necessary measures to ensure that only waste that has been subject to treatment is landfilled, compliance with such obligation should not lead to the creation of overcapacities for the treatment of residual municipal waste. In addition, in order to ensure consistency between the targets laid down in Article 11 of Directive 2008/98/EC and the landfill reduction target defined in Article 5 of this Directive and to ensure a coordinated planning of the infrastructures and investments needed to meet those targets, Member States which may obtain additional time for the attainment of the municipal waste recycling targets should also be given additional time to attain the landfill reduction target for 2030 as laid down in this Directive.
- (9) In order to ensure better, timelier, and more uniform implementation of this Directive and anticipate implementation weaknesses, an early warning system should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.

- (10) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring correct implementation, and are generating unnecessary administrative burden. It is therefore appropriate to repeal provisions obliging Member States to produce such reports and for compliance monitoring purposes use exclusively the statistical data which Member States report every year to the Commission.
- (11) Statistical data reported by Member States are essential for the Commission to assess compliance with waste legislation across the Member States. The quality, reliability and comparability of statistics should be improved by introducing a single entry point for all waste data, deleting obsolete reporting requirements, benchmarking national reporting methodologies and introducing a data quality check report. Reliable reporting of statistical data concerning waste management is paramount to efficient implementation and to ensuring comparability of data among Member States. Therefore, when preparing the reports on compliance with the targets set out in Directive 1999/31/EC, Member States should be required to use the most recent methodology developed by the Commission and the national statistical offices of the Member States.

CZ Position

- **Methodology for collection, interpretation and reporting of data should be developed by the Commission, national statistical offices of the Member States and national waste management authority of the Member States. It is important for possible future harmonization of reported data from the Member States.**
- **There is also a need for better harmonization through different pieces of EU legislation (waste framework directive, waste statistic regulation etc.).**

- (12) **[...]**
- (13) In order to ensure uniform conditions for the implementation of Directive 1999/31/EC, implementing powers should be conferred on the Commission in respect of Articles 3(3), Annex I, paragraph 3.5 and Annex II, paragraph 5. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁵.
- (14) Directive 1999/31/EC should therefore be amended accordingly.

¹⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28/02/2011, p. 13).

- (15) 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.
- (16) Since the objectives of this Directive, namely to improve the management of waste in the Union, and thereby contributing to the protection, preservation and improvement of the quality of the environment and to the prudent and rational utilisation of natural resources, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 1999/31/EC is amended as follows:

(1) Article 2 is amended as follows:

(a) point (a) is replaced by the following:

'(a) the definitions of 'waste', 'municipal waste', 'hazardous waste', 'waste producer', 'waste holder', 'waste management', 'separate collection', 'recovery', 'recycling' and 'disposal' laid down in Article 3 of Directive 2008/98/EC of the European Parliament and of the Council¹⁷ shall apply;

(b) points (b), (c), **[...]** and (n) are deleted;

CZ Position

- **Czech Republic prefers original EC proposal, i.e. deletion of term “non-hazardous waste” from the landfill directive. This term should be among crucial definitions in Waste Framework Directive.**

¹⁶ OJ C 369, 17.12.2011, p. 14.

¹⁷ 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).';

(1a) Article 3(3) is replaced by the following:

'3. Without prejudice to Directive 2008/98, Member States may declare, at their own option, that the deposit of non-hazardous waste, other than inert waste, resulting from prospecting and extraction, treatment and storage of mineral resources as well as from the operation of quarries and which are deposited in a manner preventing environmental pollution or harm to human health, can be exempted from the provisions in Annex I, points 2, 3.1, 3.2 and 3.3 of this Directive. Where necessary, the Commission may adopt implementing acts to ensure the uniform application of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).'

CZ Position

- **Czech Republic can agree with PRES proposal.**
- **There is a mistake in last sentence of the paragraph “wit” instead “with”.**

(2) Article 5 is amended as follows:

- (a) in paragraph 2 the following sentence is deleted:

'Two years before the date referred to in paragraph c) the Council shall reexamine the above target, on the basis of a report from the Commission on the practical experience gained by Member States in the pursuance of the targets laid down in paragraph a) and b) accompanied, if appropriate, by a proposal with a view to confirming or amending this target in order to ensure a high level of environmental protection.'

- (b) in paragraph 3 the following points (f) **and (g) are** added:

'(f) waste that has been separately collected **for recycling** pursuant to Article 11(1) and 22 of Directive 2008/98/EC;

(g) all waste, including biodegradable waste which, following appropriate collection and treatment, is suitable for preparing for reuse, recycling or other recovery by 2030.'

CZ Position

- **Czech Republic prefers original EC text regarding point (f). Inclusion of word “recycling” is not clear.**
- **Czech republic can agree with new point (g), but the part of the sentence “including biodegradable waste” is redundant, if the beginning of the sentence starts “all waste”.**

(c) the following paragraphs 5, 6 and 7 are added:

'5. Member States shall take the necessary measures to ensure that by 2030, the amount of municipal waste landfilled is reduced to, **either:**

a) 10% of the total amount of municipal waste **generated, or,**

b) 50 kg per capita per year.

6. **[...] A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 % of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5.**

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the deadline laid down in paragraph 5. In the event of an extension, the Member State shall take the necessary measures to reduce by 2030 the amount of municipal waste landfilled to, either:

a) 25% of the total amount of municipal waste **generated; or**

b) 125 kg per capita per year

The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall **be drafted on the basis of an evaluation of the existing waste management plans and shall** also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts.

7. By 31 December 2024 at the latest, the Commission shall examine the targets laid down in paragraph 5 with a view to **reviewing them [...]**. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

CZ Position

- **Czech Republic is not in favour of the new PRES proposal regarding landfilling reduction.**
- **Czech Republic is against any weakening of the landfilling reduction target.**
- **Czech Republic can support changes in paragraph (7).**

(2a) the following Article 5a is inserted:

Article 5a

Rules on the calculation of the attainment of the targets laid down in Article 5

- '1. For the purpose of calculating whether the targets laid down in Article 5 (5) (a) and (b) have been attained,**
- (a) the weight of the municipal waste generated and directed to landfilling shall be calculated in a given calendar year;**
 - (b) the weight of municipal waste entering treatment with a view to its subsequent landfilling, such as mechanical biological treatment or incineration without energy recovery, shall be considered as landfilled;**
 - (c) the weight of waste which is removed by treatment operations prior to recycling or other recovery of municipal waste, such as sorting, and which is subsequently landfilled shall be included in the weight of municipal waste reported as landfilled;**
 - (d) the weight of waste from recycling or other recovery operations of municipal waste which is subsequently landfilled shall not be included in the weight of municipal waste reported as landfilled.**
- 2. Member States shall establish an effective system of quality control and traceability of the municipal waste landfilled to ensure that conditions laid down in paragraphs 1 of this Article are met. They may use the system established in accordance with Article 11a(4) of Directive 2008/98/EC for this purpose.**
- 3. Waste sent to another Member State or exported from the Union for the purposes of landfilling shall be counted towards the amount of waste landfilled by the Member State in which that waste was collected.'**

CZ Position

- Czech Republic has scrutiny for Article 5a.**

(3) the following Article 5**b** is inserted:

*'Article 5**b***

Early warning report

1. The Commission shall, in cooperation with the European Environment Agency, draw up a report on the progress towards the achievement of the targets laid down in Article 5(5) and (6) three years before each time-limit laid down in those provisions at the latest.

2. The reports referred to in paragraph 1 shall include the following:

- (a) an estimation of the achievement of the targets by each Member State;
- (b) a list of Member States at risk of not achieving the targets within the respective time limits accompanied by appropriate recommendations for the Member States concerned.;

CZ Position

- **CZ is of an opinion that it is not sufficiently clear what steps will be taken by the Commission against MS where the risk factors for failure to meet the applicable time limits will be identified.**
- **It is also not specified in detail what will be the form of EC recommendations. The measures may entail administrative and financial burden for Member States. CZ will require more detailed information on this issue.**
- **According to CZ it is also necessary to ensure that comparisons between Member States will be based on a uniform methodology and uniform definitions of basic terms.**
- **For this reason, the Czech Republic is not inclined to modifying the Directive in this area, as functional tools already exist for monitoring the objectives of the legislative rules.**

(4) in Article 6(a), the following sentence is added:

'Member States shall ensure that measures taken in accordance with this point do not compromise the achievement of the objectives of Directive 2008/98/EC, notably on the increase of preparing for re-use and recycling as set out in Article 11 of that Directive.;

(5) in Article 11(2), the second sub-paragraph is deleted.

(6) Article 15 is replaced by the following:

'Article 15

Reporting

1. Member States shall report the data concerning the implementation of Article 5(2) and (5) for each calendar year to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 5. The first reporting shall cover the data for the period from 1 January [*enter year of transposition of this Directive + 1 year*] to 31 December [*enter year of transposition of this Directive + 1 year*].

2. Member States shall report the data concerning the implementation of the targets laid down in Article 5(2) until 1 January 2025.
3. The data reported by the Member State in accordance with this Article shall be accompanied by a quality check report.
4. 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 cover an assessment of the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up every three years.
5. The Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 1. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 17(2) of this Directive.;

CZ Position

- **Introduction of quality check report must not lead to increase of administrative burden of member state.**

- (7) Article 16 is replaced by the following:

'Article 16

Amendment of the Annexes

The Commission shall **keep the annexes under review, and make appropriate legislative proposals where necessary;**

- (8) Article 17 is replaced by the following:

'Article 17

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 Council¹⁸.

¹⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.02.2011, p. 13).';

2. When reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation 182/2011 shall apply.'

CZ Position

- **Czech Republic supports PRES proposal.**

(9) [...];

(9a) in Annex I, point 3.5 is replaced by the following:

The Commission shall adopt implementing acts to lay down the method to be used for the determination of the permeability coefficient for landfills, in the field and for the whole extension of the site. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 17 of this Directive.

CZ Position

- **Czech Republic can support PRES proposal.**

(10) in Annex III, point 2, the first sub-paragraph is deleted;

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert date **twenty four** months after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

CZ Position

- **Czech Republic strongly supports 24 months for transposition. Czech Republic supports PRES proposal.**

PACKAGING DIRECTIVE

- (1) Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, ensuring prudent and rational utilisation of natural resources and promoting a more circular economy.
- (2) The targets laid down in Directive 94/62/EC of the European Parliament and of the Council¹⁹ for the recovery and recycling of packaging and packaging waste should be amended by increasing the [...] re-use and recycling of packaging waste in order to better reflect the Union's ambition to move towards a circular economy.
- (3) Furthermore, in order to ensure greater coherence in waste legislation, the definitions in Directive 94/62/EC should be aligned to those of Directive 2008/98/EC of the European Parliament and of the Council²⁰ applicable to waste in general.
- (3a) Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is therefore important that Member States take appropriate measures to encourage to increase the share of re-usable packaging placed on the market and the re-use of packaging. Such measures may include the use of deposit return systems and other incentives, such as setting quantitative targets, including combined reuse and recycling targets, and differentiated financial contributions for reusable packaging under extended producer responsibility schemes for packaging.**

CZ Position

- **Czech Republic can support this PRES proposal. Czech Republic understands, that the combined targets are optional for Member States.**
- (4) 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.

¹⁹ Directive 94/62/EC of European Parliament and Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

²⁰ 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).

CZ Position

- Czech Republic can support this PRES proposal.

(5) Through a progressive increase of the existing targets on [...] 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. That way it should be ensured that valuable materials found in waste are returned into the European economy, thus making progress in the implementation of the Raw Materials Initiative²¹ and the creation of a circular economy.

CZ Position

- Czech Republic can support this PRES proposal.

- (6) Many Member States have not yet completely developed the necessary waste management infrastructure. It is therefore essential to set clear policy objectives in order to avoid locking recyclable materials at the bottom of the waste hierarchy.
- (7) With the combination of recycling targets and landfill restrictions laid down in Directives 2008/98/EC and 1999/31/EC, the Union targets for energy recovery and the recycling targets for packaging waste laid down in Directive 94/62/EC are no longer necessary.
- (8) This Directive sets long-term objectives for the Union's waste management and gives the economic operators and the Member States a clear direction for the necessary investments to attain the objectives of this Directive. In developing their national waste management strategies and planning investments in waste management infrastructure, Member States should make a sound use of the European Structural and Investment Funds in line with the waste hierarchy by promoting prevention, re-use and recycling.
- (9) Targets for the recycling of plastic packaging waste for 2025 have been set taking into account what was technically feasible at the time of the revision of the Directive; the Commission may propose revised levels of the targets for plastics for 2030 based on a review of progress made by Member States towards reaching those targets, taking into account the evolution of the types of plastics placed on the market and the development of new recycling technologies and the demand for recycled plastics.
- ~~(10) 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 energy and carbon dioxide savings. The existing preparing for re-use and recycling target for metal packaging should therefore be split into separate targets for those two types of waste.~~

²¹ COM(2013) 442 final.

CZ Position

- This recital should be deleted because PRES proposed merging of targets for ferrous metals and aluminium into one target.

(11) [...]

CZ Position

- Czech Republic can support this PRES proposal.

(12) In order to ensure the reliability of the data [...] it is important to lay down more precisely the rules according to which 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 recycling process. In order to limit administrative burdens, Member States should be allowed, under strict conditions, to report recycling rates on the basis of the weight of separately collected waste which needs no further sorting or of the output of a sorting [...] operation. Losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the final recycling process should not be deducted from the weight of the waste reported as recycled.

CZ Position

- Czech Republic can support PRES changes in this proposal. CZ appreciates the opportunity to report the output of a sorting operation.

- (13) In order to ensure better, timelier and more uniform implementation of this Directive and anticipate implementation weaknesses, an early warning system should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.
- (14) Statistical data reported by Member States are essential for the Commission to assess compliance with waste legislation across the Member States. The quality, reliability and comparability of statistics should be improved by introducing a single entry point for all waste data, deleting obsolete reporting requirements, benchmarking national reporting methodologies and introducing a data quality check report.
- (15) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring good implementation, and are generating unnecessary administrative burden. It is therefore appropriate to repeal provisions obliging Member States to produce such reports and for compliance monitoring purposes use exclusively the statistical data which Member States report every year to the Commission.

- (16) Reliable reporting of statistical data concerning waste management is paramount to efficient implementation and to ensuring comparability of data among Member States. Therefore, when preparing the reports on compliance with the targets set out in Directive 94/62/EC, Member States should be required to use the most recent methodology developed by the Commission and the national statistical offices of the Member States.
- (17) In order to supplement or amend Directive 94/62/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Articles [6a(2), 6a(5), 11(3), 19(2) and 20]. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level [...], **and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should 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.**

CZ Position

- **Czech Republic can support this PRES proposal.**

- (18) 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 [12(3d) and 19]. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²².
- (19) Directive 94/62/EC should therefore be amended accordingly.
- (20) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²³, 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.

²² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28/02/2011, p. 13).

²³ OJ C 369, 17.12.2011, p. 14.

- (21) 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, thus providing a high level of environmental protection, and, on the other hand, 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 or effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 94/62/EC is amended as follows:

- (1) 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(1) of Directive 2008/98/EC of the European Parliament and of the Council²⁴;

- (c) points 3 to 10 are deleted;

- (d) the following second paragraph is added:

'In addition, the definitions of 'waste', 'waste producer', 'waste holder', 'waste management', 'collection', 'separate collection', 'prevention', 're-use', 'treatment', 'recovery', 'preparing for re-use', 'recycling', 'final recycling process' and 'disposal' laid down in Article 3 of Directive 2008/98/EC shall apply.';

²⁴ 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).'

(2) in the second subparagraph of Article 4(1), the first sentence is replaced by the following:

'Such other 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 designed to bring together and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1(1).';

(2a) Article 5 is replaced by the following:

Article 5

Reuse

1. Member States shall take measures to increase the share of re-useable packaging placed on the market and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such measures may include:

(a) the use of deposit return schemes;

(b) the setting of quantitative targets;

(c) the use of economic incentives.

2. By 31 December 2024 the Commission shall examine data on reuse 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 and any further measures to promote reuse of packaging. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

CZ Position

- **Czech Republic can support PRES proposal for paragraph 1.**
- **Czech Republic has a scrutiny for paragraph 2.**

(3) Article 6 is amended as follows:

(a) [...];

(b) in paragraph 1, the following points (f) to (i) 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) **50** % of wood;

(iii) 75 % of [...] metals;

(iv) [...];

(v) 75 % of glass;

(vi) 75 % of paper and cardboard;

(h) no later than 31 December 2030 a minimum of 75% 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 wood;

(ii) 85% of [...] metals;

(iii) [...];

(iv) 85% % of glass;

(v) 85% of paper and cardboard';

(ba) the following paragraph 1a is inserted:

'1a. By 31 December 2024 at the latest, the Commission shall examine the targets laid down in paragraph 1 points (f) to (i) with a view to reviewing them. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.'

(c) paragraphs 2 and 3 are replaced by the following:

'2. Packaging waste exported from the Union shall only be counted towards the attainment of the targets laid down in paragraph 1 by the Member State in which the packaging waste was collected if the requirements of Article 6a (4) are met and if, in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council²⁵, the exporter can prove that the shipment of waste complies with the requirements of that Regulation and that the treatment of waste outside the Union took place in conditions that are equivalent to the requirements of the relevant Union environmental legislation.

'3. Packaging waste sent to another Member State for the purposes of preparing for reuse, recycling or recovery in that other Member State may only be counted towards the attainment of the targets laid down in paragraph 1(f) to (i) by the Member State in which the packaging waste was collected.

(d) paragraphs 5, 8, and 9 are deleted;

CZ Position

- **Czech Republic can support PRES proposals.**
- **Czech Republic supports the PRES proposals regarding target only for recycling of packaging.**
- **Czech Republic appreciates the PRES proposals regarding single target for metals and also level of target for wood.**
- **The provisions on the revision of targets should be subjected only to 2030, because it would be irrelevant to review the target for 2025 in the year 2024.**

(4) the following Article 6a is inserted:

'Article 6a

Rules on the calculation of the attainment of the targets laid down in Article 6

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

²⁵ 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).'

- (a) the weight of the packaging waste recycled shall be understood as the weight of [...] waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances;
- (b) [...]
- (c) [...]
2. [...]
3. By way of derogation from paragraph 1(a), the weight of separately collected waste which needs no further sorting or of the output of any sorting operation may be reported as the weight of the packaging waste recycled provided that:
- (a) such output waste is [...] subsequently recycled;
- (b) the weight of materials or substances that are [...] removed by further operations preceding the actual recycling operation and are not subsequently recycled is not included in the weight [...] of waste reported as recycled.
4. Member States shall establish an effective system of quality control and traceability of the packaging waste to ensure that conditions laid down in paragraphs 1(a) and 3(a) and (b) are met. The system may consist of either electronic registries set up pursuant to Article 35(4) of Directive 2008/98/EC, technical specifications for the quality requirements of sorted waste, standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.
- 4a. The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.**
5. For the purposes of calculating whether the targets laid down in Article 6(1)(f) to (i) have been achieved Member States may take into account the recycling of metals [...] separated after waste incineration in proportion to the share of the packaging waste incinerated provided that the recycled metals meet certain quality requirements. Member States shall use the common methodology established in accordance with Article 11a(6) of Directive 2008/98/EC.;

CZ Position

- **Czech Republic has a scrutiny for this Article.**

(5) the following Article 6b 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 achievement of the targets laid down in Article 6(1)(f) to (i) three years before each time-limit laid down in those provisions at the latest.
2. The reports referred to in paragraph 1 shall include the following:
 - (a) an estimation of the achievement of the targets by each Member State;
 - (b) a list of Member States at risk of not achieving the targets within the respective time limits accompanied by appropriate recommendations for the Member States concerned.';

CZ Position

- **Czech Republic is of an opinion that it is not sufficiently clear what steps will the Commission take against MS where the risk factors for failure to meet the applicable time limits will be identified.**
- **It is also not specified in detail what will be the form of EC recommendations. The measures may entail administrative and financial burden for Member States. Czech Republic will require more detailed information on this issue.**
- **According to the Czech Republic it is also necessary to ensure that comparisons between Member States will be based on an uniform methodology and uniform definitions of basic terms.**
- **For this reason, the Czech Republic is not inclined to modify the Directive in this area, as functional tools already exist for monitoring the objectives of the legislative rules.**

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

'3. The Commission shall [...] adopt **implementing acts** [...] to determine the conditions under which the concentration levels referred to in paragraph 1 are not to apply to recycled materials and to product loops which are in a closed and controlled chain, as well as to determine the types of packaging which are exempted from the requirement laid down in the third indent of paragraph 1. **Those implementing acts shall be adopted in accordance with the procedure referred to in Article 21 (2).**';

CZ Position

- **Czech Republic can support PRES proposal.**

(7) 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 provided for in paragraph 1 shall include the data listed in Annex III and shall provide in particular information on the magnitude, characteristics and evolution of the packaging and packaging waste flows, including information on the toxicity or danger of packaging materials and components used for their manufacture at the level of individual Member States.';

(c) paragraph 3 is deleted;

(d) the following paragraphs 3a, 3b, 3c and 3d are inserted:

'3a. Member States shall report the data **listed in Annex III, including data** concerning the attainment of the targets laid down in Article 6(1)(a) to (i) **and data on reuse of packaging**, for each calendar year to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected.

The data shall be reported in the format established by the Commission **on the basis of Annex III** in accordance with paragraph 3d. The first reporting shall cover data for the period from 1 January [*enter year of entry into force of this Directive + 1 year*] to 31 December [*enter year of entry into force of this Directive + 1 year*].

3b. The data reported by the Member States in accordance with this Article shall be accompanied by a quality check report and a report on the implementation of Article 6a(4).

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 cover an assessment of the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up every three years.

3d. The Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 3a. Those implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 21(2).';

(e) paragraph 5 is deleted;

CZ Position

- **According to the Czech Republic, introduction of quality check report must not lead to an increase in administrative burden of member state.**

(8) Article 17 is deleted;

(9) Article 19 is replaced by the following:

'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 procedure referred to in Article 21(2).

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 21a to amend the illustrative examples for the definition of packaging listed in Annex I.;

(10) Article 20 is replaced by the following:

'Article 20

Specific measures

The Commission shall be empowered to adopt delegated acts in accordance with Article 21a 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.;

(11) Article 21 is replaced by the following:

'Article 21

Committee procedure

1. For the purposes of Articles [12(3d) and 19(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 Council²⁶.

2. When reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation 182/2011 shall apply.'

CZ Position

- **Czech Republic can support PRES proposal.**

²⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.02.2011, p. 13).'

(12) the following Article 21a 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 Article [6a(2), Article 11(3), Article 19(2) and Article 20] shall be conferred on the Commission for a [...] period of **5 years** from [enter date of entry into force of this Directive].

3. The delegation of power referred to in Article 6a(2), Article 11(3), Article 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.

3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article [6a(2), Article 11(3), Article 19(2) and Article 20] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

(13) Annex III to Directive 94/62/EC on packaging and packaging waste is amended as set out in the Annex to this Directive.

(14) Annex IV is added to Directive 94/62/EC on packaging and packaging waste as set out in the Annex to this Directive.

CZ Position

- **Czech Republic can support PRES proposal.**

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert date **twenty four** months after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

CZ Position

- **Czech Republic strongly supports 24 months for transposition.**

ANNEX III is amended as follows:

- (1) [...];

(1a) In Tables 1 and 2, additional columns need to be added to require information on primary, secondary and tertiary packaging separately.

- (2) [...].

[...]

DENMARK

Consequences of the Presidency's proposal of introducing a maximum 50 kg per capita target of landfilling of municipal waste by 2030 as an alternative to just a maximum 10% target

At the Working Party meeting on Environment on 14th and 15th November 2016 the Presidency suggested that in the Landfill Directive the maximum 10% target of municipal waste by 2030 is to be supplemented by an alternative target of maximum 50 kg per capita. Below Denmark has based on Eurostat's data for municipal waste for 2013 and 2014 calculated the consequences of this proposal.

The calculation shows that based on 2013 figures 16 Member States, which are not at the moment fulfilling maximum 10% landfilling, will get a benefit of the new proposal. These countries will be able to increase their actual landfilling with between 0.2 to 9.7 percentage points. That is to say the actual landfilling can be between 10.2% and 19.7% instead of 10%. Six countries will get a benefit larger than 5 percentage points.

Municipal waste	Generated in kg per capita	Landfilling in kg per capita	Landfilling in %	50 kg per capita in % of generation	Benefit in percentage points by using 50 kg per capita as target in stead of 10%
How is the figure calculated?	Column B	Column C	Column D	Column E	Column F
Year	2013	2013	2013	2013	2013
European Union (28 countries)	478	143	29,9	10,5	0,5
European Union (27 countries)	479	141	29,4	10,4	0,4
Belgium	437	4	0,9	11,4	1,4
Bulgaria	432	298	69,0	11,6	1,6
Czech Republic	307	173	56,4	16,3	6,3
Denmark	752	13	1,7	6,6	-3,4
Germany	615	8	1,3	8,1	-1,9
Estonia	293	40	13,7	17,1	7,1
Ireland	586	223	38,1	8,5	-1,5
Greece	509	411	80,7	9,8	-0,2
Spain	454	253	55,7	11,0	1,0
France	517	134	25,9	9,7	-0,3
Croatia	404	332	82,2	12,4	2,4
Italy	491	181	36,9	10,2	0,2
Cyprus	618	491	79,4	8,1	-1,9
Latvia	312	259	83,0	16,0	6,0
Lithuania	433	270	62,4	11,5	1,5
Luxembourg	616	112	18,2	8,1	-1,9
Hungary	378	244	64,6	13,2	3,2
Malta	582	464	79,7	8,6	-1,4
Netherlands	526	8	1,5	9,5	-0,5
Austria	578	23	4,0	8,7	-1,3
Poland	297	157	52,9	16,8	6,8
Portugal	440	222	50,5	11,4	1,4
Romania	254	175	68,9	19,7	9,7
Slovenia	414	109	26,3	12,1	2,1
Slovakia	304	213	70,1	16,4	6,4
Finland	493	124	25,2	10,1	0,1
Sweden	451	3	0,7	11,1	1,1
United Kingdom	482	164	34,0	10,4	0,4

Countries with more than 10% landfilling in 2013, which will have a benefit of a 50 kg target by 2030

The same calculation based on 2014 figures shows that 15 Member States will get a benefit of this proposal. These countries will be able to increase their actual landfilling with between 0.2 to 10.1 percentage points. That is to say the actual landfilling can be between 10.2% and 20.1% instead of 10%. Six countries will get a benefit larger than 5 percentage points.

Municipal waste	Generated in kg per capita	Landfilling in kg per capita	Landfilling in %	50 kg per capita in % of generation	Benefit in percentage points by using 50 kg per capita as target in stead of 10%
	Column B	Column C	Column D	Column E	Column F
How is the figure calculated?			C/B	50/B	E-10%
Year	2014	2014	2014	2014	2014
European Union (28 countries)	474	132	27,8	10,5	0,5
European Union (27 countries)	475	131	27,6	10,5	0,5
Belgium	436	4	0,9	11,5	1,5
Bulgaria	442	307	69,5	11,3	1,3
Czech Republic	310	174	56,1	16,1	6,1
Denmark	758	10	1,3	6,6	-3,4
Germany	618	9	1,5	8,1	-1,9
Estonia	357	23	6,4	14,0	4,0
Ireland	586	223	38,1	8,5	-1,5
Greece	509	411	80,7	9,8	-0,2
Spain	435	240	55,2	11,5	1,5
France	509	131	25,7	9,8	-0,2
Croatia	387	309	79,8	12,9	2,9
Italy	488	154	31,6	10,2	0,2
Cyprus	617	467	75,7	8,1	-1,9
Latvia	325	258	79,4	15,4	5,4
Lithuania	433	255	58,9	11,5	1,5
Luxembourg	616	110	17,9	8,1	-1,9
Hungary	385	221	57,4	13,0	3,0
Malta	600	478	79,7	8,3	-1,7
Netherlands	527	8	1,5	9,5	-0,5
Austria	566	23	4,1	8,8	-1,2
Poland	272	143	52,6	18,4	8,4
Portugal	453	222	49,0	11,0	1,0
Romania	249	179	71,9	20,1	10,1
Slovenia	432	101	23,4	11,6	1,6
Slovakia	321	214	66,7	15,6	5,6
Finland	482	84	17,4	10,4	0,4
Sweden	438	3	0,7	11,4	1,4
United Kingdom	482	134	27,8	10,4	0,4

Countries with more than 10% landfilling in 2014, which will have a benefit of a 50 kg target by 2030

Waste Framework Directive

Denmark would like to come with some more general statements about the coherency in the Presidencies' new proposal of the Waste Framework, the Landfill and the Packaging Directives, afterwards more detailed comments will follow:

- In our early discussions some Member States have raised concerns about the suggested targets for recycling and landfilling. Some countries have also underlined the importance of keeping re-use as a part of the way you can attain the recycling targets. The support for keeping re-use as part of the combined target has first of all been raised for principle reasons, because this is the only initiative in the directives, which will really encourage to a more circular thinking.
- We appreciate very much that the Presidency has tried to find compromises, so all countries can support the text and targets. However, we find that Presidency's proposals in relation to the targets in the three directives have first of all tried to solve the concerns raised by a specific group of countries, especially about the allowed maximum landfilling and too ambitious recycling targets. The Presidency has not at all solved the concerns raised by Member States, which are in favour of re-use.
- The Presidency's new proposal for landfilling of municipal waste implies that some Member States get an increase of the allowed amount of landfilling with up to 10 percentage points. Such a proposal is not in direction of more circular economy thinking, it is in contrary. Therefore, the need and justification for allowing re-use to be included in the accounting of recycling is even larger.
- Denmark has several times raised concerns regarding the calculation method for recycling. It is a high priority for Denmark that the calculation method is practically and administratively feasible, and Denmark has therefore together with France and Germany suggested a solution based on average loss rates.
- Further main issues for Denmark is that there will be developed common EU End of Waste criteria for the most relevant waste streams, and that deposit schemes is not included in the definition of extended producer responsibility.

Article 1-4: Scope and Definitions

Summary of Main Points on scope and definitions.

DK supports the amendments regarding exclusions of the scope.

DK also supports the definitions of municipal waste, biowaste, c&d waste, backfilling and extended producer responsibility schemes. We can also support all the pre-ambles linked to these definitions. However, we cannot support the definition of "other material recovery", because it does not make sense. We suggest including the original proposal from IT and DK of "Material recovery", which was included in the PRY paper of 12 September 2016. We can also support all the pre-ambles linked to the definitions.

Detailed comments

Article 3 point 15a: The definition of "other material recovery" does not make sense. The suggested definition says: "Means any recovery other than energy recovery". This definition would be correct for "Material recovery" but not for "other material recovery". There is target for "material recovery" of C&D waste according to Article 11, point 2b. Therefore Denmark and Italy suggested three months ago including a definition of 'material recovery' in order to clarify which types of recovery are included in this term. We suggested the following definition:

“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 sludge in agriculture”. “

This definition was included in paper DS 1432/16 from the PRY stated 12 September 2016 and DK suggests that this definition is reinstated in the text. In the suggested definition of “Material recovery” it is clear that “Other material recovery” includes backfilling, and sewage sludge for land use, but is not limited to those.

Articles 5-7: By-products and End-of-Waste

Summary of Main Points on By-products and End-of-waste

In general Denmark supports the amendments to article 5 and article 7.

In article 6 Denmark supports to have a link to chemical and product related legislation, and has a positive reservation, but in general supports the amendments of para 2 and 4.

But Denmark finds it very important to support the market for secondary raw materials, and one element in doing this is common EU end-of-waste criteria. Denmark suggests that the commission shall be required to develop End of Waste criteria for the most relevant waste streams within 36 months after the entry into force of this Directive, and suggest to add this to para 2.

Furthermore, DK finds it important that the concept of End-of-Waste status is linked to non-hazardous wastes.

Details comments:

Article 5 – By-products: Denmark can support the suggested amendments.

Article 6 – End-of-waste status:

Article 6(1): Denmark suggested following amendments to art. 6(1):

*'1. Member States shall **take appropriate measures to ensure that non-hazardous waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions.***

Article 6(1)(a) Denmark can support to change “is commonly used” to “is used” in para 1(a).

Article 6(2) Denmark has a positive reservation, but in general supports the amendments of para 2, and para 4. But Denmark finds common EU end of waste criteria important to support the market for secondary raw materials.

Denmark suggests the following amendment to art. 6(2):

*“2. The Commission **may shall** adopt implementing acts in order to establish detailed criteria on the uniform application of the conditions laid down in paragraph 1 to certain types of waste . Those detailed criteria shall take into account any possible adverse environmental and human health impacts of the substance or object and shall include:*

a) permissible waste input material for the recovery operation;

b) allowed treatment processes and techniques;

c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;

d) requirements for quality management, self-monitoring and accreditation;

e) requirement for a statement of conformity.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

Detailed criteria shall be developed, for the most relevant waste streams within 36 months after the entry into force of this Directive”

Article 6(3) and article 6(4a): Denmark supports to delete para 3 and the amendments to para 4a.

Art. 6(3) and Recital 17b: Denmark can supports the recital and the deletion of para 3. But points out that when moving the content of para 3 to the calculation in 11a(4b) it is not clear that waste that have ceased to be waste can count against a material recovery target in art. 11(2)b.

Article 6(4b): Denmark supports the Commission proposal for strengthening the link to chemical and product related legislation. Denmark shares the concern from the Commission stated in the Working Paper on 14. Nov. 2016 WK747/2016. Therefore Denmark could consider to support an amendment that establish an obligation for Member States to ensure that the natural or legal person who places the substance or mixture on the market for the first time after it ceases being waste, fulfills the conditions for exemptions related to registration (REACH article 2(7)(d)), if the exemption is used. Denmark encourages the Commission to clarify to what extent the majority of relevant materials would be considered to be substances/mixtures respectively articles (and thus not relevant in this context as there is no obligation to register articles under REACH). At present, it is unclear how burdensome this new obligation would be for the industry due to this uncertainty. The final decision to support the introduction of such a new obligation would depend on an overall evaluation including the burdens.“

Article 7 – Denmark can support the amendment and the use of implemented act.

Articles 8-8a: Extended producer responsibility

Summary of Main Points on EPR

Denmark welcomes the amendments to the EPR provisions which is a further step towards a final text for this subject. Nevertheless, we still have two major concerns we would like to high-light.

First of all we are very content that a definition on EPR-schemes has been introduced. However, both of our concerns can be related to this definition. As mentioned at previous meetings we would like to have deposit schemes clearly excluded from EPR-schemes. Therefor we will propose to have an amendment to the recitals which interrelates the use of deposit scheme as an incentive mechanism pointing toward the end-user of the product with the EPR scheme. We have suggested text on this issue (see below under specific comments).

The second matter of concern is related to the financial responsibility of the producers. Besides the definition, this matter includes both recital 9a, and art. 8a(4). As mentioned previously we find it problematic to have the responsibility of waste management placed at the public authorities and the financial responsibility placed at the producers. The financial and the organizational responsibility of waste collection must be placed at the same legal entity. Or at least, the financing part should have the possibility to influence the organization of the waste collection in order to make it cost-effective. See our proposal on this issue below.

On the WPE the 1st of Dec. the Commission explained that specific demands in art. 12 and art. 14 on cost covering in the WEEE directive will apply instead of the general specification of “full cost covering” in art. 8a(4)(1) in WFD. If this is the case, it might solve some of our concerns. Denmark would like the Presidency to confirm that this is the case, and to describe if there are other articles in WEEE, ELV and the Battery directives, where the specific articles in those directives should apply instead of art. 8(a) in the WFD. The suggested amendment below concerning art. 8(a)(4), depends on the clarification of above matter.

In our opinion the waste collection should be a subject of shared responsibility, where public authorities could be responsible for the collection – and the financing of this collection – from the citizen to an appropriate collection point.

Specific comments:

Recital 9(a): ”Extendend producer responsibility scheme can be suplemented by a deposit refund scheme. Deposit scheme is an incentive mechanism that encourages the end user to return the product part of the product or packaging after use to a proper reuse, preparation for reuse, recycling or recovery.”

Article 3, 20a definition; Denmark can support the definition on EPR, if recital 9(a) is amended as suggested above.

Art. 8a (1) 5th indent; in principle Denmark agrees in the provision on including end-of-life costs in the production costs, however, we still find it difficult to realize in practice.

Art. 8a (3 (aa)); Denmark cannot favor the amendment on the obligations to provide waste collection systems including sales areas. This should be a matter of national decision whether collection through the retailers is fitting in the national waste collection system.

Art. 8a(4); Denmark suggest that the responsibility for waste collection and treatment shall be shared between authority and producers, and therefor suggest the following amendment:

“Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

- (a) ***from the point of collection*** cover the entire costs of waste management for the products it puts on the [...] market ***in that Member State***, including all the following:
- costs of separate collection, [...], sorting and treatment operations, ***and where appropriate of reuse and preparation for reuse***, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;
 - costs of providing adequate information to waste holders in accordance with paragraph 2;
 - costs of data gathering and reporting in accordance with paragraph 1, third indent.
- (b) [...]
- (c) are based on the optimised cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.

4.aa) Member States may, where appropriate, encourage producers to finance also the costs occurring for collection of waste from private households to point of collection.

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

Art. 8a (4a); Denmark welcomes the moderation of the wording on modulated of fees. In our opinion this could only be handled properly by having a common EU approach reflecting that producers are producing to a common EU market.

Art. 8a (5); Denmark is concerned about the inclusion of ‘selling by distance contract’ in the monitoring and enforcement framework. We cannot see how a member state should have the possibility to control these transactions. Clarification is needed on this article.

Summary of Main Points on Prevention

Denmark welcomes the amendments on prevention which we in general can support.

But underlines that a key element in the circular thinking is prevention by re-use, and that re-use should be promoted more than just by incentives re-use by setting up of “aspirational” quantitative targets. A aspirational target on re-use is good, but not enough. For Denmark it is important to support the principle in re-use, and the circular paradigm even more.

- Denmark appreciate that the Presidency has tried to find comprises that will allow all member states to find their main concerns accommodated somewhere in the package. However, we find that Presidency's proposals does not accommodate the concerns raised by the Member states supporting earliest possible and strongest possible incentives for reuse, circular economy and small closed loops.
- Especially on packaging you have in fact a competition between one-way packaging and re-usable packaging. It is a bizarre fact that reaching the recycling targets is currently jeopardised by reuse-efforts – thus there is an inherent incentive not to reuse. For example, the use of re-usable packaging is often a viable alternative for the use of one-way packaging. Therefore the more reuse the more complicated the collection and recycling of the remaining waste becomes; therefore incentives are needed. If re-use is not included as a part of the attainment there is a strong bias to favour one way packaging, because it is more difficult for countries with large amounts of re-use packaging to fulfil the recycling targets, if they promote and prioritise re-use.
- Re-use is above recycling in the waste hierarchy and it is therefore at the outset environmentally preferable to promote re-use.
- DK, FR, FIN, EE, IE and HR (+ supporters) - have repeatedly underlined the importance of keeping re-use as a part of the way you can attain the recycling targets. We have proposed that reuse can contribute to the attainment of the recycling targets both in relation to the WFD art. 11a as regards certain streams and the PPWD art. 6a. This proposal has been made out of principal concern for incentivising more circular thinking in the package. Without this aspect appears the package just to continue “business as usual” despite the obvious need for change from linear to circular thinking. The main elements in the proposal are:
 - Definition of preparation of re-use is maintained as it is in the current WFD
 - Re-use contribution is kept as an integrated part of the recycling targets
 - In the WFD, re-use of furniture, textiles, electrical and electronic equipment and sales packaging products could be taken into account
 - in the PPWD, reuse of all packaging falling under the scope of PPWD could be taken into account in the targets
 - Re-use efforts can always be counted – regardless where you are on your recycling efforts – but it can as a maximum contribute only with a percentage that equals half of the proposed

target increase – meaning that if there is for instance a 10 percentage point increase in the target, max 5 percentage point reuse can be counted for the combined target.

- This ensures that all MS have to make an effort on recycling to achieve the new recycling targets.
- The Commission is mandated to develop methodology before entry into force of the directive
- This establishes the earliest possible drive and incentive for reuse and circular economy and the establishment of data and knowledge where different approaches can be used.

Specific comments on Prevention:

Article 9 (1); Denmark can support the amendments in para 1. But ask where we find article 9a?

Article 9 (2); Denmark would like to ask how the indicator should be understood. Are there now three indicators? One on quantity of waste that is generated, one on quantity of waste that is disposed of and one on quantity of waste subject to energy recovery?

It is not easy to develop a suitable indicator for waste prevention, but Denmark still think that in principle it is important that the indicator doesn't measure on waste treatment methods, but on actual prevention. Therefor Denmark suggests only using "quantity of waste generated".

Article 9 (3) and art. 37 (2); Denmark cannot support that food waste shall be reported every year. The methodologies are not yet established, and we fear that it will be very expensive and time-consuming to measure and report every year. Denmark suggest to report every fourth year (maximum every second year).

Article 9 (4) and 9 (5); Denmark supports those amendments

Article 11: Targets

Summary of Main Points on Targets

Denmark supports the amendments regarding selective demolition of C&D waste. We also support Member States shall take initiatives about better design of products but the Commission has also a role to play. Denmark still supports an ambitious increase of the recycling targets but also has a positive scrutiny reservation on proposals that will facilitate an overall compromise package. Furthermore, as long as the calculation rules according to Article 11a) are not clear, we still do not know what actual amount we are talking about. The new wording of 11 a) seems to imply for example that impurities is not accepted at all. In that way it is unclear for us whether the Commission's proposal on 65% recycling by 2030 with re-use and acceptance of 10% impurities is more or less ambitious than the new suggested target of 60% without impurities and re-use.

Detailed comments on article 11

Article 11(1) b: Denmark supports that Member States shall take measures to encourage the design, manufacturing and use of products that are recyclable. But this challenge is a common one for the whole EU and the text of paragraph b must consequently include the Commission.

Article 11((2) point b; Denmark support the wording of the material recovery of C&D waste.

Article 11(3); Denmark can accept that criteria are introduced in order to obtain five years prolongation for the attainment of the targets.

Article 11(4): Denmark do not support that the wording of the review clause is change from “with a view to increasing” to “reviewing”. The suggested amendment changes fundamentally what the review can be used for. With the Presidency’s suggested wording, also less ambitious targets can be suggested and agreed in 2024. Denmark supports therefore the wording from the Commission.

Article 11a: Calculations

Summary of Main Points on calculations.

Denmark can only partly support the amendments of this Article. Denmark is very much against the deletion of paragraph 1 c and deletion of paragraph 2, where re-use are included in the attainment of the targets. It is a key point for Denmark that re-use is kept in the text. We suggest that the re-use text suggested by DK, FR, FIN, EE, IE and HR in its paper of 30 November 2016 is integrated into paragraph 1. This proposal includes only re-use sales packaging, furniture, textiles and electrical and electronic equipment. Furthermore, it takes into account that re-use can only contribute up till a certain limit, so re-use only can give a fairly minor contribution to the recycling target.

Regarding the rules in paragraph 3 and 4 for measuring the recycling, we do not find it will solve the problem, how we in practice can get reliable recycling data. Denmark cannot support the wording of paragraph 3 and 4, because it is not possible to base the standard loss rates on separately collected waste, which needs further sorting. The text says it is only possible to use standard loss rates based on separately collected waste, which needs no further sorting. Denmark has together with France and Germany suggested the Presidency a text which is based on the separately collected amounts needing further sorting or the output of the first sorting. We find that this proposal, which was sent to the Presidency on the 6th October 2016, would solve our practical problems, on how to get the data. It is a very high priority for Denmark that the calculation method is practically and administratively feasible.

Detailed comments

Article 11a (3): All Member States have data on the separately collected amount of waste or the output of first sorting operation after collection, and on the basis of those is it possible to quantify an estimated value for the amount that enters the actual recycling operation after different steps of sorting (standard loss). “Standard loss rates” should therefore replace the derogation proposed by the Commission in Art. 11 a (3) WFD as it is significantly more practicable than the concept of the 10% losses. The “Standard loss rates” should be linked to the different types of waste, different sources, different collection schemes and different types of sorting processes.

Article 11a (4); The development of EU standard loss rates should be undertaken by the Commission supported by the MS. If a Member State wants to apply lower or other rates than the standard loss rates this shall of course be accepted, if the Member State can document such values.

Early warning report, Reporting, Exercise of the delegation, Committee procedure, Transposition and Entry into force:

Summary of Main Points on Early warning report, Reporting, Exercise of the delegation, Committee procedure, Transposition and Entry into force

Denmark supports in general the suggested amendments, and would like to highlight the amendment to article 38 (2) and (3) which Denmark finds important. Also the amendments to article 38a have improved the text. Thank you for listening to member states on those subject.

Denmark welcomes that bio-waste can be recycled to “other recycled products, materials or substances”. This amendment holds a door open for future innovations and technology developments.

Detailed comments

Article 22: See comments in the box above

Article 27: Denmark supports.

Article 33: Denmark supports.

Article 37: Denmark supports in general, except from the reporting of Article 9(3) considering food waste prevention every year. It shall be every fourth year (minimum every second year).

Article 38: Denmark supports the amendments and especially the new amendments to para 2 and 3.

Article 38a and article 39: Denmark supports the amendments.

Transposition: Denmark supports the amendments.

Landfill of waste

Article 5, paragraph 3, point g: By 2030 total ban on landfilling of waste that can be recovered

Summary of Main Points on ban of landfilling by 2030 of waste, which can be recovered

Denmark supports the intention of this proposal, which includes all types of waste. However, it is not clear what is in fact included in the proposal. For example, non-hazardous bottom ash from power stations can normally be recycled, because it can be used by, for example, cement kilns or as backfilling. But if there is a period with no demand for such ashes you need to landfill it and we talk about large amounts. In this case landfilling of the ash will not be in accordance with the wording of the new point g. At the moment Denmark is not sure whether the wording of the paragraph is the right one although we can support the intention.

Article 5, paragraph 5-7 and Article 5a: New targets and calculation

Summary of Main Points on targets and calculation

The Presidency's new proposal for landfilling of municipal waste linked to an amount per capita implies that some Member States get an increase of the allowed amount of landfilling with up to 10 percentage points. As far we can see all together 15 Member States will benefit from this proposal (see also separate note that are sent to the Presidency and the Commission the 22end of November 2016). In addition the criteria for Member States which can get an extension for meeting the target by 2030 are suggested to be widened. Such proposals are not in direction of more circular economy thinking, it is in contrary. Furthermore, if we shall have harmonized conditions for waste management in the EU the proposal is also pointing in a wrong direction.

In paragraph 7 the Presidency suggests to change the evaluation of the landfill target of municipal waste by the end of 2024 so the purpose is not any longer to reduce landfilling but just to make a review. Denmark cannot see the arguments for this change and we cannot support the proposal.

The Presidency has in Article 5a suggested some clarifications of what is included in the calculation of the target for landfilling of municipal waste. Denmark can support these amendments and we find that the Presidency has made a good job here.

Packaging and packaging waste Directive

In the same way as to the Waste Framework Directive Denmark cannot support that re-use is taken out of Article 6a meaning that re-use cannot contribute to the attainment of the recycling targets. Especially on packaging you have in fact a competition between one-way packaging and re-usable packaging. It is a bizarre fact that reaching the recycling targets is currently jeopardized by reuse-efforts – thus a high recycling target is an inherent incentive not to reuse, if reuse cannot contribute to the recycling target. For example, the use of re-usable packaging is often a viable alternative for the use of one-way packaging. If re-use is not included as a part of the attainment there is a strong bias to favor one way packaging, because it is more difficult for countries with large amounts of re-use packaging to fulfil the recycling targets, if they promote and priorities re-use and thus waste prevention.

Furthermore already today re-use is partly included in the calculation. When a Member State reports the amount of packaging waste to Eurostat you in fact use the amount of packaging put on the market and not the generated amounts of packaging waste as such. The amount of packaging put on the market includes both one way packaging and the first time the re-use packaging is used. Why not make the inclusion of re-use more complete and let it account every time, it is used. But let us do it in a way so there are some limitations on, how much re-use can contribute. FR, FIN, EE, IE, HR and DK have circulated an updated version of our proposal on how re-use can be calculated. In this proposal it is more clear that re-use efforts always can be counted – regardless the result of your actual recycling efforts – but reuse can as a maximum contribute only with a percentage that equals half of the proposed target increase. This proposal has been made out of principal concern for incentivizing more circular thinking in the package. Without this aspect the package appears just to continue “business as usual” despite the obvious need for change from linear to circular thinking. The main elements in the proposal are:

- Definition of preparation of re-use is maintained as it is in the current WFD
- Re-use contribution is kept as an integrated part of the recycling targets
- In the WFD, re-use of furniture, textiles, electrical and electronic equipment and sales packaging products could be taken into account
- in the PPWD, reuse of all packaging falling under the scope of PPWD could be taken into account in the targets
- Re-use efforts can always be counted – regardless the result of your actual recycling efforts – but it can as a maximum contribute only with a percentage that equals half of the proposed target increase – meaning that if there is for instance a 10 percentage point increase in the 2025 or 2030 target, max 5 percentage point reuse can be counted for the combined target.
- This ensures that all MS have to make an effort on recycling to achieve the new recycling targets.
- The Commission is mandated to develop methodology before entry into force of the directive
- This establishes the earliest possible drive and incentive for reuse and circular economy and the establishment of data and knowledge where different approaches can be used.

The Danish point of view on re-use is a matter of principle and is not linked to, how high or low the target levels are. The inclusion of re-use is a top priority for Denmark.

Articles 6: New targets

Summary of Main Points on targets

Denmark holds a reservation until calculation methods are finally agreed but supports an ambitious and realistic increase in recycling. Regarding having only a common target for metals and not a separate one for ferrous-metals and aluminum Denmark finds that this is a step backwards. Aluminum is from an environmental point of view much more important to recycle than ferrous metals. Therefore, at the moment we cannot accept that there is no separate target for aluminum although we can discuss the level.

Articles 6a: Calculation of recycling

Summary of Main Points on calculation of recycling

In the same vein as our comments to the Waste Framework Directive, we cannot support the proposal in paragraph 3 and 4. But it goes in the right direction, and we believe that if the solution is further developed, it will be manageable for Denmark to support it. Denmark finds the text must give the opportunity to base the average loss rates on the separately collected amount as such and not only if it needs no further sorting or the output of first sorting as suggested by Denmark, France and Germany. A non-paper on Average Loss Rates was sent to the Presidency by DE supported by DK and FR on the 24th of November. This non-paper presents examples on how the average loss rate can be calculated.

Maybe the Danish, French and German text about loss rates based on the separately collected amount can be developed further. For example, it could be underlined in relation to average loss rates that these can be used on separately collected amounts, when the waste needs no further sorting or when the separately collected waste is of the same material, but it needs further sorting. The last case will include, for example, separate collection of glass packaging waste including both colored and clear glass, which needs further sorting. It could also include separately collected plastic waste including different types of plastic waste, which needs further sorting. However, it would not include separate collection of waste, where you have a mixture in the same bin of, for example plastic, metal and paper waste. In this case the average loss rates should be based on the output of the first sorting operation.

It is crucial for Denmark that the necessary data, for the calculation can actually be generated. We have therefore suggested an administratively manageable solution due to the fact that the traceability from the final recycling plant backwards to the individual sources and countries, as claimed by the Commission will very often not be feasible. This is also underlined by the European Recycling Association (EuRIC).

Denmark do not support that “preparing for re-use” is deleted in art. 6a(1)(b). Preparing for re-use is integrated in the recycling calculation in WFD, and due to harmonization of the calculation methods for recycling it must of course also be integrated in the PPWD. Especially in case of glass and wood packaging waste you have cases, where such types of packaging waste is first discarded and subsequently is cleaned or repaired by other actors for re-use. Both cases are examples of preparation of waste for re-use.

Article 5: Reuse

Denmark agrees that waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. Denmark supports that re-use data shall be reported, and that Member States shall take measures to increase the share of re-usable packaging. Denmark also supports to have a review clause on reuse, with a view to considering setting targets on re-use. But again Denmark will point on the reverse argument to ask Member States to encourage increasing the share of reusable packaging and the re-use of packaging, when at the same time setting ambitious targets on recycling of packaging waste. In praxis re-usable packaging and recyclable packaging can substitute each other, and therefore an ambitious target on recycling of packaging indirectly will discourage more re-use of packaging.

Denmark therefore underlines that a stronger incentive for re-use is needed now, and that a combined target would certainly serve this purpose and could fit in with the Presidency proposals in art.5 para 1(a) – (c). Denmark supports the proposal on how to integrate re-use in a combined target that was sent to all member states.

Specific comments on Prevention:

Recital 3a: It is not enough to set optional national targets on combined reuse and recycling targets, if we really want a development towards closed cycles and circular economy, we will need harmonized combined targets on EU level.

Article 5: Denmark supports prevention by re-use, but simply don't find that the suggested amendments supply strong enough drivers for the development of re-use systems. In praxis the PPW directive will do the opposite by only setting ambitious targets for recycling of packaging.

Denmark finds that we shall not wait until December 2024 to discuss further measures to promote reuse of packaging. It shall be done now! But it is so very important to design the measures right, and if we are not careful we risk that the measures do not promote reuse and the important transition towards a circular economy.

Article 12:

General comments to article 12: It is unclear to us exactly what is amended in article 12. We are unsure whether table 3 and 4 are deleted?

Re-use data: Denmark supports that data for re-use of packaging shall be reported, but suggest to report separately on sales packaging and transport packaging instead of separate reporting on primary, secondary and tertiary packaging. This would from a Danish point of view add more value, due to the principle that sales packaging waste is the share of packaging waste that equals municipal waste.

Household and non-household waste: Denmark cannot support to report packaging waste divided into household and non-household waste. The new wording of paragraph 2 will increase the costs for industry and authorities without any justification as such.

DK can support the intention that the national databases for packaging shall include many of the data listed in Annex III of the Directive. However, the Commission's proposal includes a significant increase of the administrative burden for the industry and the authorities. The current wording of the Directive says in paragraph 1 of Article 12 that Member States shall establish databases on packaging and packaging waste, but it does not say that the databases shall include all the data listed in Annex III. The current wording further prescribes that Member States shall report these data to the Commission by means of a format adopted on the basis of Annex III. The existing format used for reporting packaging data to the Commission does not make a split between packaging waste from households and non-households. At the moment Member States only have to report the total recycled, recovered and disposed amount. However, the new suggested wording of Article 12 paragraph implies that the data in the national databases have to differentiate between recycled, recovered and disposed packaging waste from households and non-households respectively, because Table 3 and Table 4 of Annex III include such a split. The new wording of paragraph 2 will increase the costs for industry and authorities without any justification as such.

GERMANY

DE Comments on Article 26 WFD – Establishment of a quantity threshold also for “hazardous waste“

So far undertakings which transport waste “on a professional basis” but not “normally and regularly” are exempted from being considered as a carrier on the basis of the ECJ Judgement of 9 June 2005, C-270/03. If in Article 26 an empowerment for Member States is established that foresees exemptions from the obligation to register only for non-hazardous waste, this raises concerns that the ruling of the ECJ (which does not differentiate between hazardous and non-hazardous waste) is no longer to be considered.

In Germany, the obligation to register laid down in Article 26 WFD is transposed into § 53 of the Closed Substance Cycle and Waste Management Act (*Kreislaufwirtschaftsgesetz*, KrWG) in conjunction with the Ordinance on Notification and Authorization (*Anzeige- und Erlaubnisverordnung*, AbfAEV). According to § 7 para. 9 (1) AbfAEV waste collectors and carriers which within the framework of commercial undertakings collect and transport waste “not normally and regularly” are exempted from the notification requirements of § 53 KrWG. § 7 para 9 (2) AbfAEV contains the rebuttable presumption that the collection and carriage is carried out on a “normal and regular” basis, if in total the amount of collected and transported waste does exceed 20 tonnes of non-hazardous waste or 2 tonnes of hazardous waste during a calendar year. Affected are for example painters which transport colour and solvent residues regularly or small electrical installers which take smaller waste electrical and electronic equipment from the construction site regularly.

In order to avoid bureaucratic burdens and to provide legal certainty for the transposition of the provisions into national law, Germany advocates for the introduction of an exemption also for the transport of small amounts of hazardous waste.

The proposal below follows article 5 para. 1 (b) of the PRTR-Regulation (EC) No. 166/2006. In accordance with this regulation, waste shipments (transports) outside of the respective industrial site have to be notified to the authorities starting only from an amount of 2 tonnes of hazardous waste annually.

Waste shipment law remains unaffected by the proposal below. According to the Waste Shipment Regulation every shipment of hazardous waste has to be notified. The collector is addressed in the definition of notifier according to which he needs a license in order to act as notifier. Further, the Waste Shipment Regulation stipulates that a carrier needs a registration for transboundary shipment of waste. Therefore, carriers falling under the proposed exemption cannot conduct transboundary shipments of waste.

Proposal:

Article 26 - Registration -

Where the following are not subject to permit requirements, Member States shall ensure that the competent authority keeps a register of:

- (a) establishments or undertakings which collect or transport waste on a professional basis;
- (b) dealers or brokers; and
- (c) establishments or undertakings which are subject to exemptions from the permit requirements pursuant to Article 24.

Where possible, existing records held by the competent authority shall be used to obtain the relevant information for this registration process in order to reduce the administrative burden.

A collection or transport of waste on a professional basis is assumed if an establishment or undertaking is collecting or transporting more than 20 tonnes of non-hazardous waste or more than 2 tonnes of hazardous waste annually.

I. Waste Framework Directive

Exclusions from the scope (Art. 2 (2) (e) WFD)

- Germany proposes formulating the exclusion from the scope as follows: *“Feed materials as defined in Article 3 (2) (g) of Regulation (EC) No 767/2009 of the European Parliament and of the Council except those consisting of or containing animal by-products [...].”*

Exclusions from the scope (Art. 2 (2) (f) WFD) in conjunction with recital 11a

- Waste generated during the dismantling of a ship, both waste leaving the facility and waste temporarily stored or treated in the facility, shall be subject to the Waste Framework Directive.
- For reasons of consistency, the phrase “falling under the scope” should be used in Art 2 (2) (f) instead of “covered” (see wording in recital 10 of the Regulation on ship recycling).

Definition of backfilling (Art. 3 no. 17b WFD)

- The phrase “and mines” and the phrase “and infrastructure and construction foundation” should be deleted.

Definition of extended producer responsibility scheme (Art. 3 no. 20a WFD)

- The proposed definition of EPR schemes is not consistent with the provisions in Art. 8a WFD. The requirements laid down in Article 8a WFD refer to individual operating systems. The definition, however, refers to general measures geared towards implementing producer responsibility.

Waste hierarchy (Art. 4 WFD)

- Germany welcomes both the approach of making use of the adequate economic incentives for the application as well as to exchange the relating information between European Commission and member states.
- The economic incentives in Art. 4 should, however, be explicitly mentioned.

By-products and end-of-waste status (Art. 5, 6 WFD)

- Germany rejects imposing an obligation on member states to take action. This also applies to the proposed wording requiring member states to take “appropriate measures”. Art. 5 and 6 WFD lay down separate definitions, also pursuant to rulings by the European Court of Justice to date, as a contrast to the definition of waste. Germany also rejects the new paragraph 4a, which imposes an obligation on member states to act through decisions on a case-by-case basis, due to its incalculable financial implications.
- Germany rejects allowing the Commission to adopt implementing acts instead of delegated acts in Art. 5 (2) and Art. 6 (2) WFD.

Extended producer responsibility – Art. 8 and 8a WFD

Germany in principle welcomes to advance extended producer responsibility schemes. However, in light of the principle of subsidiarity, there is no need for such detailed European minimum requirements as contained in the presidency proposal. Germany considers COM recommendations or guidelines to be sufficient and more useful.

Article 8

- Paragraph 1 highlights the contradiction between the definition of extended producer responsibility schemes and the requirements of Art. 8a. The added text is also based on the assumption that the definition makes reference to a relevant organisation and not just to general measures taken by the member states to implement producer responsibility.

Article 8a

- **Paragraph 1, 3rd indent**
Germany suggests the following wording:

*“establish, **where appropriate**, a reporting system to gather data on the products placed on the market of the Member State by the producers subject to extended producer responsibility. ~~Once these products become waste, the reporting system shall ensure that~~ **including** data is gathered on the collection and treatment of ~~that~~ waste **resulting from these products** specifying, where appropriate, the waste material flows;”*

This ensures that data must only be gathered where it is justified and necessary.

- **Paragraph 2**

Germany is critical regarding the obligation to ensure that waste holders are also informed about centres for preparation for re-use. Such centres are covered by the take back and collection systems. Preparation for re-use is a recovery procedure for treating waste. The holder of the waste in this case does not want the waste back - unlike, for example, when used products are repaired in re-use centres.

Regarding the second sentence, clarification is required about which economic incentives are being referred to.

- **Paragraph 3 (d)**

The provision is too far-reaching.

- **Paragraph 4 to paragraph 6**

Corresponding European provisions are not required. General COM guidelines or recommendations pursuant to Art. 8 (5) are sufficient and more useful. In particular Art. 8a (5), subparagraph 2, entails intervention in the sovereignty of the MS which is not permissible in view of the provision in subparagraph 1. Germany rejects the provision on establishing a national authority.

The proposed amendments in paragraph 6 are a step in the right direction.

- **Paragraph 7**

Germany will only be able to give a definitive opinion once we have an overview of the definite provisions of Art. 8a as a whole. Germany reserves the right to comment at a later date.

Prevention of waste (Art. 9 WFD)

- Germany supports the presidency's proposals to the extent that they prioritise measures to promote waste prevention. Measures such as provisions on or interference in production processes geared towards waste prevention are unacceptable.
- Paragraph 1, first sentence, should be worded as follows: "*Member States shall take measures to promote the prevention of waste generation if economically viable and technically feasible.*"

Art. 11 WFD

- Germany remains critical of the provision in Art. 11 (1): unhindered access to waste collection points for re-use centres is problematic with a view to waste monitoring (possible unauthorised removal and illegal disposal or shipment) and in the context of data monitoring, especially where there are no uniform (certification) requirements for corresponding centres. Additionally, from an overall ecological perspective, preparation for re-use is not always in keeping with waste hierarchy, for example in cases of poor energy efficiency of old appliances or a lack of demand for such appliances.

Calculation rules (Art. 11 (a) WFD in conjunction with recital 17a)

- The available options for calculating losses can provide member states with the necessary instruments for calculating quotas and gathering data. However, the text in paragraph 3 - "which needs no further sorting", or at least "no", should be deleted. If, as set out later in the text, crediting is possible with deduction of possible losses up to final recycling, it is rightly possible that separately collected waste can also be subject to sorting operations. What is important then is solely the plausible subtraction of the losses arising as a result (through methods, see comments on paragraph 4).

- Additionally, further discussion is required regarding which of the methods listed in recital 17a to determine losses may be used in what form, and whether it is necessary to further specify the methods (in the text itself or in other legislative texts). Germany welcomes the reference to standard average loss rates in paragraph 4, but is of the opinion that specification is required here too. Additionally, the wording “which needs no further sorting” or the word “no” need to be deleted, otherwise the concept of standard average loss rates makes no sense.

Separate collection of bio-waste – Art. 22 WFD

See Germany’s comments on the presidency compromise texts of 24 June 2016 and 11 July 2016.

Minimum standards (Art. 27 WFD)

- Germany rejects switching to the adoption of implementing acts. Specification of technical minimum standards for waste treatment activities and the specification of standards regarding the qualification of collectors, transporters, dealers or brokers are substantial changes.

Interpretation and adaptation to technical progress (Art. 38 WFD)

- Germany welcomes the fact that the presidency proposal no longer envisages a switch to the adoption of delegated acts for Annexes I, II and VI, as these contain fundamental provisions. This also applies to Annex III, however, which it should only be possible to amend in a proper legislative procedure.

II. Landfill Directive

Definition (Art. 2)

- Incorrect legal reference: the definition of non-hazardous waste under (d) is to be retained. However, this definition refers to (c), which is to be deleted according to the presidency proposal.

Requirements regarding waste to be landfilled (Art. 5 (3))

- Limiting the ban on landfilling in Art. 5 (3) (f) to separately collected waste for recycling is essentially a step in the right direction. However, the provision does not go far enough to be able to support application of the waste hierarchy pursuant to Art. 4 Waste Framework Directive. It is also difficult to enforce. It will not lead to an increase in separately collected waste and thus in recycling. See also Germany’s statement of 18 February 2016.
- The proposed ban in (g) from 2030 on landfilling all waste, including biodegradable waste, which, following appropriate treatment, is suitable for reuse, recycling or other recovery, is a step in the right direction. However, the terms “appropriate collection...” and “suitable for...” in particular are not specific enough. Additionally, exemptions have to be regulated for landfilling recoverable waste for which there is no recovery market at the time the waste arises, for example for mineral (non-combustible) waste.

In this context, we again refer to our statement dated 18 February 2016 in which we state that it would be much more expedient to set parameter-based requirements for all waste to be landfilled, especially for the share of residual waste, in order to (gradually) “force” its treatment pursuant to Art. 6 (a) in conjunction with Art. 2 (h) Landfill Directive (sorting recoverable components, biological or chemical processes, heat conversion...) by means of (phased) allocation criteria to be determined (e.g. organic content (ignition loss, TOC), gas parameter (GB21, AT4)).

Reduction target for municipal waste (Art. 5 (5) and (6))

- Germany rejects the reduction target - introduced in Art. (5) (b) as the new alternative to (a) - of landfilling only 50 kg of municipal waste per capita and year from 2030. The same applies to Art. 5 (6).

Rules on the calculation of the attainment of the reduction target (Art. 5 (a) (new))

- Regarding the provision in Art. (5a) (new), no. 1 (a) - that the calculation of the weight of the municipal waste generated and directed to landfilling is to be calculated in a given calendar year - Germany would like to point out that in accordance with Regulation (EC) No 2150/2002 on EU waste statistics, data always has a time lag of 18 months. This means that the COM can only be notified of the weight data for 2030 from mid-2031.
- Germany rejects the provision in Art. 5a (new) no. 1 (b), according to which the weight of the municipal waste to be directly landfilled also includes waste undergoing mechanical biological treatment or incineration without R1 status (energy recovery).
Mechanical biological waste treatment facilities and waste incineration facilities are also considered facilities for the treatment of waste pursuant to Art.6 Landfill Directive, according to which only treated waste may be landfilled. Only output materials from mechanical biological waste treatment facilities and waste incineration facilities are partly recovered and partly landfilled; this output is generally not classified as municipal waste. Additionally, mechanical biological treatment facilities are usually recovery rather than disposal facilities; a distinction should be made here too between recovery and disposal. Ashes treated at waste incineration facilities can also be recovered (recycled) as substitute building materials for technical construction.
- Germany rejects the provision in Art. 5a (new) no. 1 (c), according to which the weight of waste arising from treatment operations - prior to recycling - and being landfilled is to be included in the weight of municipal waste directly landfilled.
It is not possible to determine the weight of waste arising during the treatment stages; in this context, please refer to Germany’s statement dated 18 February 2016 on calculating recycling quotas in Art. 11a WFD (2008/98/EC). Furthermore, this waste is classed as EWC 19 xx xx (waste from waste treatment) and must be distinguished from municipal waste.
- Germany also rejects the provision in Art. 5a (new) no. 2 as such a quality control and traceability system already has to be established under Art. 11a (4) WFD. In keeping with the requirements of better regulation, duplicate provisions should be avoided.

- Art. 5a (new) as a whole should be deleted as the proposed calculation rules would lead to increased compliance costs for industry and administrations without any recognisable benefits. In order to achieve the 10% target, sufficient capacities for energy recovery and the mechanical biological treatment of untreated municipal waste is required in addition to recycling facilities. The above-mentioned approach of setting parameter-based requirements in landfill law in accordance with Council Decision 2003/33/EC for all waste to be landfilled would be a much more expedient approach.

III. Directive 94/62/EC on packaging and packaging waste

- Germany welcomes the new proposal for Article 5 “Reuse” and the clear separation of reuse and recycling in Articles 5 and 6. However, Germany is somewhat critical of the wording in the new recital 3a (“...including combined reuse and recycling targets”). This is, at the very least, ambiguous and also inexpediently combines reuse and recycling, which Germany rejects. Germany thus recommends deleting this paragraph.
- Germany welcomes the proposals which clarify unanswered questions regarding methods of calculation. As before, approval is subject to also finding a solution to this matter in the Waste Framework Directive. In this context, Germany would like to refer to the relevant statements made in the Council Working Group of 14 and 15 November 2016. Pending such an agreement on the method, the proposed recycling target increases for packaging to 65% (by 2025) and 75% (by 2050) are generally considered to be acceptable.
- Germany prefers the original proposal setting out differentiated individual recycling targets for ferrous metals and aluminium, as opposed to the new proposal. It is regrettable that instead of the original proposal, recycling targets will now be slightly reduced. However, this slight reduction is understandable with a view to achievability in many Member States.
- Nevertheless, in spite of the envisaged reduction of the hitherto relatively high targets for wood packaging, there is still need for review. The proposed increases to 50% (by 2025) and 55% (by 2030) should be reviewed again to ascertain whether they are ecologically necessary. The current recycling rate is around 36% (across 28 EU Member States). Four Member States are currently not even achieving the applicable quota of 15%. In general, Germany believes that the material use of wood combined with subsequent energy-related use of wood products (cascading use) is superior to using wood solely for energy purposes. However, it must be taken into consideration that wood is a renewable raw material and it is therefore, generally, ecologically acceptable to use wood for energy recovery. Moderately increasing recycling targets would leave sufficient leeway for adequate recovery in each case. Further, when setting recycling targets it must be taken into account that cascading use of wood ultimately produces waste wood which can conveniently be used for energy recovery. Unrealistic recycling targets should not stand in the way of this. In addition, energy recovery is appropriate for wood containing pollutants as it prevents an accumulation of noxious substances in the product life cycle.

- As they entail substantial changes to the Packaging Directive, exemptions from the maximum concentration levels of heavy metals in certain types of packaging (Article 11(3)) should, in Germany's opinion, be subject to a proper legislative procedure. Germany rejects regulation by means of delegated acts (Commission proposal) or implementing acts (Presidency proposal).
- Germany does not understand the proposed addition in Annex III. No further elaboration is provided for the additional stipulations regarding primary, secondary and tertiary packaging. Considering that these stipulations lead to additional bureaucracy, Germany would be very grateful for further elaboration to enable an assessment of the proposal.

IV. 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

- Germany welcomes the extension of the time frame for transposing the amendments to the directives to 24 months.

IRELAND

WASTE FRAMEWORK DIRECTIVE

Ireland is very grateful for the work done by the Presidency in attempting to gain consensus among Member States with the (Third) Presidency Compromise Text (Ref. Document No. 14152/16 of 08 November 2016) on the Waste Framework Directive 2008/98/EC Commission Proposal (Ref. Document No. 14975/15 of 2 December 2016).

Article 2 of Waste Framework Directive

Exemption for Feed Materials

Ireland is very grateful for and can agree to the Presidency Proposal to provide an exclusion under a new Article 2(2)(e) from the scope of the Directive for “feed materials”.

Ireland also welcomes the explicit reference proposed by the Presidency in Recital (11), which states that animal by-products sent for use as feed materials and excluded from the scope of Waste Framework Directive 2008/98/EC need to comply fully with the legal requirements stipulated in Regulation (EC) No 767/2009. However, Ireland considers that it would be worth highlighting the qualification in Recital (11):

“..... Animal by-products destined to be used as feed materials in accordance with Regulation (EC) No 767/2009 of the European Parliament and of the Council are already excluded from the scope of this Directive 2008/98/EC **to the extent that they are covered by other Community legislation.**”

Ireland also believes that there is merit in including additional wording in the Recital, as follows:

“..... Animal by-products are already excluded from the scope of this Directive 2008/98/EC **where** destined to be used as feed materials in accordance with Regulation (EC) No 767/2009 of the European Parliament and of the Council, **which applies without prejudice to other Community provisions applicable in the field of animal nutrition.**”

Finally, Ireland would like to ask the Commission about the status of the categories of materials excluded from the scope of the Waste Framework Directive under Article 2(2):

- are these materials still wastes? (albeit to be excluded from the scope of the Directive). This is not clear from the existing text of the Directive;
- Eurostat’s Waste Statistics Regulation (WSR) guidance manual is clear that the wastes excluded under Article 2(2) fall within the scope of WSR reporting. This creates challenges for the authorities and an exempted (from the Directive) category of material requiring to be reported as waste is not well understood by all operators (particularly renderers), who consider these are ‘by-products’ and not waste – accordingly, are animal by-products may not be reported as wastes accepted or transferred off-site. The situation could be exacerbated if feed materials are also granted an exemption in the future in accordance with the Presidency Compromise Proposal.

Might there be merit in explicitly including within the text of the Directive Eurostat’s interpretation that such exempted materials shall be reported as waste?

Ship Recycling

Ireland can agree to the Presidency Compromise Proposal to include an explicit exemption for ship recycling under a new Article 2(2)(f), as the provisions and wording of the exclusion avoid a duplication of requirements under Waste Framework Directive 2008/98/EC and Ship Recycling Directive (EU) No. 1275/2013.

ARTICLE 3 OF WASTE FRAMEWORK DIRECTIVE 2008/98/EC: DEFINITIONS

Municipal Waste

Ireland is grateful for the work done by the Presidency in the Third Compromise Proposal in attempting to further clarify the definition of “municipal waste” in Article 1(2)(a) of the Proposal (Proposed definition in Article 3(1a) of Waste Framework Directive) and to introduce a harmonised interpretation to facilitate comparison of statistics across EU-28.

Ireland currently reports “municipal waste” data in line with the wide application of the OECD/ Eurostat definition and Commission Decision 2011/753, so Ireland can therefore agree in principle to the proposed amendments of the definition of “municipal waste” and Ireland welcomes the Presidency Proposal to exclude the ‘quantity’ criterion. In particular:

- Ireland can agree to the inclusion in the definition of “municipal waste” of “market and street cleansing services” that is comparable to household waste in nature and composition,
- Ireland welcomes the clarity in the definition of “municipal waste” that results from the exclusion of Construction and Demolition Waste from all origins; and

Non-hazardous Waste

The Presidency Compromise Text proposes to delete Article 1(2)(b) of the Commission Proposal (Proposed definition (2a)) of the Waste Framework Directive), which proposes a.

Ireland can agree to the deletion of the definition of “non-hazardous waste” as it likes the simplicity of the current definition of “non-hazardous waste” being retained in Article 2(d) of Landfill Directive 1999/31/EC.

Construction and Demolition Waste

Ireland can agree in principle to the proposed Presidency amendment of the definition of construction and demolition waste. However, Ireland would again ask the Commission/ Presidency for confirmation that “waste arising from minor construction and demolition activities within an individual household” would be defined accordingly as “construction and demolition waste” rather than “municipal waste”.

Other Material Recovery

The Third Presidency Compromise Proposal proposes to introduce a general definition of “Other Material Recovery”:

15a. “Other material recovery” means any recovery operation other than energy recovery

Ireland has concerns that including a general definition of “other material recovery” within the Waste Framework Directive is not only superfluous but also contains the potential for the legislation to be misinterpreted.

Ultimately, it comes down to the question of what is the essential difference between the definition of “recovery” (Article 3(15)) and the definition of “other material recovery” (proposed Article 3(15a))? If the sole difference between the definition of “recovery” (Article 3(15)) and the definition of “other material recovery” (proposed Article 3(15a)) is that “other material recovery” does not include “energy recovery”, Ireland considers that the distinction being assigned to “other material recovery” would be far better made within the explicit text of Article 11(2)(b) – the only other location within the Articles/ Annexes of the Waste Framework Directive where the terminology “other material recovery” appears – as follows:

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

Backfilling

The Third Presidency Compromise Proposal proposes to introduce a definition of “Backfilling”, as follows:

“(17b) "backfilling" means any recovery operation where suitable non-hazardous waste is used for purposes of reclamation in excavated areas **and mines** or for engineering purposes in landscaping **and infrastructure and construction foundation**. Waste used for backfilling **must should** substitute non-waste materials, be suitable for the afore-mentioned purposes and be limited to the amount strictly necessary to achieve these purposes”

In the first instance, the obligation set out in Article 11(2)(b) provides that:

“by 2020 **other material recovery, including backfilling**..... shall be increased to a minimum of 70% by weight.”

Accordingly, as the measurement of target attainment includes both “other material recovery” and “backfilling”, the use of a multitude of criteria to distinguish between “other material recovery” and “backfilling” is largely academic in practical terms.

Separately, Ireland remains of the view that the original Commission Proposal wording “instead of other non-waste materials which would otherwise have been used for that purpose” on the substitution of non-waste materials within the definition of “backfilling” is a better representation of the overall legal position and is very much in line with the existing definition of “backfilling” as set out in Article 2(6) of Calculation Methodology Decision 2011/753/EU. In particular, Ireland has concerns that the proposed Presidency Compromise Text definition of “backfilling” could create a conflict with the existing definition of “recovery” as set out in Article 3.15 of the Waste Framework Directive. In particular, a legal anomaly could be created whereby an activity clearly falling within the definition of “recovery” would not be interpreted as “backfilling” due to the additional criteria being imposed – such a situation would conflict with the description of “backfilling” in proposed Recital (6a). Ireland believes that the inclusion within the definition of “backfilling” of the defined term “recovery” (current Article 3.15 of Waste Framework Directive) – which itself was formulated following careful consideration of the extensive jurisprudence on “recovery” of the European Court of Justice) -

“ ‘recovery’ means any operation the principal result of which is waste serving a useful function by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfill that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations.”

adequately addresses the range of additional criteria that are now being proposed in the Presidency Compromise Text.

Ireland can agree to the Presidency Compromise Proposal to explicitly include reclamation of non-hazardous waste in “mines” within the scope of the definition of “backfilling”.

Recital (6a) sets out a rational basis for a Member State to adjudicate whether the use of waste-derived materials for the purposes of engineering, construction or infrastructure represent “recycling” or “backfilling”. Ireland would nonetheless point out that use of waste-derived materials in the provision of infrastructure and construction of foundations is subject to onerous specifications and quality control procedures and would frequently meet the criteria to be regarded as “recycling”.

Extended Producer Responsibility

The Third Presidency Compromise Proposal proposes to introduce a general definition of “Extended Producer Responsibility Scheme” and Ireland notes that this definition of replaces explanatory text in Article 8(1), third paragraph of the previous Presidency Compromise Proposal:

20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle

Ireland has concerns that the scope of the definition of “extended producer responsibility schemes” in including non-legislative measures as this could seriously impinge on the national flexibility to introduce targeted schemes of a limited scope on a member State’s own initiative in order to resolve particular environmental problems associated with a specific waste stream.

In addition, the proposed definition refers only to the “management of the waste stage of a product’s life cycle”. In the wider context of the waste hierarchy, thereby includes “preparing for reuse” activities (waste-related activities) but in practice excludes any responsibility for reuse (of non-waste).

Ireland can accept the principle of including the proposed definition of “extended producer responsibility” but it is important for Ireland that the definition of “extended producer responsibility” excludes non-legislative measures and does not exclude responsibility for “higher in hierarchy” re-use activities.

Article 4 of Waste Framework Directive: Waste Hierarchy - Economic Instruments

Ireland welcomes the Presidency Proposal to remove the word “adequate” (economic instruments) as it is open to retrospective interpretation particularly when used in conjunction with the phrase “to provide incentives” and is not appropriate to a legal text.

Article 5 of Waste Framework Directive: By-products

The Presidency Compromise Proposal proposes to provide that the Commission may adopt detailed criteria for the uniform application of by-product conditions for specific substances or objects through implementing acts rather than through delegated acts. Ireland can agree to the Presidency Proposal for the adoption by the Commission of EU-wide by-product criteria through implementing acts.

Taking particular note of the detailed Third Presidency Compromise Proposals on the establishment of procedures for determining end-of-waste fulfilment in Article 6 of the Waste Framework Directive, Ireland would again raise concerns with the implications of Article 1(4)(c), which proposes to add a new Sub-Article 5.3 to the Directive to require Member States to notify each determination of a by-product to the Commission. Ireland considers that this proposed notification requirement completely eliminates any prospect of a streamlined system that might derive from the proposed (accelerated procedure) amendments to Article 5(1) due to the bureaucratic burden and the standstill arrangements that will mitigate against transient opportunities for the beneficial use of a by-product, particularly since there is no provision made for case-specific situations which can facilitate opportunities that may arise in practice for the timely use of by-products. Similar to the Third Presidency Compromise Proposal for end-of-waste, Ireland believes that explicit provision must be made for case specific circumstances of by-products that should not require notification.

Article 6: End-of-Waste Criteria

The Third Presidency Compromise Proposal proposes to make some significant amendments to Article 6 of the Waste Framework Directive on End-of-Waste.

In the first instance, Ireland is concerned that there seems to be a lack of consistency and coherence with the Proposals in Article 6.1 “Member States **SHALL** take appropriate measures to ensure that waste which has undergone a recovery operation is considered to have ceased to be waste”, Article 6.4 “Member States **MAY** establish detailed (national) criteria and Article 6.4a “Member States **MAY** decide case-by-case whether certain waste has ceased to be waste”. Ireland would appreciate the views of the Presidency/ Commission/ Council Legal services on this issue.

The Third Presidency Compromise Proposal proposes that criterion (a) of Article 6(1) be amended to require that “the substance or object **is** used for specific purposes”. Ireland is of the view that such a criterion can only be verified **after** the substance or object has been beneficially used – accordingly, the movement of the waste-derived material to the point of beneficial use and the **FINAL** recovery operation itself would be subject to waste controls, completely eliminating the benefits of attaining end-of-waste status.

Ireland can agree to the Presidency Proposal for the adoption by the Commission of EU-wide end-of-waste criteria through implementing acts.

In Article 1(5)(b), it is proposed that the Commission Proposal for Article 6(2) of the Waste Framework Directive be amended to provide that the detailed EU-Wide end-of-waste conditions be prescribed for five categories of criteria:

- a) permissible waste input material for the recovery operation;
- b) allowed treatment processes and techniques;
- c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;
- d) requirements for quality management, self-monitoring and accreditation;
- e) requirement for a statement of conformity.

Ireland considers that these five categories of criteria correspond to the five categories of criteria that are already included in the three EU-wide end-of-waste Regulations that have been adopted to date - the EU Scrap Metal End-of-Waste Criteria Regulation 333/2011, the EU Glass Cullet End-of-Waste Criteria Regulation 1179/2012 and the EU Scrap Copper End-of-Waste Criteria Regulation 715/2013. Accordingly, Ireland can agree to this Presidency proposal to prescribe five distinct categories of criteria.

In Article 1(5)(b), it is proposed that the Commission Proposal for Article 6(2) of the Waste Framework Directive be amended to provide that the detailed national end-of-waste conditions be prescribed for the same five categories of criteria as proposed for EU-wide end-of-waste criteria. Ireland can agree to this Presidency proposal to prescribe five distinct categories of criteria for national end-of-waste conditions. However, Ireland considers it very important that proper guidance be provided by the Commission on how these new categories should be implemented by Member States in practice (e.g. if an identification and assessment is required on whether the substance or object is included or proposed to be listed in Annex 14 (Authorisation) or Annex 17 (Restriction) of REACH).

The Presidency Proposal provides for the inclusion of Article 6.4a to explicitly provide that Member States may take case-by-case decisions (which do not require notification to the Commission) on whether certain waste has ceased to be waste:

4a. Where criteria have not been set at Community or national level under the procedure set out in paragraphs 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be notified to the Commission according to Directive 2015/1535/EC.

Ireland can agree in principle to the Presidency Proposal but would prefer the wording “...~~taking into account~~ assigning limit values for pollutants where necessary and taking into account any possible environmental and human health impacts....”. However, before finally agreeing to the Proposal Ireland would also like to hear:

- A clear explanation from the Presidency/ Commission on the rationale for not prescribing that the five categories of criteria in proposed Article 6.4 be taken into consideration for ‘case-by-case’ decisions. Non-inclusion of the five categories of criteria could create confusion and the impression that case-by-case decisions for end-of-waste are likely to be less onerous, as well as contributing to less uniform end-of-waste decision making across EU-28; and
- the views of the Council Legal Services regarding:
 - The status of the end-of-waste classification through national case-by-case decisions when the material is moved across EU-28 – do the provisions of Article 28.1 of the Waste Shipment Regulation 1013/2006 apply, which enable the Member State of destination to decide that the material is a waste?; and
 - The status of the end-of-waste classification through national criteria, which have been properly notified to the Commission and have not been the subject of objection, when the material is moved across EU-28 – do the provisions of Article 28.1 of the Waste Shipment Regulation 1013/2006 apply, which enable the Member State of destination to decide that the material is a waste (despite not having objected to the notification)?

The Presidency Proposal provides a new Article 6.4b to explicitly provide that:

- End-of-waste must be attained in accordance with the requirements of an administrative decision;
- A person placing the waste-derived (non-waste) material on the market for the first time must meet the relevant requirements under chemical and product legislation; and
- The proposed legal provisions on end-of-waste are without prejudice to other prevailing provisions of EU law.

Ireland can agree to the Presidency Proposal.

Article 7 of Waste Framework Directive: List of Waste

Ireland can agree to the Presidency Proposal for the establishment and review of the List of Waste by the Commission through implementing acts.

Article 8: EXTENDED PRODUCER RESPONSIBILITY

The Third Presidency Compromise Proposal proposes to make amendments to Article 8 of the Waste Framework Directive on Extended Producer Responsibility.

Ireland notes that the proposed introduction of a definition of “Extended Producer Responsibility Scheme” replaces explanatory text in Article 8(1), third paragraph of the previous Presidency Compromise Proposal. As noted earlier, Ireland can accept the principle of the proposed deletion of the wording on the scope of application of the general requirements for EPR schemes in Article 8(1), third paragraph with the introduction of the proposed new definition of “extended producer responsibility schemes”. However:

- Ireland has concerns that the scope of the definition of “extended producer responsibility schemes” includes non-legislative measures means – with the exception of purely voluntary industry schemes - that **nothing less than a fully-fledged producer responsibility system complying in full with all of the minimum requirements laid down in Article 8a can be operated or even contemplated by a Member State.**
- The proposed definition refers only to the “management of the waste stage of a product’s life cycle”. In the wider context of the waste hierarchy, it includes “preparing for reuse” activities (waste-related activities) but in practice excludes any responsibility for reuse (of non-waste).

It is important for Ireland that the definition of “extended producer responsibility” excludes non-legislative measures and does not exclude responsibility for “higher in hierarchy” re-use activities.

Ireland can understand that there is a certain logic behind the harmonisation of internal market conditions for producer responsibility systems subject to an EU-wide Directive, but believes that a “one-size-fits-all” approach is not appropriate and such general requirements would be much more balanced, proportionate and effective if established within each relevant waste stream Directive.

Ireland believes that the over-arching objective of a national producer responsibility system should be to achieve the best environmental outcome. Accordingly, Ireland is of the view that **such “general requirements” conditions should not be applicable to producer responsibility systems for waste streams developed solely on the initiative of a Member State and not subject to the provisions of an EU-wide producer responsibility Directive** for a particular waste stream.

Article 8a: General Requirements for Extended Producer Responsibility Schemes

As previously stated, Ireland would prefer that the EU legislation on general requirements for extended producer responsibility would be limited to the establishment of basic criteria for compliance systems and other obligated parties, thereby providing flexibility for Member States to prescribe and implement additional criteria as appropriate to the particular circumstances in order to enable smoothly functioning arrangements to be implemented at the national level.

While the stated objective of the Proposals is to harmonise arrangements across EU-28 for the application of Extended Producer Responsibility systems, the consequences of individual Member States being assigned the responsibility for applying general requirements for Extended Producer Responsibility over a wide range of criteria at the national level could in fact have a complete opposite effect and legitimise major divergences between the systems as applied across EU-28 (e.g. setting of objectives and targets for EPR systems, modulation of whole-life costs, re-use activities, litter prevention etc.)

Article 8a(1)

Ireland can agree to the Presidency Compromise Proposal to amend the Commission Proposals for Article 8a(1), first, second and third indents – (1) defining the roles/ responsibilities of social enterprises within the EPR scheme; (2) defining qualitative objectives considered relevant for the EPR scheme; (3) ensuring that the required attributes of the waste stream reporting system are specified in more detail for EPR schemes.

While the objective of the provision can be seen, Ireland is concerned that the wording of Article 8a(1), indent 5 “(Member States shall) ensure that schemes contribute to the incorporation of end-of-life costs into production costs” may be unworkable in practice – how can the Member States ensure that schemes “contribute” to such an outcome?.

Article 8a(2)

Ireland can agree to the Presidency Proposal in Article 8a.2 to ensure that waste holders are informed about “centres for reuse and preparation for reuse”.

Article 8a.3

Ireland can agree to the Presidency Proposal to amend the chapeau of Article 8a.3 to refer to EPR responsibilities “Member States to ensure that any organisation implementing EPR”.

Ireland can agree to the Presidency Proposal to split the first indent in Article 8a.3 to also provide a separate indent (aa) for “(EPR organisations) providing “an appropriate availability of waste collection systems covering the sales area as well as the area where the products are likely to become waste”

Ireland can agree to the Presidency Proposal in Article 8a.3(c) that regular independent audits be carried out “where relevant”.

Article 8a(4)

The Third Presidency Compromise Proposal retains the provision for full cost recovery from the producer and adds some further criteria to those contained in Article 8a(4) of the Commission Proposal, which effectively means that there is an unrestricted financial responsibility being imposed on producers. However, the requirement for financial contributions from producers to cover the entire costs of waste management and associated expenses sets a very high benchmark for prospective producer responsibility systems and involves responsibility for costs falling outside the scope of activity and influence of producers (e.g. litter prevention). Ireland considers that such a requirement to bear the entire costs would mitigate against the establishment of a simple and effective niche scheme of a more limited target scope.

In addition, full cost recovery from producers may not necessarily result in services being provided in the most cost-efficient or effective manner. In this regard, Ireland considers that in line with the provisions of Article 14 of the Waste Framework Directive (“Costs”), there is merit in allowing Member States the scope for shared responsibility among the relevant stakeholders in relation to the techniques (e.g. awareness-raising, information and education), disciplines (e.g. enforcement arrangements, technical standards) and costs associated with the management of the particular waste stream.

Ireland can agree to the Presidency clarification that financial responsibility for EPR schemes is without prejudice to the competence of the public authorities with respect to waste management.

Article 8a(4a)

Ireland can agree to the Presidency Proposal to reconstitute Article 8a(3)(b) as a separate sub-Article 8a(4a)

Article 8a(5)

Ireland would consider the requirement set out in the Presidency Compromise Proposal to ensure that the financial means (of the producer responsibility scheme) are properly used to be more of a governance issue rather than a “monitoring and enforcement” role, as the producer responsibility scheme would, in all likelihood, be a private company. Accordingly, Ireland would favour the scope of the framework to extend to “an adequate governance, monitoring and enforcement framework”.

Ireland welcomes the principle of the explicit inclusion of “distance sellers” (including on-line sales over the internet) who place products on the market of individual Member States within the scope of Article 8a.5 of the Third Presidency Compromise Proposal. However, Ireland considers it very important that the legislation also includes a requirement for the appointment of an independent, authorised representative within the Member State as an alternative to the producer being established within the particular Member State – such a requirement is contained in Article 17(1) of WEEE Directive 2012/19/EU.

Article 8a(6)

Ireland can agree to the Presidency Compromise Proposal to facilitate constructive dialogue between relevant extended producer responsibility stakeholders.

Article 8a(7)

Ireland can agree to the Presidency Proposal to allow 36 months after the transposition deadline to adopt existing systems to the general requirements for extended producer responsibility.

Article 9 of Waste Framework Directive: Prevention

The Presidency Compromise Proposal proposes to make a number of amendments to Article 9 of the Waste Framework Directive, including extending the number and scope of measures that MS shall take to prevent waste generation in Article 9.1. Ireland has previously expressed concerns with such Proposals:

- the range of measures in Article 9.1 are very prescriptive in nature and are linked explicitly to Article 29.1 of the Waste Framework Directive on the content of Waste Prevention Programmes. Such an approach could actually act as a deterrent to Member States from taking a wider perspective in the development of their waste prevention programmes and schemes, as the priority focus would be on the measures set out in Article 9.1. While Ireland favours encouraging options for maximising of reuse within Member States in appropriate circumstances, it is important that national governments retain the flexibility to prioritise resources for those reuse measures that will complement the existing waste prevention effort and maximise potential for success.
- the legal effect of proposed Article 9.1 requires that “Member States shall take measures..... to encourage.....”. Ireland notes that a corresponding requirement for Member States to take measures to ‘encourage the use of products that are resource efficient, durable, repairable & recyclable’ exists in both WEEE 1 and WEEE 2 and it has proven very difficult to implement such a provision at a national level where the markets function as a global economy. In order to encourage Original Equipment Manufacturers (OEMs) or SMEs to produce green goods, there is a need to provide incentives in order to create level playing field – **these barriers to sustainable green products need to be dealt with at EU level.** Ireland would therefore highlight the importance of making progress on the implementation of the Action Point “Ecodesign work plan 2015-2017 and request to European standardisation organisations to develop standards on material efficiency for setting future Ecodesign requirements on durability, reparability and recyclability of products” as programmed for December 2015 in the Annex to the EU Action Plan on the Circular Economy.

Notwithstanding these important reservations:

- Indent 1 – Ireland can support the principle of encouraging the design, manufacturing and use of reusable products.
- Indent 2 – Ireland can support the principle to target critical raw materials to prevent those materials becoming waste – however, Ireland would stress the importance of the Action Point contained in the Annex to the EU Action Plan on the Circular Economy for the Commission to produce a Report on critical raw materials and the circular economy by 2017.
- Indent 3 – Ireland is confused by the Reference to Article 9a (of the Waste Framework Directive)?

- Indent 6 - Ireland can support the principle of promoting communication about hazardous substances in the supply chain. However, Ireland feels that there is a need for the Commission and the Member States to develop guidance and share information on this matter – Article 38 of the Waste Framework Directive offers an opportunity to make provision for such guidance and information sharing. Ireland would also stress the importance of the Action Point contained in the Annex to the EU Action Plan on the Circular Economy for the development of an improved knowledge base and support to SMEs for the substitution of hazardous substances of very high concern by 2018.
- Indent 7: Ireland can agree to the Presidency Proposal to take appropriate measures to reduce litter from products that are the main sources of litter pollution.
- Indent 8: Ireland, being already very active in this area, can support the Compromise Proposal for information and communication campaigns on waste prevention and littering.
- Indent 9: The Compromise Proposal provides that waste prevention measures shall be taken by Member States to “*encourage the use of deposit return schemes*”. Ireland proposes the addition of the phrase to the end of the indent “where appropriate, taking into account the technical, environmental and economic feasibility of implementing such schemes”, reflecting the principles used elsewhere in the WFD. This amendment would allow MS flexibility in responding to the need to increase reuse but taking due account of the relative environmental and economic benefits offered by Deposit-Refund schemes in the context of existing national initiatives and circumstances.

Ireland would also point out that the Joint Proposal from Member States (including Ireland) to allow certain re-use activities to count towards the fulfilment of preparing for reuse/ recycling targets would make Deposit-Refund schemes more feasible in practical and economic terms within the overall context of the Waste Framework Directive provisions (e.g. a Compliance Scheme supporting certain re-use activities would be able to count successful initiatives towards preparing for reuse/ recycling target achievement).

- Indent 10: The Compromise proposes to require waste prevention measures to “*incentivise re-use through the setting up of aspirational quantitative targets*”. Ireland would like to hear the rationale for this proposal and any further detail from the Presidency/Commission. The setting of realistic and achievable targets for reuse is known to be difficult because of the lack of data but also because of difficulties in collecting data outside the waste regime. Imposing data collection requirements on reuse operators – without offering corresponding benefits to re-use endeavours - may in fact have the effect of discouraging reuse by generating excessive administrative burden. Ireland has strong reservations about the current wording of this provision. As an alternative, Ireland proposes rewording as follows: “examine the potential for aspirational quantitative targets to incentivise reuse”.

- Indent 11: The Compromise Proposal proposes to require waste prevention measures to “provide, as appropriate, adequate economic incentives to producers”. Ireland has reservations about the current wording of this provision and would welcome clarification from the Presidency/Commission of the objective behind this provision. Do ‘producers’ producers of waste or only producers of products? Ireland also queries the use of the word ‘adequate’. Ireland would consider that the term “adequate” is not appropriate to a legal text being unclear regarding how it would be measured or assessed and notes that the Third Presidency Compromise Proposal for Article 4 of the Waste Framework Directive has deleted this qualification on economic instruments.

Article 9.2

Ireland does not agree with the selection of “quantity of waste disposal” or the “Quantity of waste incineration” as appropriate waste prevention indicators.

Article 11: RE-USE AND RECYCLING

Article 11(1) of Waste Framework Directive

Ireland can agree in principle to the Presidency Compromise Proposal, which provides for an amendment to require Member States to encourage the design, manufacturing and use of products that are recyclable”. However, Ireland would have concerns about the effectiveness at a practical level of such an approach within individual Member States and would favour a pan-EU approach to this issue.

Ireland can support the Presidency Compromise Proposal to use the phrase “circular economy” rather than “European Recycling Society”.

The Third Presidency Compromise Proposal proposes to reduce the Commission targets for Member States of preparing for re-use/ recycling of municipal waste of 60% to 55% in 2025 and 65% to 60% in 2030.

- Ireland has previously stated that municipal waste preparing for reuse/ recycling targets are inextricably linked to-
 - the definition of municipal waste, and
 - the measurement methods

Accordingly, the feasibility of the targets can only be properly assessed when the definition and the measurement method have been agreed.

While the targets of 60% in 2025 and 65% in 2030 will be hugely challenging and Ireland has concerns that achievement may not be feasible in practice, Ireland believes that it is premature to amend the level of ambition for preparing for reuse / recycling targets for municipal waste for 2025 and 2030 at this early stage of negotiations.

Article 11a: CALCULATION RULES FOR ARTICLE 11 TARGETS

The Third Presidency Compromise Proposal suggests a number of amendments to Article 11a on Calculation Methodology Rules.

Ireland can accept the Presidency Proposal to amend Article 11.1(a') to refer to a "given" calendar year.

Ireland can agree in principle to the clarification in the chapeau of the text of Article 11a(3) but would prefer to refer to the weight of "separately collected municipal waste which needs no further sorting".

Ireland notes the Presidency amendment to the Commission Proposal in Article 11a(3b) to provide that all losses prior to the actual recycling operation are to be deducted from the weight of waste counted as recycled. However, both Decision 2011/753/EU on the calculation methodology for "household and similar waste" targets in the Waste Framework Directive and Decision 2005/270/EC on the calculation methodology for the recycling and recovery of packaging waste currently provide that where waste is recycled **without significant losses**, that waste may be considered the weight of the waste which is recycled. **Ireland would suggest that it appropriate that a small tolerance should be allowed in Article 11a(3)(b) e.g. 2%.**

Ireland welcomes the Presidency Compromise Proposal to amend Article 11a.4 to explicitly provide that "standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices" may be used to calculate data on recycled waste. Ireland also agrees with the Presidency insertion of the Recital (17a) "guiding principle" that losses of materials occurring before the waste enters the actual recycling operation

"can be established on the basis of electronic registries, technical specifications, detailed rules on the calculation of standard average loss rates for various types of waste, collection and treatment systems and practices, or other equivalent measures."

Ireland strongly believes that the issue of measurement should be addressed at a pan-EU level rather than through an obligation imposed on individual Member States and can agree in principle to the Joint Danish/ German/ French Proposal on "Average Loss Rates" (ALRs).

Ireland has previously proposed that legal obligations should be imposed on facilities to measure and report "average loss rates" and, in this regard, Ireland believes that Commission Regulation (EU) No. 493/2012 laying down detailed rules for the calculation of recycling efficiencies of the recycling processes at waste batteries and accumulators facilities can be a useful model for the Waste Framework Directive:

- The Regulation requires recyclers to report information on "recycling efficiencies at their facilities (for lead-acid batteries and accumulators)" (Annex IV), "recycling efficiencies (for nickel-cadmium batteries and accumulators)" (Annex V) and "recycling efficiencies (for other batteries and accumulators)" (Annex VI)

This would provide a mechanism whereby the responsibility is placed on individual recycling facilities – rather than on individual Member States – to report recycling efficiencies on the basis of detailed calculation methodologies and rules as defined by the Commission/ Member States. Most importantly, in the case where the (first) battery recycler is located in a Third Country outside of the EU, the recycling efficiency report of that recycler is also required to be submitted to the person who supplied the batteries to that recycler and the supplier should then submit the report to the national competent authority.¹ Adopting this approach would mean that the waste sector would be required to achieve a standard that is acceptable to and has been prescribed in detail by the Member States, rather than Member States being subject to the interpretation by facilities of the requirements imposed by Articles 11a(1) and 11a(3). Furthermore, prescribed reporting by facilities of the recycling efficiencies being achieved at the Plants would serve as an excellent basis for an “effective system of quality control and traceability of the municipal waste” to be established by Member States.

Ireland can agree to the Third Presidency Compromise Proposal that the Commission may adopt harmonised conditions for the calculation of the weight of metals that have been recycled after incineration through implementing acts rather than through delegated acts.

Article 11b: EARLY WARNING REPORT

No changes proposed in Third Presidency Compromise Proposal.

ARTICLE 22: BIOWASTE

The Third Presidency Compromise Proposal proposes to amend the Commission Proposal for Article 22 of the Waste Framework Directive to remove the requirement on attaining “targets”. Ireland would ask the Council Legal Services/ Commission for views on the legal implications of the provision that the Presidency proposes to remove – in particular, does the original Commission Proposal mean that the qualification “where technically, environmentally and economically practicable and appropriate” apply/ not apply where separate collection of bio-waste is needed to attain the relevant preparing for reuse/ recycling targets?

¹ Based on commentary in Paragraph 4.1 of *DG Environment Guidelines on the application of Commission Regulation EU 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators.*

ARTICLE 27 OF WASTE FRAMEWORK DIRECTIVE: MINIMUM STANDARDS

Ireland welcomes the Third Presidency Compromise Proposal that the Commission may use implementing acts, rather than delegated acts, in respect of the adoption of “minimum technical standards” criteria for waste activities subject to a Permit or to Registration.

ARTICLE 33 OF WASTE FRAMEWORK DIRECTIVE: INFORMATION TO BE SUBMITTED TO THE COMMISSION

Ireland can agree to the Presidency Compromise Proposal to amend the procedure for adopting the notification format for the URL link to Waste Management Plans and Waste Prevention Programmes in Article 33(2).

Ireland does not agree to the Presidency Compromise Proposal to allow for the notification format to be updated through a Delegated Act under new Article 33(3).

ARTICLE 35: RECORD KEEPING

Ireland does not agree to the Presidency Compromise Proposal to empower the Commission to adopt an implementing act to establish minimum conditions for the operation of Electronic Registries under a new Article 35(5) as Ireland does not believe that Electronic Registers should be regulated under the Directive, as this approach may require existing and successful national registers to be completely reconstituted.

ARTICLE 38: INTERPRETATION AND ADAPTATION TO TECHNICAL PROGRESS

Ireland does not agree with the Proposal to amend Article 38(1) to empower the Commission to use delegated acts in respect of the adaptation of the “energy efficiency formula” criteria for waste incineration, which establishes energy efficiency standards for incineration of municipal waste to be classified as a recovery operation, (i.e. **it is an implementing act**), thereby providing a common methodology on energy efficiency standards for incineration of municipal waste to be applied throughout the Union.

Ireland welcomes the Presidency Compromise Proposal in Article 38.3 to delete the provision to empower the Commission to amend Annex VI through a delegated act.

ARTICLE 38A: EXERCISE OF THE DELEGATION

Ireland is confused at the Third Presidency Compromise Proposal in Article 1(24) to confer power on the Commission to adopt certain delegated acts for “**an indeterminate period of 5 years**”?

Ireland can accept the Third Presidency Compromise Proposal to require the Commission to consult an Expert Committee of Member State Representatives before adopting a delegated act.

ARTICLE 39: COMMITTEE PROCEDURE

Ireland welcomes the Third Presidency Compromise Proposal to include the provision of a new Article 39.3 to provide that the provisions of the third paragraph of Article 5(4) of Regulation 182/2011 shall apply where the committee delivers no opinion on a draft implementing act.

ANNEX II

Ireland welcomes the Third Presidency Compromise Proposal to establish Code R11a for “backfilling” in Annex II of Waste Framework Directive 2008/98/EC.

ANNEX VI

Ireland can agree – unless it is decided to allow re-use be counted towards fulfilment of targets - to the Third Presidency Compromise Proposal to delete Annex VI from the Commission Proposal – the Annex is redundant with the more detailed calculation rules elaborated in Article 11a of the Commission Proposal.

TRANSPOSITION OF REVISIONS TO DIRECTIVE 2008/98/EC

Ireland welcomes the Presidency Compromise Proposal to increase the time for transposition to 24 months, from 18 months, after entry into force of the Directive.

LANDFILL DIRECTIVE

Article 2: Definitions

The First Presidency Compromise Proposal proposes to reintroduce the definition of “non-hazardous waste” in Article 2. Ireland welcomes the Presidency Proposal.

Article 3: Scope

Ireland can agree to the Presidency Proposal to amend the “scope”, which essentially updates the Directive to comply with prevailing Comitology procedures:

- the scope for Member States to deposit extractive waste without having to fulfil the provisions in Annex I, points 2, 3.1, 3.2 and 3.3 of the Landfill Directive, and that
- the Commission may adopt implementing acts to ensure the uniform application of these provisions.

Article 5: Waste and Treatment not Acceptable in Landfills

The First Presidency Compromise Proposal amends Article 1(2b) of the Commission Proposal to provide that

- Article 5(3)(f) of the Landfill Directive is amended to provide that “waste that has been separately collected **for recycling**” shall not be accepted at a landfill – Ireland can agree to this Presidency Proposal.
- Article 5(3)(g) of the Landfill Directive is introduced to provide that the following material shall not be accepted at landfill:

(g) all waste, including biodegradable waste which, following appropriate collection and treatment, is suitable for preparing for reuse, recycling or other recovery by 2030.

Ireland would like to ask the Commission/ Council Legal Services for an interpretation of the implications of this provision – it seems very ambiguous and may be interpreted to mean that the vast majority of waste should not be accepted at landfill (as there is a theoretical potential for appropriate collection and treatment that can render it suitable for preparing for reuse/ recycling/ other recovery). In this regard, Ireland notes the provisions of Recital (5) of the Presidency/ Commission Proposal:

“...Technical, environmental or economical feasibility of recycling or other recovery of residual waste resulting from separately collected waste should be taken into account in the implementation of these landfill restrictions.

It seems appropriate that these qualifications should be clearly incorporated into the text of proposed Presidency Article 5(3)(g)

(g) all waste, including biodegradable waste which, following appropriate collection and treatment and subject to technical, environmental or economic feasibility, is suitable for preparing for reuse, recycling or other recovery by 2030.

Ireland would also like to raise the issue as to whether there should there be an explicit provision within the text of Article 5 of the Landfill Directive to enable exceptions to be made for ‘emergency’ type scenarios (e.g. animal carcass disposal in the event of an outbreak of “foot and mouth” disease) whereby landfill contingency capacity may have to be activated in a short timeframe? In this regard, Ireland notes that the Presidency Proposal for a new Recital (6) as referring to the issue of landfilling being a better environmental outcome.

The First Presidency Compromise Proposal amends Article 1(2c) of the Commission Proposal to provide that

- The limit on the amount of municipal waste sent to landfill by 2030 to be reduced under Article 5(5) of the Landfill Directive to “10% of the total amount of municipal waste **generated**” or “**50 kg per capita per year**”. Ireland would again raise the issue of the need for landfill in emergency situations and the need to make some provision for such a scenario within the text of Article 5 of the Landfill Directive.

Ireland also notes that the definition of “municipal waste” is crucial to the quantity that may ultimately be landfilled. In this regard, Ireland does not favour the use of a choice of two limits by Member States where there will be a major difference in quantities of municipal waste allowed to be landfilled between the two options – as would happen in Ireland under our current interpretation of the scope of “municipal waste”. In this regard, Ireland would like to ask the Commission/ Council Legal Services whether there is discretion for a Member State to use either of the “limits” in individual years – or are they committed to the first indicator chosen for reporting purposes?

The derogation for certain Member States under Article 5 is now to be available under proposed new Article 5(6) to those Member States “which prepared for reuse/ recycled less than 20% or landfilled more than 60% of its municipal waste in 2013”. In addition, the limit on the amount of municipal waste sent to landfill by 2030 for derogated Member States to be reduced under Article 5(6) of the Landfill Directive to “25% of the total amount of municipal waste generated” or “50 kg per capita per year”. Ireland is considering the implications of providing a derogation on the proposed new landfill restrictions for certain Member States.

- The Commission shall examine the targets by the end of 2024 under proposed Article 5(7) within a view to “reviewing” them. Ireland can agree to this Presidency Proposal.

Article 5a: Rules on the Calculation of the Attainment of the Targets laid down in Article 5

Article 1(2a) of the First Presidency Compromise Proposal proposes to introduce a new Article 5a into the Landfill Directive on the Rules on the calculation of the attainment of the targets as laid down in Article 5.

- 1. For the purpose of calculating whether the targets laid down in Article 5 (5) (a) and (b) have been attained,*
 - (a) the weight of the municipal waste generated and directed to landfilling shall be calculated in a given calendar year;*
 - (b) the weight of municipal waste entering treatment with a view to its subsequent landfilling, such as mechanical biological treatment or incineration without energy recovery, shall be considered as landfilled;*
 - (c) the weight of waste which is removed by treatment operations prior to recycling or other recovery of municipal waste, such as sorting, and which is subsequently landfilled shall be included in the weight of municipal waste reported as landfilled;*
 - (d) the weight of waste from recycling or other recovery operations of municipal waste which is subsequently landfilled shall not be included in the weight of municipal waste reported as landfilled.*
- 2. Member States shall establish an effective system of quality control and traceability of the municipal waste landfilled to ensure that conditions laid down in paragraphs 1 of this Article are met. They may use the system established in accordance with Article 11a(4) of Directive 2008/98/EC for this purpose.*

3. *Waste sent to another Member State or exported from the Union for the purposes of landfilling shall be counted towards the amount of waste landfilled by the Member State in which that waste was collected.*

Ireland supports the proposed Article 5a(1)(a), which refers to “municipal waste generated and directed to landfilling”.

Ireland also supports the proposed Article 5a(1)(d), which refers to residues arising during the course of the actual “recycling or other recovery operation” not being counted as landfilled.

Ireland does not agree with the Presidency Proposal for Article 5a(1)(b) “the weight of waste entering treatment with a view to its subsequent landfilling” as DUE CREDIT SHOULD BE GIVEN FOR TREATMENT provided to residual municipal waste that is SPECIFICALLY DESIGNED TO REDUCE THE QUANTITY, BIODEGRADABILITY AND CHARACTER OF RESIDUAL WASTE THAT HAS TO BE SENT TO LANDFILL (e.g. stabilised biowaste resulting from a mechanical-biological treatment process, incineration bottom ash sent to landfill).

Moreover, Ireland is concerned that there is a lot of scope for double-counting under the proposed Articles 5a(1)(b) “the weight of waste entering treatment with a view to its subsequent landfilling” and Article 5a(1)(c) “the weight of waste which is removed by treatment operations or other recovery of municipal waste” and subsequently landfilled. Ireland would suggest that explicit text be inserted within Article 5(1) of the Directive to provide that “double-counting” should not take place.

Ireland can agree to the Presidency Proposal for an “effective system of quality control and traceability” under proposed Article 5a(2) of the Landfill Directive.

Ireland can agree to the Presidency Proposal for municipal waste exported for landfill by a Member State being counted as landfilled under proposed Article 5a(3) of the Landfill Directive.

Article 16: Amendment to the Annexes

Ireland can agree to the Presidency Proposal that the Annexes should only be amended by “legislative proposals”.

Article 17: Committee Procedure

Ireland welcomes the Presidency Proposal to include a new Article 17.3 to provide that the provisions of the third paragraph of Article 5(4) of Regulation 182/2011 shall apply where the committee delivers no opinion on a draft implementing act.

Article 17a: Exercise of the Delegation

Ireland can agree to the Presidency Proposal to delete “Exercise of the Delegation” – as there are no longer delegated acts proposed, this provision is redundant.

Transposition of Revisions to Directive 1999/31/EC

Ireland welcomes the Presidency Proposal to increase the time for transposition to 24 months – rather than 18 months – after the entry into force of the Directive.

Annex I, Point 3.5

Ireland can agree to the Presidency Proposal to determine the permeability coefficient for landfills by an implementing act, which essentially updates the Landfill Directive to comply with the prevailing Comitology procedures.

PACKAGING DIRECTIVE

Article 3 of Packaging Directive 1994/62/EC: Definitions

There are no amendments in the First Presidency Compromise Proposal to those proposed in the original Commission Proposal.

Article 5 of Packaging Directive: Reuse

Article 1(2a) of the First Presidency Compromise Proposal completely re-casts Article 5 of the Packaging Directive, untouched in the Commission Proposal:

- 1. Member States shall take measures to increase the share of re-useable packaging placed on the market and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such measures may include:*
- (a) the use of deposit return schemes;*
 - (b) the setting of quantitative targets;*
 - (c) the use of economic incentives.*

Article 5(1)(a): While acknowledging that the use of deposit return schemes is not being made absolutely mandatory, Ireland proposes the addition of the phrase to the end of point (a) “where appropriate, taking into account the technical, environmental and economic feasibility of implementing such schemes”, reflecting comments Ireland has previously made on proposed changes to Article 9 of the Waste Framework Directive. This amendment would allow Member States the flexibility in responding to the need to increase reuse but taking due account of the environmental and economic benefits offered by Deposit-Refund schemes in the context of existing national initiatives and circumstances.

Article 5(1)(b): Ireland proposes rewording as follows: “examine the potential for the setting of quantitative targets”. Ireland would like further detail from the Presidency/Commission in the terms of the kinds of packaging that might be targeted and how it relates to the proposal in proposed Article 5(1)(a) on deposit and return systems. As Ireland has mentioned in previous comments on Article 9 of the Waste Framework Directive, the Joint Proposal from Member States (including Ireland) to allow certain re-use activities to count towards the fulfilment of preparing for reuse/ recycling targets would make Deposit-Refund schemes more attractive in economic terms.

Article 5(1)(c): Ireland would welcome clarification from the Presidency/Commission on the objective behind this provision on the “use of economic incentives”. Who would be targeted by such a provision?

Ireland can accept the Presidency Proposal in proposed new Article 5(2) of the Packaging Directive to examine the data on reuse provided by Member States and to provide a Report, accompanied by a legislative Proposal, if appropriate.

Article 6: Recovery and Recycling

The First Presidency Compromise Proposal does not propose amendments to the overall packaging recycling targets for 2025 or 2030 (although the previous targets included the “reuse” element within the Commission Proposal definition of “preparing for reuse” - which is now dealt with under the Presidency Proposal for Article 5).

As previously indicated, Ireland can agree in principle to overall packaging recycling targets of 65% by the 31 December 2025 and 75% by the 31 December 2030.

The First Presidency Compromise Proposal proposes to reduce the material specific targets for plastic and wood, while the aluminium specific target has been incorporated into a specific target covering all metals.

Material specific targets to be achieved by 31 December 2025:

- The target for plastic packaging that must be recycled is now 50%, down 5% from the original proposal. Ireland could agree in principle to this proposal.
- The target for wood packaging to be recycled is now proposed as 50%, a reduction of 10%. Ireland was in agreement in principle with the original proposal of 60%.
- Ireland can agree to the proposal to incorporate the material specific target for aluminium into a target for recycling of metals.

Material specific targets to be achieved by 31 December 2030:

- The target for wood packaging to be recycled is proposed as 55%, a reduction of 20%. Ireland was in agreement in principle with the original proposal of 75%.
- Ireland can agree to the proposal to eliminate the material specific target for aluminium.

However, Ireland considers that packaging recycling targets are inextricably linked to the measurement method and that the feasibility of the targets can only be finally be decided when the measurement method has been agreed. It may therefore be premature to amend the level of ambition of the material specific targets at this stage of the negotiation process.

Article 1(3) of the Presidency Compromise Proposal proposes to add a new Article 6 1.a to allow for a review of the proposed targets by the 31st December 2024. Ireland can agree to this proposal.

Article 6a of Packaging Directive: Rules on the Calculation of the Attainment of the Targets set Down in Article 6

The First Presidency Compromise Proposal amends the Commission Proposal on Article 6a on Calculation Methodology Rules in line with the (proposed revision in the Article 11a) Waste Framework Directive calculation methodology.

- Ireland notes the Presidency amendment to provide that all losses prior to the actual recycling operation are to be deducted from the weight of waste counted as recycled. However, Decision 2005/270/EC on the calculation methodology for the recycling and recovery of packaging waste currently provides that where waste is recycled **without significant losses**, that waste may be considered the weight of the waste which is recycled. **Ireland would suggest that a small tolerance should be allowed in Article 6a.3** e.g. 2%.
- Ireland welcomes the Presidency Proposal to amend Article 6.4 to explicitly provide that “standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices” may be used to calculate data on recycled waste.
- Ireland can agree to the Presidency Proposal for a new Article 6a.4a which states that “the amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.”

Article 9: Essential Requirements

Ireland is very surprised that the First Presidency Compromise Proposal proposes no amendments to Article 9 on Essential Requirements of Packaging when so many amendments on waste prevention are being developed by the Presidency for inclusion in Article 9 of the Waste Framework Directive. This oversight is disappointing, particularly in view of the findings the 2011 Study that the Essential Requirements are not well understood or enforced by Member States. The Proposal for the revision of the Packaging Directive provides an excellent opportunity to improve the implementation of the Essential Requirements of Packaging.

The 2011 Study recommended that there were potential solutions to the difficulties identified in relation to the implementation of the Essential Requirements in the form of policy measures such as
“the inclusion of the requirement to assess conformity to the Essential Requirements in the Packaging Directive, and clarification of when packaging conforms with the Essential Requirements or not via the introduction into the Packaging Directive of benchmark indicators on the weight and size of packaging for various product categories”

Indeed, much work was carried out in relation to “Conformity Assessment” in the Article 21 Packaging Waste Committee in the late 1990s.

Article 11 of Packaging Directive: Concentration of Heavy Metals Present in Packaging

Ireland welcomes the Presidency Proposal to provide for an amendment of Article 11.3, whereby the Commission shall adopt implementing acts – rather than delegated acts - in accordance with Article 21a to determine the conditions under which the concentrations levels referred to in paragraph 1 are not to apply to recycled materials and to product loops which are in a closed and controlled chain, as well as the types of packaging which are exempted from the requirement referred to in the third indent of paragraph 1.

Article 12: Information Systems and Reporting

The First Presidency Compromise Proposal proposes a number of amendments to Article 1(7)(d) of the Commission Proposal for Article 12 of the Packaging Directive:

- Proposed Article 12.3a is now to contain an explicit link to Annex III of the Packaging Directive for both the purposes of data reporting by Member States and the establishment of the notification format under proposed Article 12.3d.

Ireland notes that the format of the data tables that a Member State is required to report to the Commission under Commission Decision 2005/270/EC regarding the recovery/recycling targets do not require a breakdown between household and non-household waste packaging. Accordingly, many Member States (including Ireland) will have not set up national waste data reporting systems to gather these breakdowns (and it would be very difficult in practice for waste operators to provide the details of the division of household/ non-household packaging waste due to the mixing of wastes during collection, handling and pre-treatment).

Ireland also notes that it is proposed in the Presidency Compromise Proposal that Annex III will require that separate columns be provided in the pro-forma tables for primary, secondary and tertiary packaging. Again, it will be difficult in practice to provide the details of the breakdown of primary, secondary and tertiary packaging waste.

- Proposed Article 12.3a is now to include a requirement for the mandatory submission by Member States of data on reuse of packaging within the prescribed notification format. As reuse of packaging is a non-waste activity, it will be difficult to oblige operators to provide reliable information on reuse of packaging. However, the Joint Proposal from Member States (including Ireland) to allow certain re-use activities to count towards the fulfilment of preparing for reuse/ recycling targets would create an economic incentive for Member States to have re-use counted and would greatly facilitate the collection of such data on packaging re-use.
- Ireland can agree to the First Presidency Compromise Proposal to make explicit reference to the “examination” procedure in the adoption of implementing acts under Article 12.3d.

Article 21: Committee Procedure

Ireland welcomes the First Presidency Compromise Proposal to include the provision of a new Article 21.3 to provide that the provisions of the third paragraph of Article 5(4) of Regulation 182/2011 shall apply where the committee delivers no opinion on a draft implementing act.

Article 17a: Exercise of the Delegation

Ireland can agree to the First Presidency Compromise Proposal to include a new Article 21a.3a in the Packaging Directive “Exercise of the Delegation” requiring consultation with Member State Experts before adopting a delegated act, which essentially updates the prevailing legal requirements.

Transposition of Revisions to Directive 94/62/EC

Ireland welcomes the Presidency Proposal to increase the time for transposition to 24 months – rather than 18 months – after the entry into force of the Directive.

Annex III

As already noted under Article 12 of the Packaging Directive, Ireland is concerned with the proposed inclusion of a requirement for separate records of primary, secondary and tertiary packaging waste (along with the requirement to align the Notification Format with the Requirements of Annex III). It may not be feasible to report such data on primary, secondary and tertiary packaging separately and would, at the very least, require a major overhaul of data recording systems.

DIRECTIVES ON WEEE, ELVs and BATTERIES

Transposition of Revisions to Directives 2012/19/EU, 2000/53/EC and 2006/66/EC

Ireland welcomes the Presidency Proposal to increase the time for transposition to 24 months – rather than 18 months – after the entry into force of the Directive.

SPAIN

DMR (14152/16)

Artículo 2. Ámbito de exclusión:

- Apartado e) y considerando 11). Podemos aceptar la redacción del artículo 2.e) siempre que en el considerando 11 se mencione el total cumplimiento de la legislación de piensos.
- Nuevo apartado f) y considerando 11a (buques). Reserva de estudio. Consideramos que debe incluirse que a los residuos obtenidos del reciclado de buques les es de aplicación la DMR, de conformidad con lo establecido en el segundo inciso del apartado g del artículo 13.1 del Reglamento de buques, que dice:

“that all waste generated from the ship recycling activity and their quantities are documented and are only transferred to waste management facilities, including waste recycling facilities, authorised to deal with their treatment without endangering human health and in an environmentally sound manner;”

Teniendo en cuenta lo anterior, se propone el siguiente cambio:

Propuesta de la Presidencia	Propuesta España
(f) ships flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to any waste on board of a ship other than operationally generated waste	(f) ships flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to any waste on board of a ship other than operationally generated waste and to waste generated from the ship recycling activity.

Artículo 3. Definiciones

Residuo municipal:

- Consideramos que se debe mantener el término cantidad por las razones que ya hemos comentado en nuestros comentarios anteriores para tratar de excluir a los residuos comerciales generados en grandes cantidades y gestionados por privados. Si finalmente no se incluyera el término cantidad podríamos trabajar describiendo los posibles orígenes que pueden asociarse al término “other sources” bien de forma inclusiva en el apartado b) o exclusiva en el último párrafo.
- En el apartado a) consideramos que la mención a los envases no es necesaria en la medida en que ya se encontrarían incluidos en los materiales mencionados.
- En el apartado b), proponemos que se incluyan los residuos de parques y jardines.
- En la última frase, consideramos que debe volver a incluirse la exclusión ligada a los RCD originados en las obras de hogares.

Teniendo en cuenta todos los comentarios anteriores, se proponen dos opciones:

Propuesta de la Presidencia	Propuesta España 1	Propuesta España 2
<p>municipal waste" means</p> <p>(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses and furniture;</p> <p>[...]</p> <p>(b) mixed waste and separately collected waste from other sources <u>including market and street cleaning services</u> that is comparable to household waste in nature and composition [...];</p> <p>(c) [...]</p> <p>Municipal waste does not include waste from production, agriculture, forestry, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and demolition waste [...].</p>	<p>municipal waste" means</p> <p>(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including mattresses and furniture;</p> <p>(b) mixed waste and separately collected waste from other sources, <u>small commerce and trade, small business, small office buildings and institutions including schools, hospitals and government buildings</u>, including market and street cleaning services <u>and park and garden maintenance</u> that is comparable to household waste in nature and composition</p> <p>Municipal waste does not include waste from production, agriculture, forestry, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and demolition waste <u>except waste arising from minor construction and demolition activities by individual households</u>"</p>	<p>municipal waste" means</p> <p>(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including mattresses and furniture;</p> <p>(b) mixed waste and separately collected waste from other sources <u>including market and street cleaning services</u> that is comparable to household waste in nature and composition [...];</p> <p>Municipal waste does not include waste from production, agriculture, forestry, <u>large commerce and industry</u>, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and demolition waste <u>except waste arising</u></p>

		<u>from minor construction and demolition activities by individual households.</u>
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España también podría trabajar con la propuesta manifestada por Francia en la reunión del día 14 de noviembre, que hacía mención a que acotaba los residuos procedentes de otras fuentes a que éstos se beneficiaran de los mismos Servicios de gestión que los residuos procedentes de hogares. (**the same management services than household waste**”).

Biorresiduos: de acuerdo a la propuesta

RCD: de acuerdo con la propuesta

Otra valorización material: no tenemos inconveniente en que se incluya, pero consideramos que tal y como se define no aporta ni clarifica nada.

Relleno:

- Consideramos que debe limitarse a RCD no peligroso y no a cualquier tipo de residuos, ya que posiblemente si se permite el relleno con cualquier residuo no peligroso estaremos ante vertido encubiertos. Si no se quiere acotar a que sean RCD, se podría clarificar como se establece en la propuesta 2.
- La mención a “excavated areas and mines” debería sustituirse por “extractive industries activities” de conformidad con la terminología establecida en la Directiva 2006/21/CE, ya que las canteras “quarries” no estarán incluidas y es una de las áreas en las que se puede producir un relleno.
- Consideramos que debe clarificarse lo que se quiere decir en el último párrafo del considerando 6a, ya que sería contrario a la propia definición de reciclado que excluye la transformación en materiales que vayan a usarse en operaciones de relleno. Es posible que esta confusión derive de la inclusión de “and infrastructure and construction foundation”.

Propuesta de la Presidencia	Propuesta España 1	Propuesta España 2
“Backfilling” means any recovery operation where suitable non-hazardous waste is used for-purposes of reclamation in excavated areas and mines or for engineering purposes in landscaping and infrastructure and construction foundation [...]. Waste used for backfilling must substitute non-waste	“backfilling” means any recovery operation where suitable construction and demolition non-hazardous waste is used for-purposes of reclamation in excavated areas resulting from extractive industrie activities and mines or for engineering purposes in landscaping and infrastructure and	“backfilling” means any recovery operation where suitable non-hazardous waste is used for-purposes of reclamation in excavated areas resulting from extractive industrie activities and mines or for engineering purposes in

materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes	construction foundation. Waste used for backfilling must substitute non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes.	landscaping and infrastructure and construction foundation. Waste used for backfilling must substitute and be similar to non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes.
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EPR scheme: Agradecemos que se haya incorporado una definición. Solamente quisiéramos señalar que quizá la palabra “operational” puede generar confusión en relación con el uso del término operaciones de gestión de residuos. De conformidad con la DMR los EEMM son los que establecen condiciones de operación a las instalaciones de tratamiento de residuos y no puede darse cabida a que sean los productores de producto a establecer las condiciones de operación de los gestores de residuos. Entendemos que lo que se pretende decir es que la legislación debe concretar la responsabilidad de los productores de producto en la organización de la gestión. Por este motivo proponemos cambiar el término ”operational” por “organizational”.

Propuesta de la Presidencia	Propuesta España
20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle.	20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and organizational responsibility for the management of the waste stage of a product’s life cycle.

Artículo 4.

De acuerdo. No tenemos problema con lo propuesto por la Presidencia, aunque estaría bien que se incluyeran ejemplos de los posibles instrumentos económicos. No tenemos inconveniente en que se informe a la Comisión de los instrumentos económicos adoptados como ya propusimos en nuestros comentarios al doc 10525/16, ya que para el intercambio de información que se propone es necesaria la remisión de información.

Artículo 5.

No tenemos comentarios a los apartados 1, 2 y 3 de la propuesta. Teniendo en cuenta el debate surgido en la reunión del día 14 de noviembre sobre el movimiento de estas sustancias entre Estados Miembros y con distinta legislación/opinión en cuanto a su consideración como residuo, consideramos que debiera incluirse la siguiente cláusula de salvaguarda como nuevo apartado 4:

Propuesta de la Presidencia	Propuesta España
...	4. Where national regulation has been established and the holder intends to transport by-products outside of that member state, Waste Shipment Regulation will be applied in order to comply with article 28 of this Regulation

Artículo 6. Fin de condición de residuo

Nos parecen bien las modificaciones introducidas en los apartados 1, 2 y 4. Respecto al 3 suprimido, nos parece bien siempre que se mantenga el considerando 17b. Respecto al punto 4a, aunque procede de la DMR vigente, desde España siempre se ha considerado que el caso a caso se aplica a los flujos de residuos, pero no a un caso particular de un residuo generado en una instalación concreta. Es por ello que se incluyó la obligación de notificación bajo la antigua Directiva 98/34, notificación que tiene sentido para normas nacionales pero no para autorizaciones concretas. Si existiera la posibilidad que se plantea en el apartado 4a, conllevaría distorsiones de mercado y además sería de difícil control por la legislación de residuos ya que el material podría exportarse como producto libremente a otros EEMM. Por tanto, si ese es su sentido pediríamos su eliminación conforme a la siguiente propuesta. Vinculado también al considerando 8 a

Propuesta de la Presidencia	Propuesta España
Article 6. 4a. Where criteria have not been set at Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be notified to the Commission according to Directive 2015/1535/EC.	[..]

<p>Recital (8a)</p> <p>Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, and procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.</p>	<p>Recital (8a)</p> <p>Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, and procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.</p>
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De acuerdo al apartado 4b.

Consideramos que debiera incluirse un nuevo punto 4c con la siguiente cláusula de salvaguarda en relación con la posibilidad de movimiento de estos materiales entre estados miembros y su consideración como residuos en esos estados miembros:

Propuesta de la Presidencia	Propuesta España
...	<p>4c. Where national regulation has been established and the holder intends to transport end of waste material outside of that member state, Waste Shipment Regulation will be applied in order to comply with article 28 of this Regulation.</p>

Artículo 7. Lista de residuos.

De acuerdo con la propuesta de la presidencia.

Artículo 8.RAP.

De acuerdo. No tenemos comentarios.

Artículo 8a. Requisitos generales de la RAP

Apartado 1 y 2. De acuerdo.

Apartado 3. En el punto c).

Conforme al apartad 3 letra c), en la práctica para garantizar la calidad de la información que suministran las organizaciones de RAP, se está proponiendo que dichas organizaciones establezcan un mecanismo para controlar tanto a los productores de producto como a los gestores de residuos. España considera que son los Estados miembros los que deben establecer un mecanismo adecuado para asegurar la calidad de la información cuando se aplica la RAP. Consideramos que son los Estados miembros los que deben establecer un mecanismo para recabar la información correspondiente a la puesta en el mercado de productos y a la gestión de los residuos. Las organizaciones deben solamente presentar la información que los EEMM les solicite, y en lo que respecta a la información financiera sí consideramos que esta tenga que estar auditada.

Propuesta de la Presidencia	Propuesta España Opción A
Article 8a 3. C) puts in place an adequate self-control mechanism, supported, where relevant by regular independent audits, to appraise: – the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b); – the quality of data collected and reported in accordance with paragraph 1, third indent, and the requirements of Regulation (EC) No 1013/2006.	Article 8a 3. C) submit a report supported by regular independent audits, to appraise: – the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b); – the information and data on products placed in the market and data on their waste management, as required by the member states;

Apartado 4. Letra a) primer gui3n: consideramos que los productores de producto deben financiar las actividades de preparaci3n para la reutilizaci3n de residuos susceptibles de someterse a ese tratamiento pero para evitar posibles malinterpretaciones del t3rmino “where appropriate” se propone una redacci3n en l3nea con lo anterior. As3 mismo, consideramos que los fabricantes no deben apropiarse de los residuos/materiales que salen de las plantas de tratamiento, ya que eso interfiere en la competencia en lo que respecta al sector dedicado a la gesti3n de los residuos (los residuos son propiedad de las plantas de tratamiento pero no de los productores de producto). Los productores de producto tienen la responsabilidad de organizar correctamente la gesti3n conforme al principio de jerarqu3a. Para reflejar lo anterior proponemos modificar la 3ltima frase de este apartado. As3 el apartado a) con las dos modificaciones explicadas quedar3a:

Propuesta de la Presidencia	Propuesta Espa3a
<p>Article 8a.4.</p> <p>(a) cover the entire costs of waste management for the products it puts on the [...] market in that Member State, including all the following:</p> <ul style="list-style-type: none"> – costs of separate collection, [...], sorting and treatment operations, <u>and where appropriate of reuse and preparation for reuse,</u> required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products; – costs of providing adequate information to waste holders in accordance with paragraph 2; – costs of data gathering and reporting in accordance with paragraph 1, third indent 	<p>Article 8a.4.</p> <p><i>a) cover the entire cost of waste management for the products it puts on the market in that Member State including all the following:</i></p> <ul style="list-style-type: none"> <i>- costs of separate collection, sorting and treatment operations <u>including preparing for reuse of waste liable to prepare for reuse,</u> required to meet the waste management targets referred to in paragraph 1, second indent, <u>taking into account, where appropriate, the estimation of the economical benefits that are obtained by treatment and reuse operators from reuse or sales of secondary raw material from the wastes received. this benefits should be considered in the tariffs of reuse and treatment operations;</u></i> – costs of providing adequate information to waste holders in accordance with paragraph 2; – costs of data gathering and reporting in accordance with paragraph 1, third indent

Respecto al apartado 5. Consideramos que debe incluirse tambi3n, en el primer p3rrafo, el seguimiento y vigilancia de las organizaciones de EPR y en el segundo p3rrafo proponemos que la autoridad mencionada no s3lo se designe en el caso de que haya m3ltiples organizaciones, sino tambi3n cuando haya solo una, con lo que pondr3amos reformular.

Para ello proponemos la siguiente modificación para el apartado 5:

Propuesta de la Presidencia	Propuesta España
<p>Article 8a.5</p> <p>5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, <u>irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU</u> are implementing their extended producer responsibility obligations, the financial means, [...] are properly used, and all actors involved in the implementation of the schemes report reliable data.</p> <p>Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, the Member State concerned shall [...] appoint an [...] authority independent of private interests to oversee the implementation of extended producer responsibility obligations</p>	<p>Article 8a.5</p> <p><i>5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU are implementing their extended producer responsibility obligations, the financial means, are properly used, and all actors involved in the implementation of the schemes <u>comply with their obligations, especially EPR organizations,</u> and report reliable data.</i></p> <p><i>Member States shall appoint an authority independent of private interests to oversee the implementation of extended producer responsibility obligations, specially where multiple organisations implement extended producer responsibility obligations on behalf of the producers</i></p>

Artículo 9.

Sobre el apartado 1 y en relación con nuestros comentarios al artículo 11 proponemos que se incluya el término “Recyclable”.

Propuesta de la Presidencia	Propuesta España
<p>'Article 9</p> <p>Prevention of waste</p> <p>1. Member States shall take measures to prevent waste generation. These measures shall:</p> <ul style="list-style-type: none"> - encourage the design, manufacturing and use of products 	<p>'Article 9</p> <p>Prevention of waste</p> <p>1. Member States shall take measures to prevent waste generation. These measures shall:</p> <ul style="list-style-type: none"> - encourage the design, manufacturing and use of products that are resource

that are resource efficient, durable, repairable, reusable and [...] upgradable ;	efficient, durable, repairable, reusable, recyclable and upgradable;
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No tenemos comentarios a los apartados 4 y 5.

Respecto al apartado 2, seguimos considerando que los indicadores mencionados sobre eliminación o valorización energética no son indicadores de prevención sino de gestión de residuos e indicarían si se avanza en las opciones prioritarias del principio de jerarquía. Avanzando en las opciones de gestión prioritarias (preparación para la reutilización y reciclado) se reducirían las necesidades de eliminación y de valorización energética, pero no se está previniendo la generación de residuos. Por ello que consideramos que debe mencionarse sólo los indicadores de cantidad de residuos en el apartado 2.

Respecto al apartado 3, consideramos que también en el acto de implementación se debe incluir la definición de food waste conforme a lo que se determine en los proyectos en marcha, para ello proponemos la siguiente modificación en los apartados 3 y 4:

Propuesta de la Presidencia	Propuesta España
<p>Article 9. par 2,3 and 4</p> <p>2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the [...] quantity of waste that is generated, [...] disposed of, or subject to energy recovery.</p> <p>3. Member States shall monitor and assess the implementation of their food waste prevention measures by measuring food waste on the basis of methodologies established in accordance with paragraph 4.</p> <p>4. The Commission may adopt implementing acts to establish indicators to measure the overall progress in the implementation of waste prevention measures. In order to ensure uniform measurement of the levels of food waste, the Commission shall adopt an implementing act to establish a common methodology, including minimum quality</p>	<p>Article 9 par 2,3 and 4</p> <p>2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the quantity of municipal waste and other types of waste that are generated.</p> <p>3. Member States shall monitor and assess the implementation of their food waste prevention measures by measuring food waste on the basis of the definition and the methodologies established in accordance with paragraph 4.</p> <p>4. The Commission may adopt implementing acts to establish indicators to measure the overall progress in the implementation of waste prevention measures. In order to ensure uniform measurement of the levels of food waste, the Commission shall adopt an implementing act to establish a common definition and methodology, including</p>

requirements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).	minimum quality requirements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2)
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Artículo 11.

Respecto al apartado 1, España considera que, en aplicación del principio de jerarquía, para avanzar en la preparación para la reutilización se debe facilitar el acceso a los residuos a los gestores autorizados que lleven a cabo estas operaciones. Por este motivo España apoya que se recoja esta idea en el primer párrafo si bien limitándola a preparación para la reutilización y a gestores autorizados por los Estados Miembros.

España también considera que la recogida separada de residuos es clave para avanzar en las primeras opciones de la jerarquía y considera que se puede hacer un mal uso del condicionado de viabilidad técnica, económica y ambiental, retrasando la implantación de estas recogidas.

Nos parece correcto que se mencione la demolición selectiva. La separación de RCD contribuye no sólo a garantizar que se separen las sustancias y materiales peligrosos para su correcta gestión, sino que también contribuye a facilitar la preparación para reutilización de materiales y a un reciclado de calidad de los áridos obtenidos en comparación con los áridos procedentes de RCD mezclados.

Respecto al último párrafo: “*Members states shall take measures to encourage the design, manufacturing, and use of products that are recyclable.*”, si bien lo compartimos, consideramos que se trataría de una medida de prevención al objeto de reducir el impacto ambiental de la gestión de los residuos por lo que consideramos que debiera incluirse el término “recyclable” en el primer guión del artículo 9 como ya se ha mencionado. No obstante, llamamos la atención de que para mayor efectividad de las medidas de ecodiseño, España considera que deben ser adoptadas a nivel de la Unión Europea para evitar distorsiones del mercado.

A continuación se reflejan todos los cambios propuestos en el apartado 1 del artículo 11:

Propuesta de la Presidencia	Propuesta España
<p>Article 11</p> <p>'1. Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, by advancing the granting of access [...] of such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.</p>	<p>Article 11</p> <p>1. Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, by advancing the granting of access [...] of preparing for reuse operators such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other</p>

<p>Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors <u>[...]</u></p> <p>Member States shall take measures to promote selective demolition in order to enable removal and safe handling of hazardous substances and materials, as well as sorting systems for construction and demolition waste for at least the following: wood, [...] mineral fractions (concrete, bricks, tiles and ceramics), metal, glass, plastics and plaster, in order to attain the target set out in paragraph 2(b).</p> <p><u>Member state shall take measures to encourage the design, manufacturing, and use of products that are recyclable</u></p>	<p>measures.</p> <p>Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors <u>[...]</u></p> <p>Member States shall take measures to promote selective demolition in order to enable removal and safe handling of hazardous substances and materials, <u>and to promote preparation for reuse and high quality recycling</u> as well as sorting systems for construction and demolition waste for at least the following: wood, [...] mineral fractions (concrete, bricks, tiles and ceramics), metal, glass, plastics and plaster, in order to attain the target set out in paragraph 2(b)</p>
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Respecto al párrafo primero *del apartado 2*, consideramos que debe mencionarse la jerarquía de residuos. Para ello proponemos su inclusión de la forma siguiente:

Propuesta de la Presidencia	Propuesta España
<p>Article 11.2</p> <p><u>'In order to comply with the objectives of this Directive, and move towards a circular economy with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:</u></p>	<p>Article 11.2</p> <p><i>'In order to comply with the objectives of this Directive <u>and hierarchy principle</u>, and move towards a circular economy with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:':</i></p>

Sobre el nivel de los objetivos España prefiere no manifestarse hasta que no se concreten otros apartados de la propuesta como la definición y el método de cálculo.

Sobre los dos criterios incluidos para poder acogerse a la prórroga (20% de reciclado o 60% de vertido), consideramos que debe aplicarse un único criterio y parece más lógico que se aplique en este caso el relativo a la tasa de reciclado. Respecto al criterio del 20%, dada la formulación tan genérica actual, qué datos se usarían (¿de 2013, datos más recientes?)

Propuesta de la Presidencia	Propuesta España
Article 11.3 <u>'3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.</u>	Article 11.3 '3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.'

España podría valorar positivamente la inclusión de un objetivo específico de reciclado de biorresiduos y un objetivo de regeneración de aceites usados.

Artículo 11a.

Agradecemos que se haya eliminado la referencia a la reutilización de productos en el cálculo de objetivos de gestión de residuos. Ello asegura una mayor coherencia jurídica en todo el texto puesto que la reutilización se aplica a productos y la preparación para reutilización y reciclado se aplica a residuos. Además, existen muchas dudas metodológicas sobre cómo computar la reutilización dado que no se ha incluido ninguna metodología en la propuesta.

No tenemos comentarios al apartado 1.

Respecto al apartado 3, entendemos que con la nueva propuesta de la presidencia se vuelve a incluir como punto de medida los residuos recogidos separadamente, que la COM había tenido la intención de suprimir. Esto implica que existan dos excepciones a la regla general de cómputo, lo que se traducirá en una mayor dificultad de armonización de los datos, ya que los EEMM podrán elegir cualquiera de las tres opciones. Esto iría en principio iría en contra del espíritu de la directiva de disponer de un método de cálculo común para todos los Estados Miembros con el ánimo de armonizar y disponer de datos más fiables y comparables.

Respecto a la propuesta en sí, no parece coherente lo que se incluye en el apartado 3 al mencionar “separately collected waste which needs no further sorting” con lo que se propone en el 4 de restar las pérdidas estándar. Si no se necesita separación, no sería necesario restar pérdidas. En definitiva, consideramos que el texto debe ser revisado para una mayor coherencia.

Por otra parte, y en relación con las pérdidas estándar, España considera que esta posibilidad puede ser adecuada cuando no se dispone de información de los rechazos o pérdidas de las plantas de tratamiento, lo que puede ocurrir en el caso de las exportaciones (pensamos que a nivel nacional sí puede obtenerse información si existe la obligación por parte de los gestores de residuos de enviar memorias anuales de su actividad a las autoridades competentes donde se indique residuos entrantes, salientes y su destino. Y cuando haya mezclas de residuos de distintas procedencias, mediante caracterizaciones se podría asignar la parte correspondiente a residuos municipales). Cuando no hubiera información en el EM se podrían aplicarse estas pérdidas estándar, razón por la cual España consideraba que debían fijarse por la COM, lo que contribuiría a una mayor armonización. Si se sigue por esta línea habrá que dejarlo claro en el texto que se proponga.

Respecto al párrafo 4a, consideramos que debe limitarse a residuos municipales y que debe incluirse lo mencionado en el apartado 6 completo del artículo 2 de la Decisión 753/2011. Así mismo consideramos que el compostaje doméstico puede también incluirse en el cómputo, como ya lo está en el método 2 de la Decisión 753/2011. Teniendo en cuenta ambas cosas, proponemos lo siguiente:

Propuesta de la Presidencia	Propuesta España
<p>Article 11a.4a</p> <p>4^a. For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance</p>	<p>Article 11a.4a</p> <p>For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable municipal waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance <u>for land treatment resulting in benefit to agriculture or ecological improvement.</u></p> <p><i>Where a Member State includes home-composted waste in the calculation, in the report submitted in application of article 37 it shall explain how the amounts generated and recycled have been calculated.</i></p>

Respecto al párrafo 4b consideramos que debe añadirse al final “backfilled or landfilled” como se propone a continuación y tal y como está incluido en el considerando 17c. Si no se incluye podrá computarse como reciclado materiales que han podido dejar de ser residuo pero que se usan para operaciones de relleno o incluso si finalmente terminan en vertedero por no tener salida comercial:

Propuesta de la Presidencia	Propuesta España
<p>Article 11a.4b</p> <p><i>The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.</i></p>	<p>Article 11a.4a</p> <p><i>The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels, <u>backfilled or landfilled</u></i></p>

Respecto al párrafo 5, seguimos pensando que poder computarse los metales recuperados de las escorias de incineración no incentiva la recogida separada, por lo que seguimos proponiendo su supresión.

Artículo 11b. EWR

De acuerdo. No tenemos comentarios

Artículo 21. Aceites usados

España apoya la propuesta de IT relativa a la introducción de un objetivo mínimo de regeneración para 2025 y 2030. En España en 2006 se aprobó el Real Decreto 679/2006 donde se establecía que a partir de 2008 debe alcanzarse el 65% de regeneración de los aceites usados recogidos.

Artículo 22. Biowaste

Consideramos que debe suprimirse la mención a la viabilidad técnica, ambiental y económica ya que está plenamente demostrado. Además la viabilidad por ejemplo económica depende de con qué se compare: si el coste del vertido es bajo, la recogida separada de biorresiduos nunca será viable económicamente.

Solicitamos que se suprima la mención a “otros productos reciclados, materiales o sustancias”, dado la poca concreción de estos términos, ya que podría entenderse que se incluyen como reciclado los biocombustibles. En cualquier caso, nos gustaría saber a qué materiales o productos se refiere dicha mención.

Por otra parte, y debido a las dudas suscitadas sobre el párrafo “Waste with similar biodegradability and compostability properties may be collected together with bio-waste”, y teniendo en cuenta los beneficios asociados al uso de bolsas compostables utilizadas para la recogida separada de biorresiduos, se propone una redacción que mencione expresamente la norma aplicable a los envases compostables.

Propuesta de la Presidencia	Propuesta España
<p>Article 22.</p> <p>'Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost, digestate and other recycled products, materials or substances [...].</p> <p>Waste with similar biodegradability and compostability properties may be collected together with bio-waste.</p> <p>They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:</p> <ul style="list-style-type: none"> (a) the recycling, including composting and digestion, of bio-waste; (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection; (c) the use of environmentally safe materials produced from bio-waste.; 	<p>Article 22.</p> <p>'Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost and digestate and other recycled products, materials or substances [...].</p> <p><i>Waste, such as compostable bags, which complies with EN 13432 may be collected together with bio-waste.</i></p> <p>They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:</p> <ul style="list-style-type: none"> (a) the recycling, including composting and digestion, of bio-waste; (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection; (c) the use of environmentally safe materials produced from bio-waste.;

España podría valorar positivamente la inclusión de un objetivo específico de reciclado de biorresiduos.

Artículo 26.

España considera que la propuesta de la COM es difícilmente aplicable en la práctica debido a la dificultad de verificación de la cantidad propuesta a lo largo de un año y porque además no se clarifica en el texto si se aplica a un tipo de residuo o la totalidad de residuos que puedan recogerse en un mismo vehículo de transporte. Ello puede suponer una pérdida de trazabilidad en el control de los residuos. En nuestra normativa nacional, a estas empresas sólo se les exige una comunicación previa al inicio de su actividad y la llevanza de un archivo cronológico, que está a disposición de la autoridad competente.

Artículo 27

Ok. Al objeto de avanzar en una mayor armonización, consideramos que para el apartado 1 del artículo 27, debiera ser un Shall en vez de un may.

Propuesta de la Presidencia	Propuesta España
Article 27. '1. The Commission may [...] adopt implementing acts [...] setting out technical minimum standards for treatment activities which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards, in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).	Article 27. '1. The Commission shall [...] adopt implementing acts [...] setting out technical minimum standards for treatment activities which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards, in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2)

Artículos 28, 29 y 30 (2)

No tenemos comentarios.

Artículo 33

Desde nuestro punto de vista y tal y como está redactado el apartado 2, consideramos excesivo que haya un acto de implementación para proporcionar la URL donde está disponible los planes y programas así como la fecha de su adopción. Quizá pueda modificarse el párrafo propuesto por la COM inicialmente para incluir la remisión de la URL.

Propuesta de la Presidencia	Propuesta España
Article 33.2 2, The Commission shall adopt implementing acts to establish the format [...] with which Member States shall provide the URL through which information regarding their plans and programmes can be found, and inform the Commission on their date of adoption and any substantial revisions of plans and programmes. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).'	Article 33.2. <i>'2. The Commission shall adopt implementing acts to establish the format for notifying the information on the adoption and substantial revisions of those plans and programmes, including information URL and date of adoption. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).''</i>

Solicitamos aclaración sobre qué significa el apartado 3, ya que no entendemos cómo podría modificarse el párrafo 2 (sobre el formato) a la luz del avance científico y técnico.

Artículo 35, 36 y 38 y 38a.

No tenemos comentarios.

Artículo 37.

Sobre las fechas mencionadas en los apartados 1 y 2 para indicar cuándo hay que remitir el informe, consideramos que es un poco imprecisa, puesto que podría adoptarse el formato en 2018 y empezar a informarse en 2020 cuando aún no se dispone de esa información.

Sobre el apartado 3, seguimos considerando que, al igual que se hace para el backfilling en el objetivo de RCD, la preparación para la reutilización también debiera notificarse separadamente de reciclado.

Directiva vertederos (14169/16)

Definiciones

Entendemos que al mantener la definición de residuo no peligroso y suprimir la de residuo peligroso (apartado b), es necesario cambiar la referencia de la definición de residuos no peligrosos para remitir al nuevo apartado a) y no al c) que es el que se suprime en la propuesta

Artículo 3.3.

Nos gustaría preguntar a qué se debe esta modificación.

Artículo 5.

Apartado 3.

Respecto al punto f) si bien no nos parece mal la redacción quizá se podría ser más preciso con el siguiente texto “ *Waste that has to be separately collected pursuant article 11(1) and 22 of D^a 2008/98*” que implica no solo el residuo que ya ha sido separado sino el que lo tiene que ser siempre.

Nos gustaría solicitar aclaraciones sobre la razón de por qué se ha incluido el punto g). Aunque por ahora tenemos reserva sobre este nuevo apartado, nos parece que es demasiado general. La prohibición al no concretar a qué residuos se refiere y solo mencionar “suitable for preparing for reuse, recycling and other recovery” supondría prácticamente prohibir el depósito de residuos para 2030.

Con esta nueva propuesta de prohibición, abierta a todos los residuos y sin objetivo de reciclado asociado (el objetivo de reciclado sólo existe, pero solo para residuos municipales), desde nuestro punto de vista se estaría posiblemente alentando a incrementar la valorización energética.

Apartado 5.

Para nosotros ambos objetivos significan más o menos el mismo esfuerzo.

Sobre los dos criterios para aplicar la prórroga, consideramos que debe ser uno único y en este caso, proponemos que sea el vinculado al vertido

Propuesta de la Presidencia	Propuesta España
Article 5.6 <u>A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 %of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5</u>	Article 5.6 A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 %of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5’;

Artículo 5a.

Agradecemos a la Presidencia que haya incluido una metodología de cálculo para valorar el cumplimiento de los objetivos de vertido establecidos en el artículo 5.

Sobre la letra b del apartado 1, con la redacción propuesta parece entenderse que todo lo que entra a las plantas de TMB se debe computar en vertido y sin embargo, una parte de lo que entra en esas plantas se recupera en forma de materiales que se destinan a reciclado (aunque tienen peor calidad) y otra parte puede generar un material que puede usarse en el suelo previa autorización de operación R10. Para clarificar lo anterior, proponemos la siguiente redacción:

Propuesta de la Presidencia	Propuesta España
<p>Article 5a</p> <p><u>b) the weight of municipal waste entering treatment with a view to its subsequent landfilling, such as mechanical biological treatment or incineration without energy recovery, shall be considered as landfilled;</u></p>	<p>Article 5a</p> <p><u>Only the weight of municipal waste entering treatments such as mechanical biological treatment or incineration without energy recovery, that is subsequently landfilled, shall be included in the weight of municipal waste reported as landfilled</u></p>

Solicitamos aclaraciones sobre el apartado d porque no lo entendemos muy bien.

Si bien entendemos que el apartado 3 es correcto, nos gustaría resaltar que no es deseable que se destinen residuos a vertederos en otros países, ya que es en los países receptores de los residuos donde se generan los problemas ambientales asociados a los vertederos. Para evitar quizá esta práctica quizá se debiera desincentivar de alguna manera...

No tenemos comentarios al resto de modificaciones propuestas.

Directiva envases (14198/16)

Teniendo en cuenta las discusiones del pasado 1 de diciembre, España considera que debe reflexionarse si el artículo que sirve de base jurídica para la Directiva vigente (mercado único) debiera ser el artículo de medio ambiente (192) como ocurre en el resto de directivas comunitarias donde aplica la responsabilidad ampliada del productor del producto (RAEEs, Pilas, VFU).

Por otro lado, querríamos aclaraciones e implicaciones de la eliminación del término “preparation for re-use” de forma exhaustiva en todo el texto.

Considerando 3a: Consideramos que se debe revisar el texto propuesto en lo que respecta al cómputo conjunto de la reutilización y el reciclado, si finalmente no se recoge esa posibilidad en el artículo 6 como se propone a continuación.

Propuesta de la Presidencia	Propuesta España
<p>Whereas 3a</p> <p><u>Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is therefore important that Member States take appropriate measures to encourage to increase the share of re-usable packaging placed on the market and the re-use of packaging. Such measures may include the use of deposit return systems and other incentives, such as setting quantitative targets, including combined reuse and recycling targets, and differentiated financial contributions for reusable packaging under extended producer responsibility schemes for packaging.</u></p>	<p>Article 6a</p> <p>Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is therefore important that Member States take appropriate measures to encourage to increase the share of re-usable packaging placed on the market and the re-use of packaging. Such measures may include the use of deposit return systems and other incentives, such as setting quantitative targets, including combined reuse and recycling targets, and differentiated financial contributions for reusable packaging under extended producer responsibility schemes for packaging.</p>

Respecto al considerando 12, preferimos el término “facilities” suprimido en vez de “operation”.

Respecto a la definición de residuo de envase, solicitamos que se mantenga la exclusión eliminada de la definición vigente relativa a los residuos de producción como se propone a continuación:

Propuesta de la Presidencia	Propuesta España
<p>Artículo 3</p> <p>'2. ‘packaging waste’ shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council</p>	<p>Article 3</p> <p>'2. ‘packaging waste’ shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council, excluding production residues.</p>

Podemos apoyar la inclusión del artículo 5 sobre reutilización de envases.

Artículo 6.

Consideramos que la preparación para la reutilización no debe desaparecer del texto, ya que puede darse este tipo de operación de gestión en determinados residuos de envases como por ejemplo palés o bidones.

Sobre los objetivos propuestos, que se han reducido respecto de la propuesta de la COM, podríamos aceptarlos. Respecto a la unión de los objetivos de reciclado de envases de hierro y de aluminio en un único objetivo consideramos que se pierde la oportunidad de incentivar el reciclado de envases de Aluminio. Es cierto que el reciclado de este tipo de envases puede ser inferior al reciclado de envases de hierro y por ello, apoyaríamos la propuesta de Francia de que hubiera objetivos separados para envases de hierro y aluminio pero con inferior valor para los de aluminio.

De acuerdo también a la posibilidad de que la COM revise los objetivos.

Artículo 6a.

Echamos de menos un párrafo similar al que existe en las propuestas de la DMR y Vertederos como punto a’:

Propuesta de la Presidencia	Propuesta España
Article 6a	Article 6a Member States shall calculate the weight of the packaging waste generated and prepared for reuse or recycled in a given calendar year

Respecto al apartado a), la propuesta en sí, no parece coherente lo que se incluye en el apartado 3 al mencionar “separately collected waste which needs no further sorting” con lo que se propone en el 4 de restar las pérdidas estándar. Si no se necesita separación, no sería necesario restar pérdidas. En definitiva, consideramos que el texto debe ser revisado para una mayor coherencia.

España le gustaría que se clarificara si con la redacción propuesta del artículo 6a se permite incluir en el cálculo los residuos de envases recuperados de las plantas de TMB que se destinan a reciclado.

Por otra parte, y en relación con las pérdidas estándar, España considera que esta posibilidad puede ser adecuada cuando no se dispone de información de los rechazos o pérdidas de las plantas de tratamiento, lo que puede ocurrir en el caso de las exportaciones (pensamos que a nivel nacional sí puede obtenerse información si existe la obligación por parte de los gestores de residuos de enviar memorias anuales de su actividad a las autoridades competentes donde se indique residuos entrantes, salientes y su destino). Y que podrían aplicarse por defecto a todos los EEMM, razón por la cual España consideraba que debían fijarse por la COM, lo que contribuiría a una mayor armonización.

Consideramos que no debe suprimirse el apartado b) en la medida en que pueden llevarse a cabo operaciones de preparación para la reutilización de determinados envases, tal y como hemos comentado antes. A este objeto se propone la siguiente redacción, que es similar a la de la COM pero eliminando el términos “Recognised”

Propuesta de la Presidencia	Propuesta España
Article 6a (b) <u>[...]</u>	Article 6a “(b) the weight of the packaging waste prepared for reuse shall be understood as the weight of packaging waste <u>that has been collected by a preparation for re-use operator and has undergone all necessary checking, cleaning and repairing operations to enable re-use without further sorting or pre-processing</u>”

Respecto al apartado 4a, consideramos que debe añadirse al final “backfilled or landfilled” como se propone a continuación y tal y como está incluido en la definición de reciclado de la DMR. Si no se incluye podrá computarse como reciclado, materiales que han podido dejar de ser residuo pero que se usan para operaciones de relleno o incluso si finalmente terminan en vertedero por no tener salida comercial:

Propuesta de la Presidencia	Propuesta España
Article 6a.4a 4a The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels	Article 6a.4a 4a The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels, <u>backfilled or landfilled.</u>

Seguimos pensando que poder computarse los metales recuperados de las escorias de incineración no incentiva la recogida separada, por lo que seguimos proponiendo su supresión.

Anexo III.

Sobre la modificación propuesta para el anexo III, tenemos reserva de estudio dada la dificultad de separar la información entre envases primarios, secundarios y terciarios.

Resto de Directivas (14228/16).

No tenemos comentarios en este momento

Courtesy translation

Waste Framework Directive (14152/16)

Article 2. Exclusions from the scope:

- Paragraph (e) and recital 11). We can accept the wording of Article 2 (e) provided that recital 11 refers to full compliance with feed legislation.
- New section (f) and recital 11a (ships). Study reservation. We consider that it should be included that the waste obtained from the recycling of ships is covered by the WFD, in accordance with the provisions of the second paragraph of section g of article 13.1 of the Ship Recycling Regulation, which establishes:

"That all waste generated from the recycling activity and their quantities are documented and are only transferred to waste management facilities, including waste recycling facilities, authorized to deal with their treatment without endangering human health and in an environmentally sound manner;"

Taking into account the above, the following change is proposed:

Presidency Proposal	Spanish Proposal
(f) ships flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to any waste on board of a ship other than operationally generated waste	(f) ships flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to any waste on board of a ship other than operationally generated waste and to waste generated from the ship recycling activity.

Article 3. Definitions

Municipal waste:

- We believe that the term quantity should be maintained for the reasons we have already mentioned in our previous comments, in order to try to exclude commercial waste generated in large quantities and managed by private entities. If the term quantity is not finally included we could work by describing the possible origins that may be associated with the term "other sources" either in an inclusive way in section b) (proposal 1) or in an excluding way in the last paragraph (proposal 2)
- In section (a) we consider that the mention of the word "packaging" is not necessary since they would be already included in the mentioned materials.
- In section (b), we propose to include park and garden waste.
- In the last sentence, we consider that the exclusion linked to the CDW originated in households should be included again.

Taking into account all the previous comments, two options are proposed:

Presidency Proposal	Spanish proposal 1	Spanish proposal 2
<p>municipal waste" means</p> <p>(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses and furniture;</p> <p>[...]</p> <p>(b) mixed waste and separately collected waste from other sources <u>including market and street cleaning services</u> that is comparable to household waste in nature and composition [...];</p> <p>(c) [...]</p> <p>Municipal waste does not include waste from production, agriculture, forestry, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and demolition waste [...].</p>	<p>municipal waste" means</p> <p>(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including mattresses and furniture;</p> <p>(b) mixed waste and separately collected waste from other sources, <u>small commerce and trade, small business, small office buildings and institutions including schools, hospitals and government buildings</u>, including market and street cleaning services <u>and park and garden maintenance</u> that is comparable to household waste in nature and composition</p> <p>Municipal waste does not include waste from production, agriculture, forestry, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and demolition waste <u>except waste arising from minor construction and demolition activities by</u></p>	<p>municipal waste" means</p> <p>(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including mattresses and furniture;</p> <p>(b) mixed waste and separately collected waste from other sources <u>including market and street cleaning services</u> that is comparable to household waste in nature and composition [...];</p> <p>Municipal waste does not include waste from production, agriculture, forestry, <u>large commerce and industry</u>, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and</p>

	<u>individual households</u> ”	demolition waste <u>except waste arising from minor construction and demolition activities by individual households.</u>
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Spain could also work with the proposal made by France at the meeting on 14 November, which focused on waste from other sources benefiting from the same management services as waste from households. (The same management services as household waste).

Bio-waste: we agree with the proposal

CDW: we agree with the proposal

Other material recovery: we have no problem in including it, but we consider that, as defined, it doesn't contribute or clarify anything.

Backfilling:

- We consider that it should be limited to CDW not dangerous and not to any type of waste, since if filling with any non-hazardous waste is allowed we could face hidden or not registered/illegal landfilling. If it is not intended to be limited to CDW, it could be clarified as set out in our proposal 2.
- The mention of "excavated areas and mines" should be replaced by "extractive industries activities" in accordance with the terminology laid down in Directive 2006/21 / EC, as quarries will not be included and it is one of the areas in which backfilling could be applied. So areas derived or resulting from these activities
- We believe that what is meant by the last paragraph of recital 6a should be clarified as it would be contrary to the very definition of recycling which excludes the processing into materials that are to be used into backfilling operations. It is possible that this confusion derives from the inclusion of the sentence "and infrastructure and construction foundation".

Presidency Proposal	Spanish proposal 1	Spanish Proposal 2
“Backfilling” means any recovery operation where suitable non-hazardous waste is used for-purposes of reclamation in excavated areas and mines or for engineering purposes in landscaping and infrastructure and construction foundation [...].	“backfilling" means any recovery operation where suitable construction and demolition non-hazardous waste is used for-purposes of reclamation in excavated areas resulting from extractive industrie activities and mines or for engineering purposes in landscaping and	“backfilling" means any recovery operation where suitable non-hazardous waste is used for-purposes of reclamation in excavated areas resulting from extractive industrie activities and mines or

Waste used for backfilling must substitute non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes	infrastructure and construction foundation. Waste used for backfilling must substitute non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes.	for engineering purposes in landscaping and infrastructure and construction foundation. Waste used for backfilling must substitute and be similar to non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes..
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EPR scheme: We welcome a definition. We would just like to point out that perhaps the word "operational" may create confusion in relation to the use of the term waste management operations. According to the WFD, the MSs are those that establish conditions of operation for waste treatment facilities and cannot be left to the product producers to establish the conditions of operation of waste managers. We understand that what is meant is that legislation must specify the responsibility of producers of the product in the organization of management. For this reason, we propose to change the term "operational" to "organizational".

Presidency proposal	Spanish proposal
20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle.	20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and organizational responsibility for the management of the waste stage of a product’s life cycle.

Article 4.

We agree. We have no problem with what the Presidency has proposed, although it would be good to include examples of possible economic instruments. We have no objection to informing the Commission of the economic instruments adopted as we have already proposed in our remarks to doc. 10525/16, since for the exchange of information proposed it is necessary to forward information.

Article 5.

We have no comments on paragraphs 1, 2 and 3 of the proposal. Taking into account the debate that arose at the meeting of November 14 on the movement of these substances between Member States and with different legislation / opinion regarding their consideration as waste, we consider that the following safeguard clause should be included as a new paragraph 4 :

Presidency Proposal	Spanish proposal
...	4. Where national regulation has been established and the holder intends to transport by-products outside of that member state, Waste Shipment Regulation will be applied in order to comply with article 28 of this Regulation

Article 6. End of condition of waste.

The amendments made to paragraphs 1, 2 and 4 seem OK to us. With regard to paragraph 3, we are satisfied as long as paragraph 17b is retained. Regarding point 4a, although it comes from the current WFD, Spain has always considered that case by case applies to waste streams, but not to a particular case of a waste generated in a particular installation. That is why the obligation to notify under the old Directive 98/34 was included, a notification which makes sense for national rules but not for specific authorizations. If the possibility posed in section 4a existed, it would lead to market distortions and it would also be difficult to establish a control by waste legislation since the material could be freely exported to other MSs. Therefore, if that is the intention, would ask for its elimination according to the following proposal, linked also to recital 8 a

Presidency Proposal	Spanish proposal
<p>Article 6.</p> <p>4a. Where criteria have not been set at Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be</p>	[..]

notified to the Commission according to Directive 2015/1535/EC .	
<p>Recital (8a)</p> <p>Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, and procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.</p>	<p>Recital (8a)</p> <p>Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, and procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.</p>

We agree with section 4b.

We consider that a new point 4c should be included with the following safeguard clause in relation to the possibility of movement of these materials among member states and their consideration as waste in those member states:

Presidency proposal	Spanish proposal
...	<p>4c. Where national regulation has been established and the holder intends to transport end of waste material outside of that member state, Waste Shipment Regulation will be applied in order to comply with article 28 of this Regulation.</p>

Article 7. List of Waste.

We agree with the proposal of the presidency.

Article 8.EPR

We have no comments.

Article 8a. General Requirements of EPR

Paragraphs 1 and 2. We agree.

Paragraph 3. In point (c):

Under paragraph 3 (c), in practice, to ensure the quality of information provided by EPR organizations, it is proposed that such organizations should establish a mechanism to control both product producers and waste managers. Spain considers that it up to the Member States to establish an adequate mechanism to ensure the quality of information when the EPR is applied. We consider that Member States should establish a mechanism for collecting information on the placing on the market of products and the management of waste. Organizations should only submit the information requested by the MSs, as well as financial information that we consider should be audited.

Presidency Proposal	Spanish proposal
Article 8a 3. C) puts in place an adequate self-control mechanism, supported, where relevant by regular independent audits, to appraise: <ul style="list-style-type: none">– the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b);– the quality of data collected and reported in accordance with paragraph 1, third indent, and the requirements of Regulation (EC) No 1013/2006.	Article 8a 3. C) submit a report supported by regular independent audits, to appraise: <ul style="list-style-type: none">– the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b);– the information and data on products placed in the market and data on their waste management, as required by the member states;

Paragraph 4 (a) first indent: we consider that producers of products should finance the preparatory activities for the re-use of waste that is likely to undergo such treatment, but to avoid possible misinterpretation of the term "where appropriate" an alternative wording is proposed. Likewise, we believe that manufacturers should not take hold/appropriation of the waste / material leaving the treatment plants, as this interferes with competition in the waste management sector (waste is the property of Treatment plants but not of the product producers). Product producers have the responsibility to adequately organize the management according to the principle of hierarchy. To reflect the above, we propose to modify the last sentence of this section. Thus section a, with the two modifications explained would be:

Presidency Proposal	Spanish proposal
<p>Article 8a.4.</p> <p>(a) cover the entire costs of waste management for the products it puts on the [...] market in that Member State, including all the following:</p> <ul style="list-style-type: none"> – costs of separate collection, [...], sorting and treatment operations, <u>and where appropriate of reuse and preparation for reuse</u>, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products; – costs of providing adequate information to waste holders in accordance with paragraph 2; – costs of data gathering and reporting in accordance with paragraph 1, third indent 	<p>Article 8a.4.</p> <p><i>a) cover the entire cost of waste management for the products it puts on the market in that Member States including all the following:</i></p> <p><i>- costs of separate collection, sorting and treatment operations including preparing for reuse of waste liable to prepare for reuse, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account, where appropriate, the estimation of the economical benefits that are obtained by treatment and reuse operators from reuse or sales of secondary raw material from the wastes received. this benefits should be considered in the tariffs of reuse and treatment operations;</i></p> <ul style="list-style-type: none"> – costs of providing adequate information to waste holders in accordance with paragraph 2; – costs of data gathering and reporting in accordance with paragraph 1, third indent

Regarding paragraph 5. We consider that the first paragraph should also include the monitoring and surveillance of EPR organizations and in, the second paragraph, we propose that the mentioned authority is designated not only in the case of multiple organizations, but also when there is only one.

For this, we propose the following modifications for section 5:

Presidency proposal	Spanish proposal
<p>Article 8a.5</p> <p>5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, <u>irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU</u> are implementing their extended producer responsibility obligations, the financial means, [...] are properly used, and all actors involved in the implementation of the schemes report reliable data.</p> <p>Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, the Member State concerned shall [...] appoint an [...] authority independent of private interests to oversee the implementation of extended producer responsibility obligations</p>	<p>Article 8a.5</p> <p><i>5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU are implementing their extended producer responsibility obligations, the financial means, are properly used, and all actors involved in the implementation of the schemes <u>comply with their obligations, especially EPR organizations,</u> and report reliable data.</i></p> <p><i>Member States shall appoint an authority independent of private interests to oversee the implementation of extended producer responsibility obligations, specially where multiple organisations implement extended producer responsibility obligations on behalf of the producers</i></p>

Article 9.

In paragraph 1 we propose that the term “recyclable” is included.

Presidency proposal	Spanish proposal
<p><i>'Article 9</i></p> <p>Prevention of waste</p> <p>1. Member States shall take measures to prevent waste generation. These measures shall:</p>	<p><i>'Article 9</i></p> <p>Prevention of waste</p> <p>1. Member States shall take measures to prevent waste generation. These measures shall:</p>

<p>- encourage the design, manufacturing and use of products that are resource efficient, durable, repairable, reusable and [...] upgradable;</p>	<p>- encourage the design, manufacturing and use of products that are resource efficient, durable, repairable, reusable, recyclable and upgradable;</p>
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We have no comments on paragraphs 1, 4 and 5.

With regard to paragraph 2, we still consider that the indicators mentioned there on energy disposal or recovery are not indicators of prevention but of waste management and indicate whether progress is made in the priority options of the hierarchy principle. Advancing priority management options (preparation for reuse and recycling) would reduce waste and energy recovery needs, but waste generation is not being prevented. That is why we consider that only the indicators of quantity of waste in section 2 should be mentioned.

With respect to paragraph 3, we also consider that the definition of food waste should be included in the implementation act in accordance with what is determined in the ongoing processes and studies. We therefore propose the following modifications in sections 3 and 4:

Presidency proposal	Spanish proposal
<p>Article 9. par 2,3 and 4</p> <p>2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the [...] quantity of waste that is generated, [...]</p> <p>disposed of, or subject to energy recovery.</p> <p>3. Member States shall monitor and assess the implementation of their food waste prevention measures by measuring food waste on the basis of methodologies established in accordance with paragraph 4.</p> <p>4. The Commission may adopt implementing acts to establish indicators to measure the overall progress in the implementation of waste prevention measures. In order to ensure uniform measurement of the levels of food waste,</p>	<p>Article 9 par 2,3 and 4</p> <p>2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the quantity of municipal waste and other types of waste that are generated.</p> <p>3. Member States shall monitor and assess the implementation of their food waste prevention measures by measuring food waste on the basis of the definition and the methodologies established in accordance with paragraph 4.</p> <p>4. The Commission may adopt implementing acts to establish indicators to measure the overall progress in the implementation of waste prevention measures. In order to ensure uniform measurement of the levels of food waste, the Commission shall adopt an</p>

the Commission shall adopt an implementing act to establish a common methodology, including minimum quality requirements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).	implementing act to establish a common definition and methodology, including minimum quality requirements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2)
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Article 11.

With respect to paragraph 1, Spain considers that, in application of the hierarchy principle, to facilitate the preparation for reuse, access to waste should be facilitated by the authorized managers who carry out these operations. For this reason, Spain supports this idea in the first paragraph, but limits its application/scope for reuse and to managers authorized by Member States.

Spain also considers that the separate collection of waste is key to advance in the first options of the hierarchy and considers that it is possible to make a misuse of the condition of technical, economic and environmental feasibility, delaying the implementation of these collections.

We think it is right to mention selective demolition. The separation of CDW contributes not only to ensuring that hazardous substances and materials are separated for their proper management, but also to facilitate the preparation for reuse of materials and to the quality recycling of aggregates obtained in comparison with aggregates from CDW mixtures.

Regarding the last paragraph, “*Member States shall take measures to encourage the design, manufacturing, and use of products that are recyclable*” we consider that this would be a preventive measure in order to reduce the environmental impact of waste management. It should be better placed under article 9, or, alternatively the term "recyclable" could be included in the first indent of Article 9, as already mentioned. However, we would like to point out that in order to make ecodesign measures more effective, Spain considers that they should be adopted at European Union level to avoid market distortions.

The changes proposed in Article 11 (1) are as follows:

Propuesta de la Presidencia	Propuesta España
<p>Article 11</p> <p>'1. Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, by advancing the granting of access [...] of such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.</p>	<p>Article 11</p> <p>1. Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, by advancing the granting of access [...] of preparing for reuse operators such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other</p>

<p>Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors <u>[...]</u></p> <p>Member States shall take measures to promote selective demolition in order to enable removal and safe handling of hazardous substances and materials, as well as sorting systems for construction and demolition waste for at least the following: wood, [...] mineral fractions (concrete, bricks, tiles and ceramics), metal, glass, plastics and plaster, in order to attain the target set out in paragraph 2(b).</p> <p><u>Member state shall take measures to encourage the design, manufacturing, and use of products that are recyclable</u></p>	<p>measures.</p> <p>Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors <u>[...]</u></p> <p>Member States shall take measures to promote selective demolition in order to enable removal and safe handling of hazardous substances and materials, <u>and to promote preparation for reuse and high quality recycling</u> as well as sorting systems for construction and demolition waste for at least the following: wood, [...] mineral fractions (concrete, bricks, tiles and ceramics), metal, glass, plastics and plaster, in order to attain the target set out in paragraph 2(b)</p>
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With regard to the first paragraph of section 2, we consider that the hierarchy of waste should be mentioned. For this, we propose its inclusion as follows:

Presidency proposal	Spanish proposal
<p>Article 11.2</p> <p><u>'In order to comply with the objectives of this Directive, and move towards a circular economy with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:</u></p>	<p>Article 11.2</p> <p><i>'In order to comply with the objectives of this Directive <u>and hierarchy principle</u>, and move towards a circular economy with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:':</i></p>

Regarding the ambition/level of the objectives Spain does not have a final position until other sections of the proposal, such as the definitions and the calculation methods are not fully discussed and clarified.

We would like to clarify how the minimum % recycling to be achieved in 2013 to implement/trigger the derogation is calculated, if it would be calculated in accordance with the current Community decision (Decision 753/2011), according to Eurostat data or by applying the new methodology (which data will be used?)

Regarding the two criteria included to be eligible for the extension (20% recycling or 60% discharge), we consider that a single criterion should be applied, and it seems more logical to apply in this case the one related to the recycling rate.

Presidency proposal	Spanish proposal
<p>Article 11.3</p> <p><u>'3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.</u></p>	<p>Article 11.3</p> <p>'3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.;</p>

Spain could consider favorably the inclusion of a specific target on biowaste recycling and a regeneration target for waste oils

Article 11a.

We agree with the deletion of the reference to product reuse in the calculation of waste management objectives. This ensures greater legal consistency throughout the text as reuse is applied to products and the preparation for reuse and recycling applies to waste. In addition, there are many methodological doubts about how to compute reuse since no methodology has been included in the proposal.

We have no comments on section 1.

With regard to paragraph 3, we understand that the new proposal of the Presidency re-introduces as a point of measurement the waste collected separately, which the COM had intended to delete. This implies that there are two exceptions to the general rule of computation, which will result in a greater difficulty in harmonizing the data, since the MSE may choose any of the three options. This would in principle run counter to the spirit of the directive of having a common method of calculation for all Member States with the aim of harmonizing and providing more reliable and comparable data.

With regard to the proposal itself, it does not seem coherent what is included in section 3 by mentioning "separately collected waste which needs no further sorting" with what is proposed in 4 to subtract standard losses. If no separation is needed, it would not be necessary to subtract losses. In short, we believe that the text should be revised for greater coherence.

On the other hand, and in relation to standard losses, Spain considers that this possibility may be adequate when there is no information on the rejections or losses of treatment plants, which may occur in the case of exports (We think that at national level, information can indeed be obtained if there is an obligation on the waste managers side to send annual reports of their activity to the competent authorities which indicate incoming and outgoing waste and their destination. And, where mixtures of waste from different sources exist, characterizations could be used to allocate the part corresponding to municipal waste). Only where there was no information in the MS, these standard losses could be applied, that is why Spain considers that, should be needed, these loss rates should be fixed by the COM, which would contribute to greater harmonization. If these loss rates are finally to be used, the text proposal should be much clearer on how the rates would be calculated, harmonized and updated.

With respect to paragraph 4a, we consider that it should be limited to municipal waste and that the full paragraph 6 or article 2-Decision 753/2011 should be included. We also consider that domestic composting can also be included in the calculation, as it is already done in method 2 of Decision 753/2011. Taking into account both things, we propose the following:

Presidency proposal	Spanish proposal
<p>Article 11a.4a</p> <p>4^a. For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance</p>	<p>Article 11a.4a</p> <p>For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable municipal waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance <i>for land treatment resulting in benefit to agriculture or ecological improvement.</i>”</p> <p><i>Where a Member State includes home-composted waste in the calculation, in the report submitted in application of article 37 it shall explain how the amounts generated and recycled have been calculated.</i></p>

With regard to paragraph 4b we consider that the terms "backfilled or landfilled" should be added at the end as proposed below and as it is also included in recital 17c. If it is not included, materials that have ceased to be waste but that are used for operations of backfilling or even landfilled, for not having a commercial market, could be computed as recycled.

Presidency proposal	Spanish proposal
<p>Article 11a.4b</p> <p>The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.</p>	<p>Article 11a.4a</p> <p>The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels, <u>backfilled or landfilled</u></p>

With respect to paragraph 5, we continue to believe that being able to compute metals recovered from incineration slags does not encourage separate collection, so we would still to propose its suppression.

Article 11b. EWR

Agree. No comments

Article 21. Used oils

Spain supports the IT proposal on the introduction of a minimum regeneration target for 2025 and 2030. In Spain, in 2006, Royal Decree 679/2006 was approved, which established that since 2008, the regeneration target must be 65% of waste oils collected.

Article 22. Biowaste

We believe that the mention of technical, environmental and economic viability should be deleted as that viability is fully demonstrated. In addition, the economic viability, for example, depends on what is being compared: if the cost of the disposal is low, separate collection of bio-waste will never be economically viable.

We request that the reference to "other recycled products, materials or substances" is deleted, given the broad scope these terms that could lead to the understanding that biofuels are included as recycled. In any case, we would like to know what materials or products are we referring to with that.

On the other hand, and given the doubts raised with the paragraph "Waste with similar biodegradability and compostability properties may be collected together with bio-waste", and taking into account the benefits associated with the use of compostable bags used for the separate collection of bio-waste, a wording that explicitly mentions the standard applicable to compostable packaging could be proposed.

Presidency proposal	Spanish proposal
<p>Article 22.</p> <p>'Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost, digestate and other recycled products, materials or substances [...].</p> <p>Waste with similar biodegradability and compostability properties may be collected together with bio-waste.</p> <p>They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:</p> <ul style="list-style-type: none"> (a) the recycling, including composting and digestion, of bio-waste; (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection; (c) the use of environmentally safe materials produced from bio-waste.; 	<p>AArticle 22.</p> <p>'Member States shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable and appropriate to ensure the relevant quality standards for compost and digestate and other recycled products, materials or substances [...].</p> <p><i>Waste, such as compostable bags, which complies with EN 13432 may be collected together with bio-waste.</i></p> <p>They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:</p> <ul style="list-style-type: none"> (a) the recycling, including composting and digestion, of bio-waste; (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection; (c) the use of environmentally safe materials produced from bio-waste.;

As already mentioned, Spain could positively consider the inclusion of a specific target on bio-waste recycling.

Article 26.

Spain considers that the COM proposal is difficult to apply in practice because of the difficulty of verifying the quantity proposed over a year and also because it is not clarified in the text if it applies to a type of waste or the whole amount of waste that can be collected in the same transportation vehicle. This can lead to a loss of traceability in the control of waste. In our national legislation, these companies only require a communication prior to the start of their activity and the keeping of a chronological file, which must be available for the competent authority.

Article 27

Agree. However, in order to advance further harmonization, we consider that for Article 27, paragraph 1, it should be a “Shall” instead of a “May”.

Presidency proposal	Spanish proposal
Article 27. '1. The Commission may [...] adopt implementing acts [...] setting out technical minimum standards for treatment activities which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards, in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).	Article 27. '1. The Commission shall [...] adopt implementing acts [...] setting out technical minimum standards for treatment activities which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards, in order to ensure the uniform application of that Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2)

Articles 28, 29 and 30 (2)

We have no comments.

Article 33

In our view and as section 2 is now drafted, we consider it excessive that there is an act of implementation to provide the URL where the plans and programs are available as well as the date of their adoption. The paragraph proposed initially by COM could be amended to include the reference to the URL.

Presidency proposal	Spanish proposal
Article 33.2 2, The Commission shall adopt implementing acts to establish the format [...] with which Member States shall provide the URL through which information regarding their plans and programmes can be found, and inform the Commission on their date of adoption and any substantial revisions of plans and programmes. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).'	Article 33.2. <i>'2. The Commission shall adopt implementing acts to establish the format for notifying the information on the adoption and substantial revisions of those plans and programmes, including information URL and date of adoption. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).'</i>

We request clarification on what paragraph 3 means, since we do not understand how paragraph 2 (on format) could be modified in the light of scientific and technical progress.

Articles 35, 36 and 38 and 38a.

We have no comments.

Article 37

On the dates mentioned in paragraphs 1 and 2 to indicate when the report is to be sent, we consider the text to be somewhat imprecise, since the format could be adopted in 2018 and start reporting in 2020 when this information is not yet available.

Regarding paragraph 3, we continue to consider that, as it is done for backfilling in the CDW target, preparation for reuse should also be reported separately from recycling.

Landfill directive (14169/16)

Definitions

We understand that, when maintaining the definition of non-hazardous waste and eliminating the one of hazardous waste (section b), it is necessary to change the reference of the definition of non-hazardous waste to make reference to the new paragraph a) and not c) which is the one that is deleted in the proposal

Article 3.3.

We would like more clarification on these changes.

Article 5.

Paragraph 3.

Regarding point (f), although we agree with the idea, it could be further clarified with the following wording: **"Waste that has to be separately collected under article 11 (1) and 22 of WFD 2008/98"** implying not waste that has already been separated but also the one that has to be always separated (even if it is not).

We would like to request clarification on the inclusion of point (g). For the time being, we have reservations about this new section, since we think it is too general. The text, that does not specify which waste is concerned and simply mentions "suitable for preparation for reuse, recycling and other recovery" would practically ban the deposit of waste by 2030.

This new banning proposal, open to all waste and without a related recycling objective (the recycling objective exists, but only for municipal waste), in our view would be encouraging energy valorization.

Paragraph 5.

For us, both targets/alternatives mean more or less the same effort.

Regarding the two criteria for applying the extension, we consider that it should be just one and in this case, we propose that is the one related to disposal/landfilling.

Presidency proposal	Spanish proposal
Article 5.6 A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 %of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5	Article 5.6 A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 %of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5';

Article 5a.

We thank the Presidency for having included a calculation methodology to assess compliance with the landfill targets set out in Article 5.

Regarding letter b of section 1, with the proposed wording, it seems to be understood that everything that enters TMB plants must be computed as landfilled and yet a part of what enters these plants is recovered in the form of materials that are recycled (although they have poorer quality) and other fractions can generate a material that can be used in the soil -prior authorization of operation R10 granted-. To clarify the above, we propose the following wording:

Presidency proposal	Spanish proposal
Article 5a b) the weight of municipal waste entering treatment with a view to its subsequent landfilling, such as mechanical biological treatment or incineration without energy recovery, shall be considered as landfilled;	Article 5a <u>Only the weight of municipal waste entering treatments such as mechanical biological treatment or incineration without energy recovery, that is subsequently landfilled, shall be included in the weight of municipal waste reported as landfilled</u>

We request clarification on section d) because we do not understand it very well.

While we understand that section 3 is correct, we would like to point out that it is not desirable that waste is disposed in landfills in other countries, as the countries would experience the environmental problems associated with landfills. To avoid this practice maybe this shipping of waste to be landfilled should be discouraged in some way.

We have no comments on the other proposed modifications.

Packaging Directive (14198/16)

In the light of the discussions at the last WPE meeting on December 1st, Spain considers that there should be a debate on whether the article on which the current Directive (single market) should be based should be the article 192 on environmental, as it is in the rest of Directives where the extended responsibility of the producer of the product (WEEE, Batteries, ELVs) is mentioned.

Besides, we would like clarification and implications of eliminating the term "preparation for re-use" systematically throughout the text.

Recital 3a: We consider that the proposed text should be revised as regards the mentions for a combined target for the calculation of re-use and recycling, if this possibility is not finally included in Article 6, as proposed below.

Regarding to recital 12, we prefer the term "facilities" instead of "operation".

Regarding to the definition of packaging waste, we request that the exclusion of production residues is re-introduced again in the definition, matching therefore the existing one currently, as proposed below:

Propuesta de la Presidencia	Propuesta España
Artículo 3 '2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council	Article 3 '2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council, excluding production residues.

We can support the inclusion of article 5 on reuse of packaging.

Article 6

We believe that the preparation for reuse should not disappear from the text, as this type of management can take place in certain packaging waste such as pallets or drums.

On the proposed objectives, which have been reduced in relation to the COM proposal, we could accept them. Regarding the combination of iron and aluminum packaging in a generic metal target, we consider that, by doing that, the opportunity to encourage the recycling of aluminum packaging would be lost. It is true that the recycling rate of this type of packaging may be less than the recycling of iron packaging and therefore, we would support the French proposal of having separate targets for iron and aluminum packaging but a lower value for aluminum.

Also agree on the possibility for the COM to review the objectives.

Article 6a.

We miss an introductory paragraph similar to the one that exists in the proposals of the WFD and Landfills Directive as point a ':

Presidency proposal	Spanish proposal
Article 6a	Article 6a Member States shall calculate the weight of the packaging waste generated and prepared for reuse or recycled in a given calendar year

With regard to subparagraph (a), the proposal has some inconsistencies between what is included in section 3, mentioning "separately collected waste which needs no further sorting" and what is proposed in sub-paragraph 4, to subtract standard losses. If no separation is needed, it would not be necessary to subtract losses. In short, we believe that the text should be revised for greater coherence.

Spain would like to clarify whether the proposed wording of Article 6 allows for packaging waste recovered from TMB plants and sent to recycling to be included in the recycling calculations.

On the other hand, and in relation to standard losses, Spain considers that this possibility may be adequate when no information is available on the rejections or losses of treatment plants, which may occur in the case of exports (we believe that at national level, information can indeed be obtained if there is an obligation on the waste managers side to send annual reports of their activity to the competent authorities which indicate incoming, outgoing and destination waste). And that these standard loss rates could be applied by default to all MSs. That is why Spain considers that they should be set/fixed by the COM, which would contribute to greater harmonization. If these loss rates are finally to be used, the text proposal should be much clearer on how the rates would be calculated, harmonized and updated.

We believe that paragraph (b) should not be deleted since as preparations may be carried out for the re-use of certain packaging, as discussed above. The following wording is proposed to this end, which is similar to COM text but deleting the terms "Recognized"

Presidency proposal	Spanish proposal
Article 6a (b) <u>[...]</u>	Article 6a <i>“(b) the weight of the packaging waste prepared for reuse shall be understood as the weight of packaging waste that has been collected by a preparation for re-use operator and has undergone all necessary checking, cleaning and repairing operations to enable re-use without further sorting or pre-processing</i>

With regard to section 4a, we consider that "backfilled or landfilled" should be added at the end as proposed below and as it is included in the definition of recycling in the WFD. If it is not included it will be possible to count/compute as recycled materials that might have ceased to be waste but that are used for operations of backfilling or even landfilled if they do not have a commercial market:

Presidency proposal	Spanish proposal
<p>Article 6a.4a</p> <p><i>4a The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels</i></p>	<p>Article 6a.4a</p> <p><i>4a The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels, <u>backfilled or landfilled</u>.</i></p>

We still believe that being able to compute metals recovered from incineration slags does not encourage separate collection, so we continue to propose the removal of this possibility.

Annex III

Regarding the proposed amendment to Annex III, we have a study reservation given the difficulty of differentiating information between primary, secondary and tertiary packaging.

Other Directives (14228/16).

We have no comments at this stage.

ESTONIA

Recycling target

Estonia is supporting the proposal on reward of re-use in the recycling target together with FIN, DK, FR, IE, HR (final text submitted by DK on 30.11.2016).

Derogation and interim targets

For the Member States meeting certain criteria (incl Estonia), the Presidency compromise text foresees an opportunity of additional five years for complying with the re-use and recycling targets established for 2025 and 2030. These countries would need to increase their recycling capacity at levels that are well-above past averages to meet those targets and such a derogation is well grounded and well received.

We are certain that the establishment of the implementation plan will be enough to pave the way towards meeting the targets through the derogation period. Setting interim targets as currently proposed by the Presidency may well have a counterproductive effect – if missed by one percentage point, the whole possibility to use the derogation would be lost. It seems inconsistent that while there are criteria in place that prove the need for derogation and there is an implementing plan that will clarify the path to the target, there is also the interim target that may block the whole path. **We therefore recommend removing the interim targets and propose to focus on implementing plans as means to guide countries using the derogation to comply with the targets.**

Annex III of Directive 94/62/EC on packaging and packaging waste

Estonia does not support the proposal by the Presidency to add additional columns to Tables 1 and 2 in order to report separately the data on primary, secondary and tertiary packaging.

We have negative practical experience in Estonia where the excise duty tax was applied only to primary packaging. In practice, it was often very difficult to distinguish between primary and secondary packaging. The same question could arise also when the secondary and tertiary packaging has similar functions. Therefore, the proposal by the Presidency will result in additional administrable burden while we don't see any added benefit arising from it.

Reporting intervals

Estonia would like to express our concern regarding the reporting articles in the Presidency compromise texts (14152/16, 14228/16, 14198/16, 14169/16). Almost all directives in the amendment package reflected in the compromise texts have a uniform approach to the reporting interval of targets stating that the data is reported electronically within 18 months from the end of the reporting year for which the data are collected. The only exception is the Batteries Directive 2006/66/EU where amendments are only related to the implementation report and other reporting articles are not affected.

The reporting interval of the collection rate and recycling efficiencies in the Batteries Directive is no later than 6 months after the end of the calendar year concerned which means that batteries' data have to be compiled and reported by 30th of June for the previous calendar year, although all waste data is compiled and reported within 18 months of the end of the reporting. For the annual reporting of targets in other producers' responsibility directives relevant to the Batteries Directive (Directives 2000/53/EC, 2012/19/EU) the reporting interval is already the same as in the Waste Framework Directive proposal in the Presidency compromise text – within 18 months from the end of the reporting year for which the data are collected. **Estonia proposes to harmonise the reporting intervals in all the Directives that are covered in the waste package with the aim to improve the overall quality of waste data.**

If the reporting interval issue is not addressed with specific amendments in the Batteries Directive collection target, recycling level and recycling efficiencies' articles, the current situation would remain unchanged – the waste batteries data will be uneven as it cannot be based on validated waste data because the waste data would be reported later with its 18-month interval as opposed to the 6-month reporting interval in the Batteries Directive. Because Estonia collects data on all waste, the waste batteries data reported annually to the Commission is somewhat of an estimation because the waste data is incomplete by the reporting deadline of the Batteries Directive. **Estonia supports unified reporting intervals of targets in all the Directives considered in the waste package.**

FRANCE

I. DIRECTIVE CADRE DECHETS

A. Modifications des exclusions de champ de la directive cadre déchets (article 2(2))

Les autorités françaises soutiennent les exclusions de champ proposées par la Présidence. Pour autant, il leur semble nécessaire de reprendre la rédaction de la seconde phrase du nouveau f) relatif aux navires en s'inspirant de la rédaction de l'article 1.3.b) du règlement 1013/2006 concernant les transferts de déchets. La disposition s'écrirait alors :

(f) ships flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to ~~any waste on board of a ship other than operationally generated waste~~ **waste generated on board of ships until such waste is offloaded in order to be recovered or disposed of.**

B. Définitions

1. Déchets municipaux (article 3(1a)).

Les autorités françaises n'adhèrent pas à la définition proposée par la Présidence. Elles considèrent que cette définition n'est pas suffisamment précise pour que les Etats membres puissent l'appliquer de manière uniforme. Ainsi, les objectifs de recyclage s'inscriraient dans des périmètres variant d'un Etat membre à l'autre : la mise en œuvre de la directive cadre déchets ne serait pas uniforme au sein de l'Union européenne.

Les autorités françaises sont attachées à ce que les objectifs fixés s'appuient sur une réalité physique cohérente d'un Etat membre à l'autre et non à une série de flux de déchets n'ayant aucun rapport tant dans la production que la collecte ou encore le traitement. Pour cela, il est indispensable que la définition des déchets municipaux soit limitée aux déchets des ménages, aux déchets de marché et de nettoyage des rues, ainsi qu'aux déchets des entreprises bénéficiant du même service de gestion des déchets. Pour ces derniers, le service de collecte et de traitement de ces déchets doit être le même que celui des déchets des ménages.

Les objectifs de recyclage caractériseraient donc la performance du service rendu aux ménages.

Pour les autorités françaises, une limite quantitative serait satisfaisante **tout comme le simple ajout, à la fin du b) de la définition des déchets municipaux, des termes « and that benefit from the same waste management than household waste ».**

2. Biodéchets (article 3(4)).

Les autorités françaises demeurent favorables à ce que soit précisé dans la définition des biodéchets que ces derniers **doivent être non dangereux**. Cela permettra d'éviter que des déchets alimentaires javellisés pour les rendre non consommables, et par là même devenus non compostables/méthanisables, soient mélangés avec des biodéchets non dangereux envoyés en compostage/méthanisation au risque de polluer le compost/le digestat produits.

3. Déchets de construction (article 3(4a)).

Cette définition s'avère inutile car elle est tautologique (les déchets de la construction et de la démolition sont les déchets générés par les activités de construction et de démolition).

4. Autres valorisations matière (article 3(15a)).

Les autorités françaises ne sont pas favorables à cette définition qu'elles jugent inutile et incohérente car elle oppose la valorisation énergétique à la valorisation matière. Au contraire, cette définition devrait, eu égard à son intitulé, opposer certaines valorisations matières à d'autres valorisation matière. **Les autorités françaises sont favorables à la définition de la valorisation matière proposée par les autorités italiennes et danoises dans le document 11436/16 du 12 septembre 2016.**

5. Remblayage (article 3(17b))

Les autorités françaises ne sont **pas favorables à ce que les mines soient mentionnées** dans la définition du remblayage, la valorisation de déchets par remblayage dans les mines étant sujette à caution.

De plus, les autorités françaises considèrent qu'il est **nécessaire de clarifier le considérant 6a** qui, du fait de l'utilisation du verbe « *exclude* » pourrait laisser entendre que le recyclage de déchets de la construction et de la démolition pour la construction de routes et d'infrastructures est systématiquement couverte par la définition du remblayage alors qu'il n'en est rien : certaines opérations de construction de routes et d'infrastructures peuvent être des opérations de recyclage, notamment parce que les déchets utilisés ont fait l'objet d'une transformation, alors que d'autres opérations sans transformation ne sont que du remblayage ou de la valorisation matière.

6. Filières à responsabilité élargie des producteurs (article 3(20a))

Les autorités françaises peuvent soutenir l'introduction d'une telle définition pour autant que celle-ci soit amendée. Il convient de remplacer *financial or financial and operational* par *financial and/or operational* puisque un producteur reste libre d'assumer seul la gestion de ces produits devenus déchets, sans avoir recours à un éco-organisme. Il n'aura alors qu'une responsabilité opérationnelle et non financière.

C. Instruments économiques (article 4)

Les autorités françaises ne s'opposent pas aux modifications proposées par la Présidence.

Cependant, elles estiment que la Commission européenne devrait participer plus activement au **développement d'instruments économiques efficaces afin de dynamiser le recyclage**, notamment celui des plastiques, car le faible cours du pétrole en limite l'intérêt économique.

A cette fin, dans le cadre de sa stratégie sur les plastiques, la Commission pourrait piloter une étude portant sur la possibilité de mettre en œuvre un (ou des) dispositif(s) de soutien pour favoriser le développement de la production de matériaux issus du recyclage. Cette étude tiendrait compte des avantages environnementaux de ces matériaux, tels que l'évitement d'émissions de CO₂, par rapport à la production des mêmes matériaux à partir de matières premières vierges. Pour ce faire, les autorités françaises souhaitent que la clause de revoyure suivante soit insérée :

By 31 December 2017 at the latest, the Commission shall examine the framework that would provide support to the production of secondary raw material reflecting their environmental benefits over the production of the same materials from virgin raw materials. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

D. Sous-produits (article 5)

Les autorités françaises acceptent les modifications proposées par la présidence dans son texte de compromis, bien qu'elles considèrent que ces dernières auront peu d'impact sur les pratiques actuelles et ne faciliteront pas la transition vers une économie plus circulaire. Les autorités françaises persistent à penser que reprendre la jurisprudence de la CJUE rendrait les dispositions sur les sous-produits plus ambitieuses tout en maîtrisant les enjeux environnementaux.

Comme les autorités françaises le suggèrent depuis le début des discussions sur les directives déchets, le fait de **reprendre dans le droit positif l'arrêt C-444/00 Mayer Parry Recycling Ltd, qui précise qu'un processus de production qui utilise indifféremment des produits ou des déchets comme matière première produit des produits et non des déchets**, serait déjà un pas en avant considérable. La rédaction pourrait être la suivante :

A substance or object resulting from a production process that uses all or part of waste as raw materials shall not be considered as waste when this substance or object possesses characteristics comparable to those that would have been produced without the use of waste.

A process the primary aim of which is waste treatment is not considered a production process as referred to in this paragraph.

E. Sortie du statut de déchet (article 6)

Les autorités françaises accueillent **favorablement les modifications de l'article 6 suggérées par la Présidence**, notamment celles précisant les critères détaillés d'une sortie du statut de déchet communautaire ou nationale. Les critères retenus apparaissent pertinents et, en première approche, compatibles avec la procédure actuellement en vigueur au niveau national français. De telles dispositions sont effectivement à même d'améliorer sensiblement l'harmonisation des sorties du statut de déchet.

Cependant, les autorités françaises ne soutiennent pas la réintroduction du paragraphe 4a qui permet d'effectuer des sorties du statut de déchet au cas par cas. Cette procédure est censée permettre de régler des problèmes locaux et s'adresse avant tout à des déchets qui vont être utilisés localement et qui ne seront pas transférés dans un autre Etat membre. Aussi, **pour être acceptable, une telle disposition devrait être complétée par une autre disposition demandant aux Etats membres de s'assurer que les déchets, devenus produits au travers de cette procédure, ne sont pas transférés dans un autre Etat.** En l'absence d'une telle disposition et donc d'un rôle actif de l'Etat membre accordant la sortie du statut de déchet au cas par cas, rien ne permettrait aux autorités d'un Etat membre importateur de détecter une importation de déchets ayant bénéficié d'une sortie du statut de déchet au cas par cas, car ces déchets auraient été exportés sous le statut de produit dont ils bénéficient dans l'Etat membre exportateur ayant accordé la sortie du statut de déchet.

Enfin, même si elles souscrivent à l'objectif du paragraphe 4b, les autorités françaises considèrent sa rédaction confuse. Après la première phrase, elles souhaitent qu'il soit précisé que la conformité aux réglementations « produits chimiques » ou « produits » ne vaut pas présomption de conformité au paragraphe 1 de l'article 6 puis de supprimer le dernier paragraphe. Le paragraphe 4b s'écrirait alors :

*The natural or legal person who places a material on the market for the first time after it ceases being a waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. **Compliance with the chemical or product related legislation does not constitute a presumption of conformity with the provisions of paragraph 1 of Article 6.***

F. Responsabilité élargie des producteurs (article 8)

Les autorités françaises sont favorables aux modifications du paragraphe(1) de l'article 8 proposées par la présidence qui, combinées avec la nouvelle définition des filières REP en article 3(20a), clarifient les modalités d'application des exigences de l'article 8a aux seules filières REP établies par les Etats membres (excluant de fait tout accord volontaire de branche) et doivent clarifier le fait qu'une filière peut être opérationnelle ou financière.

Les autorités françaises soutiennent l'ajout d'une référence à la réparabilité des produits au paragraphe (2) de l'article 8 qui permettra de faciliter la réparation des produits en garantissant l'accès aux pièces détachées et outils nécessaires. Pour autant, elles regrettent que ce paragraphe ne fasse pas référence au développement de produits contenant des matériaux recyclés comme cela avait été suggéré sous présidence néerlandaise.

Concernant les modifications proposées par la Présidence au paragraphe (5) de l'article 8, les autorités françaises proposent **d'introduire à cet article une référence à une procédure d'interprétation comparable à celle prévue par le règlement Biocides.** Les échanges d'information entre Etats membres permettraient d'aboutir à une compréhension/interprétation partagée des termes de la directive. L'introduction dans le droit permettrait ensuite une sécurisation juridique des opérateurs économiques et des Etats membres.

Selon les autorités françaises, une telle approche pourrait être utilisée pour la définition des critères de modulation des contributions payées par les producteurs et du coût optimisé.

G. Exigences générales applicables aux filières à responsabilité élargie des producteurs (article 8a)

1. Paragraphe (1) :

Les autorités françaises sont favorables aux modifications apportées au paragraphe (1) et acceptent désormais la dernière puce du paragraphe dont la rédaction a été clarifiée par la Présidence.

2. Paragraphe (2) :

Les autorités françaises sont favorables aux modifications apportées au paragraphe (2).

3. Paragraphe (3) :

Les autorités françaises saluent la prise en compte par la présidence au paragraphe (3) de leurs préoccupations relatives à la couverture géographique des filières REP. Celle-ci doit être basée sur les zones géographiques où sont vendus les produits mais également sur les zones où ces produits sont susceptibles de devenir des déchets.

4. Paragraphe (4) :

Les autorités françaises ne peuvent accepter l'obligation d'une couverture totale des coûts par les contributions financières des metteurs sur le marché. La nouvelle phrase insérée en fin de paragraphe ne permet pas de résoudre le problème maintes fois soulevé par les autorités françaises.

Les autorités françaises demandent un assouplissement de cette disposition, pour permettre une adaptation ajustée aux spécificités de chaque filière. Elles rappellent que la directive Véhicules hors d'usage ainsi que la directive relative aux piles et accumulateurs prévoient déjà la possibilité d'une couverture partielle des coûts.

Pour les autorités françaises, il est préférable de supprimer le paragraphe (4) plutôt que de le conserver dans sa rédaction actuelle.

5. Paragraphe (4a)

Compte tenu de leur position concernant le paragraphe (4) exprimé ci-dessus, les autorités françaises sont favorables au nouveau paragraphe (4a) même si elles estiment que sa rédaction n'est pas assez directive. **A cette fin, le verbe *encourage* pourrait être remplacé par le verbe *ensure*.**

6. Paragraphe (5)

Les autorités françaises sont favorables aux modifications apportées au paragraphe (5) et saluent l'introduction d'une référence au commerce électronique.

7. Paragraphe (6)

Les autorités françaises préfèrent la rédaction proposée par la présidence néerlandaise dans son document informel daté du 3 juin 2016.

H. Prévention (article 9)

Les autorités françaises rencontrent quelques difficultés avec l'article 9 tel qu'amendé par la Présidence car

- ce dernier fait référence à un article 9a qui n'a pas été communiqué aux Etats membres,
- les autorités françaises considèrent qu'il est nécessaire de définir des objectifs de réemploi dans la directive cadre suivant le mécanisme qu'elles ont présenté dans le document informel co-signé par les autorités danoise et finlandaises,
- la modification apportée à la disposition sur les dépôts sauvages est de nature à empêcher un Etat membre de prendre des mesures d'interdiction de produits à la source des principaux déchets que l'on retrouve dans l'environnement, notamment marin.

Pour ce dernier point, l'ajout des mots « *inter alia through consumption restrictions* » à la fin de la phrase pourrait régler ce problème.

Les autorités françaises proposent de plus de modifier l'article 18 de la directive 94/62/CE relative aux emballages et aux déchets d'emballages pour faire un lien avec les restrictions qui pourraient avoir été adoptées au titre du paragraphe (1) de l'article de la directive cadre déchets. Cette mise en cohérence pourrait consister en la modification suivante :

Freedom to place on the market Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive with the exception of packaging identified as a source of littering according to article 9(1) of the directive 2008/98/EC.

I. Réemploi et recyclage (article 11)

Article 11.2 (c) et (d) :

Les autorités françaises ne peuvent pas accepter les propositions de la Présidence visant à réduire le niveau d'ambition des objectifs de recyclage de la directive cadre qui semblent accessibles alors même que le taux de recyclage des déchets municipaux en France est de l'ordre de 40%.

Autant elles pourraient éventuellement comprendre que le Conseil prône une telle position à des fins stratégiques de négociation avec le Parlement européen, autant une telle proposition à ce stade de la négociation ne leur paraît pas utile.

Elles rappellent que la proposition des autorités danoises, finlandaises et françaises en termes de réemploi facilite l'atteinte des objectifs de recyclage en donnant la possibilité de tenir compte du réemploi dans l'atteinte de ces objectifs.

Elles estiment que la différenciation des objectifs selon les Etats membres est la voie pour aboutir à un bon compromis entre ambition et réalisme, sous réserve que les objectifs de long terme restent communs et ambitieux.

Article 11.1 :

Les autorités françaises proposent de faciliter l'accès au gisement de certains types de déchets aux acteurs du réemploi, afin qu'ils deviennent des acteurs de la préparation en vue du réemploi. Une telle pratique est courante et encadrée en France, où les acteurs de l'économie sociale et solidaire ont accès au gisement de déchets de certaines filières REP, notamment DEEE, textiles et meubles. Cela leur permet de trier les biens réparables ayant pris le statut de déchet, de les réparer (i.e. préparation en vue du réemploi) et de les remettre sur le marché en tant que bien d'occasion.

Les autorités françaises souhaitent modifier ce paragraphe comme suit :

*Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, by **facilitating the access of preparing for re-use operators to the fraction of the relevant waste stream that might be repaired and subsequently placed on the market as second hand products** ~~advancing the granting of access for personnel of such networks to waste collection points~~, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.*

De plus, comme elles l'ont déjà indiqué, les autorités françaises considèrent qu'il est indispensable que l'article 11 facilite la réparation des produits et par là même facilite leur réemploi et la préparation en vue du réemploi de déchets de produits ou de composants. Pour cela, un préalable consiste à garantir l'accès, dans le respect des règles de la concurrence, aux pièces détachées et outils nécessaires à ces réparations.

Une telle disposition permettrait d'interdire qu'un producteur de téléphone portable bloque, par l'intermédiaire d'une mise à jour du logiciel du téléphone, les téléphones ayant été réparés en dehors de son réseau de boutiques (comme cela a pu avoir lieu au début de cette année). Ou encore qu'un producteur de console vidéo utilise des vis spécifiques pour lesquels aucun tournevis n'est disponible sur le marché, interdisant de fait tout démontage et donc toute réparation.

Pour ce faire, les autorités françaises proposent que soit introduit à l'article 11 l'acte d'exécution suivant :

The Commission shall adopt an implementing act to establish the list of products and components for which Member States shall ensure the prohibition of any restriction to give independent operators access to any spare parts, technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these products and components, taking due consideration of intellectual right properties.

Article 11.3 :

Les autorités françaises ne sont pas opposées au principe d'objectifs différenciés car elles estiment au contraire qu'il s'agit d'un élément utile pour permettre à l'ensemble des Etats membres de progresser en tenant compte de leur situation de départ de manière pragmatique. Elles restent toutefois attentives à ce que la différenciation n'entraîne pas une diminution des objectifs globaux, mais permettent de la souplesse dans les délais accordés pour les réaliser. Les autorités françaises acceptent le principe de ne pas lister dans la directive les Etats membres pouvant bénéficier de tels objectifs en définissant à la place des critères permettant bénéficier de ces dispositions. La méthode de la Commission pourrait être reprise pour autant que soit précisée la méthode permettant de calculer ces critères : ainsi, le critère de 20% de recyclage s'entend-il au sens Eurostat, au sens de la méthode 4 de la directive cadre Déchets ou encore d'une autre méthode statistique, comme celle proposée par la Présidence pour la directive relative à la mise en décharge ?

J. Méthodes de calcul (article 11a)

Tout en accueillant favorablement l'introduction de la notion de taux de perte standard, les autorités françaises considèrent qu'un certain nombre de modifications de cet article sont encore nécessaires pour que ce dernier puisse être accepté.

Le principe de taux de perte standard doit être plus encadré réglementairement, comme l'explique le document informel préparé par les autorités allemandes, danoises et françaises, portant sur les dispositions nécessaires à la bonne mise en œuvre de tels taux de perte standard.

Les autorités françaises considèrent qu'il est indispensable de limiter le nombre de méthodes permettant de calculer les objectifs de recyclage afin d'assurer une comparabilité des données entre les Etats membres et par la même assurer une homogénéité de mise en œuvre de la directive cadre déchets.

Pour cela, il est nécessaire de **limiter le nombre de méthodes permettant de quantifier les pertes matière avant l'entrée du processus de recyclage**. Pour les autorités françaises, seules les méthodes de taux de perte standard, de registre électronique, voire de norme-produit si elles sont arrêtées au niveau communautaire par le CEN (la Commission européenne serait avisée de donner mandat au CEN), devraient être retenues. **Elles demandent donc de supprimer au paragraphe 4 les termes « or any equivalent measure »** qui rend obsolète toute tentative d'harmonisation des pratiques.

Cela reviendrait à réitérer les mêmes difficultés que celles existant dans la directive actuelle, où de très nombreuses méthodes peuvent être utilisées et où la comparabilité entre les Etats membres n'existe pas.

Concernant le **paragraphe 4a**, les autorités françaises rappellent que ne sont visés dans cette disposition que les biodéchets provenant des déchets municipaux afin que les déchets provenant des industries agro-alimentaires répondant à cette définition soient bien exclus des objectifs de recyclage des déchets municipaux, et que ces derniers n'intègrent pas de déchets de production.

Les autorités françaises acceptent que les termes de l'article 2.6 de la décision n° 2011/753 établissant des règles et méthodes de calcul permettant de vérifier le respect des objectifs fixés par la directive 2008/98/CE soient repris dans ce paragraphe. Aussi, il est nécessaire d'ajouter, à la fin du paragraphe, les mots « **for land treatment resulting in benefit to agriculture or ecological improvement** » afin d'obtenir une reprise complète et claire de la disposition dont l'objectif est bien de rappeler que le compostage et la méthanisation de déchets peuvent être considérés comme des opérations de recyclage si et seulement si le compost, ou le digestat, ont une valeur agronomique et font l'objet d'un retour au sol.

Enfin, concernant le paragraphe 5, les autorités françaises sont favorables à une rédaction plus ouverte afin d'inciter à la valorisation des résidus d'incinération et de co-incinération. Afin de lever toute ambiguïté quant à la place de l'incinération sans valorisation énergétique dans la hiérarchie des déchets, les autorités françaises ne sont pas opposées à **l'introduction d'objectifs de réduction de l'incinération sans valorisation énergétique dans la directive cadre déchets.**

K. Huiles usagées (article 21)

Les autorités françaises **accueillent très favorablement la proposition des autorités italiennes visant à définir des objectifs de régénération des huiles usagées** mais ne sont pas convaincues de la nécessité de définir un objectif de collecte au paragraphe (2f) de l'article 11 car l'objectif de régénération est applicable aux huiles pouvant être collectées, ce qui implique que sans collecte, l'objectif de régénération ne pourra jamais être atteint.

L. Biodéchets (article 22)

Les autorités françaises sont favorables aux modifications apportées à la phrase chapeau de l'article 22 par la présidence même si elles préfèrent la notion de tri à la source des biodéchets. Comme elles l'ont déjà indiqué, les autorités françaises comprennent qu'une obligation de collecte séparée des biodéchets implique la mise en place de moyens de collecte et donc de camions de collecte. Cette notion leur semble donc incompatible avec le compostage domestique qui est notamment pratiqué en milieu rural. Il est donc nécessaire de remplacer l'expression « *separate collection* » par l'expression « *source separation* ».

Les autorités françaises considèrent que l'expression "*where technically, environmentally and economically practicable*" ou TEEP, affaiblit les dispositions dans lesquelles elle est présente. C'est pourquoi les autorités françaises proposent de **supprimer ces termes à l'article 22 et soient remplacés par une obligation de mise en place du tri à la source des biodéchets à compter de 2030.** En effet, les conditions techniques, économiques et environnementales permettront à cette date, de généraliser le tri à la source des biodéchets au sein de l'Union européenne.

Enfin, les autorités françaises demandent que le second paragraphe soit être circonscrit aux seuls sacs plastiques utilisés pour la collecte des biodéchets, puisque c'est pour ce cas précis que ce paragraphe a été inséré. Enfin, elles demandent que ces sacs plastiques soient valorisables par compostage et méthanisation. Une référence aux normes afférentes permettrait de mieux cadrer cette disposition sans exclure les travaux de normalisation en cours sur le sujet.

II. DIRECTIVE MISE EN DECHARGE

A. Déchets et traitements non admis dans les décharges (article 5)

Les autorités françaises sont favorables, sur le principe, à ce que les déchets ayant fait l'objet d'une collecte séparée au titre de l'article 11(1) de la directive cadre déchets ne soient pas mis en décharge, à l'exception des refus de tri résultant d'une telle collecte. Cette collecte séparée peut conduire à ce que les déchets soient recyclés mais également préparés en vue du réemploi (cas des DEEE). Aussi, le **f) du paragraphe 3 de l'article 5 ne devrait pas se limiter au seul recyclage et devrait aussi inclure la préparation en vue du réemploi.**

Les autorités françaises ne sont **pas favorables à la rédaction du nouveau g)** introduit par la Présidence qui, tel qu'il est rédigé, revient à interdire la mise en décharge des déchets municipaux. En effet, la mise en place d'un tri à la source des biodéchets ne permet jamais de détourner 100% des biodéchets des déchets résiduels et cela pour au moins deux raisons :

- la première vient du fait que le taux d'adhésion à une collecte séparée n'est jamais de 100% ; certains ménages s'y refuseront, estimant, par exemple, que la poubelle à biodéchets prend trop de place dans leur cuisine.
- la seconde est propre au tri des biodéchets : les consignes de tri autorisent rarement la collecte de tous les types de biodéchets. Par exemple, la collecte de déchets de viandes est loin d'être systématique car elle peut favoriser l'apparition de rats.

Les autorités françaises proposent que soit interdite la mise en décharge des déchets ayant fait l'objet d'une collecte séparée et dont l'objectif est d'assurer la valorisation des biodéchets. Pour maintenir l'objectif mentionné à l'article 6a, une obligation de tri à la source des biodéchets en 2030 pourrait être insérée à l'article 22 de la directive cadre Déchets. Ainsi, dans tous les cas de figure, les biodéchets seraient triés en 2030 et interdits de mise en décharge. Sans cette dernière obligation (effective si les conditions technico-économiques du moment le permettent), la mise en décharge des biodéchets pourrait être interdite sans pour autant que le tri de ces déchets soit exigé, ce qui serait paradoxal.

B. Objectif de réduction de la mise en décharge :

Les autorités françaises ne soutiennent pas :

- l'objectif de réduction de mise en décharge qui ne couvre que 7% des quantités réelles de déchets mis en décharge selon les chiffres publiés par Eurostat,
- l'objectif alternatif proposé par la Présidence qui leur paraît complexe et aussi peu efficace.

De fait, aucun des objectifs proposés portant exclusivement sur les déchets municipaux n'aura de réel impact sur les quantités de déchets réellement mis en décharge. L'atteinte de ces objectifs sera coûteuse et sans réel bénéfice pour l'environnement.

Les autorités françaises proposent de construire différemment cet objectif :

- en élargissant son périmètre à l'ensemble des déchets non dangereux non inertes ;
- et en définissant un objectif relatif comme par exemple de diviser par deux les quantités de déchets non dangereux non inertes admis en décharge à l'horizon 2030 par rapport à 2012.

Un tel objectif tiendrait compte de la situation réelle de chacun des Etats membres et permettrait de réellement réduire la mise en décharge de déchets. Il serait plus lisible et plus compréhensible par l'ensemble des citoyens puisqu'il s'agirait de mettre moitié moins de déchets à la décharge.

Un tel objectif serait également plus efficace du point de vue économique puisqu'il permet à chaque Etat membre de trouver la juste répartition d'effort de réduction de la mise en décharge entre les déchets municipaux (soumis par ailleurs aux objectifs de recyclage) et les déchets des activités économiques tout en facilitant les économies d'échelle par la création d'infrastructures valorisant à la fois des déchets municipaux et des déchets d'activités économiques.

Cet objectif serait également facile à contrôler et à comparer entre Etats membres en évitant l'écueil de la différence d'interprétation du périmètre des déchets municipaux.

Il est à noter selon les données Eurostat, qu'en 2012, sur les 2 085 Mt de déchets mis en décharge, seuls 77,6 Mt étaient des déchets municipaux. Ces 2 085 Mt de déchets mis en décharge étaient principalement des déchets minéraux et des déchets dangereux, de sorte que ces 77,6 Mt de déchets municipaux peuvent être comparées aux 424 Mt de déchets non dangereux non inertes mis en décharge la même année (selon Eurostat), ce qui démontre le caractère inapproprié d'un tel objectif de réduction de la mise en décharge des déchets municipaux.

Comme les autorités françaises l'ont déjà proposé, la rédaction serait la suivante :

Non hazardous non inert waste : waste which is covered by article 2(d) and article 2(e) at the same time.

Member States shall take the necessary measures to ensure that by 2030 the amount of non hazardous non inert waste landfilled is reduced by 50% compared to the amount of non hazardous non inert waste landfilled in 2012.

De plus, les autorités françaises craignent que **l'absence de disposition encadrant l'incinération sans valorisation énergétique, ainsi que d'autres opérations d'élimination (comme évoqué par les autorités italiennes)**, donne l'impression aux opérateurs économiques que ces opérations sont plus hauts dans la hiérarchie des modes de gestion des déchets par rapport à la mise en décharge qui fait l'objet d'un cadrage spécifique et d'objectifs de réduction. Or, il s'agit d'élimination dans tous les cas.

Aussi, les autorités françaises proposent au minimum **d'introduire un objectif de réduction de l'incinération effectuée sans valorisation énergétique dans la directive cadre déchets**. Elles **sont par ailleurs ouvertes à la proposition des autorités italiennes relative à l'encadrement de l'élimination en général**.

Cette réduction pourrait être complétée par une interdiction de délivrer un permis à toute nouvelle installation n'effectuant pas une valorisation énergétique des déchets. Ces dispositions seraient limitées aux seuls déchets non dangereux dans la mesure où la notion de valorisation énergétique, telle que définie à l'annexe II de la directive cadre déchets, ne s'applique pas aux installations d'incinération de déchets dangereux. La rédaction pourrait être :

Member States shall take the necessary measures to ensure that by 2030 the amount of non hazardous non inert waste incinerated without energy recovery is reduced by 50% compared to the amount of non hazardous non inert waste incinerated without energy recovery in 2012.

By 1st January 2018, Member States shall take the necessary measures to ensure that the competent authority does not deliver permits referred to in article 23 to establishment or undertaking intending to carry out non hazardous waste incineration without energy recovery.

C. Méthode de calcul des objectifs de l'article 5 (article 5a)

Les autorités françaises estiment que l'ajout du nouvel article 5a est le bienvenu et permettra de limiter les risques de mauvaise interprétation des objectifs de réduction de la mise en décharge. Les autorités françaises sont notamment favorables à ce que les déchets municipaux prétraités avant leur mise en décharge soient rapportés comme étant des déchets municipaux mis en décharge tout comme les résidus de déchets municipaux n'ayant pu être valorisés et qui sont envoyés en décharge.

Cependant, **elles considèrent que cet article ne devrait pas servir d'entremise à la définition d'objectif portant sur l'incinération sans valorisation énergétique des déchets pour lesquels il est nécessaire de définir des objectifs clairs** (cf. *supra*). Afin d'apporter plus de clarté, les autorités françaises proposent que l'article 5a soit modifié comme suit :

Article 5a

Rules on the calculation of the attainment of the targets laid down in Article 5

1. For the purpose of calculating whether the targets laid down in Article 5 (5) (a) and (b) have been attained,

- (a) the weight of the municipal waste generated and directed to landfilling shall be calculated in a given calendar year;
- (b) the weight of municipal waste entering treatment *referred to in article 6 (a)* with a view to its subsequent landfilling, such as mechanical biological treatment *or stabilization operation* ~~or incineration without energy recovery~~, shall be considered as landfilled;
- (c) the weight of *materials that are discarded* ~~waste which is removed~~ by treatment operations prior to recycling *operation of municipal waste referred to in paragraph 1(a) of article 11a of the directive 2008/98/EC*, or other recovery *operation* of municipal waste, such as sorting, and which is subsequently landfilled shall be included in the weight of municipal waste reported as landfilled;
- (d) the weight of *materials that are discarded by a recycling operation of municipal waste referred to in paragraph 1(a) of article 11a of the directive 2008/98/EC*, ~~waste from recycling~~ or other recovery operations of municipal waste, which *are* ~~is~~ subsequently landfilled, shall not be included in the weight of municipal waste reported as landfilled.
2. Member States shall establish an effective system of quality control and traceability of the municipal waste landfilled to ensure that conditions laid down in paragraphs 1 of this Article are met. They may use the system established in accordance with Article 11a(4) of Directive 2008/98/EC for this purpose.
3. Waste sent to another Member State or exported from the Union for the purposes of landfilling shall be counted towards the amount of waste landfilled by the Member State in which that waste was collected.'

I. WASTE FRAMEWOK DIRECTIVE

A. Exclusion from the scope (article 2(2))

The French authorities support the exclusions proposed by the Presidency. However, it seems necessary to amend the wording of the second sentence of the new (f) related to ships, drawing on the wording of Article 1.3.b) of Regulation 1013/2006 on shipments of waste. The provision would then read:

(f) ships flying the flag of a Member State covered by Regulation (EU) 1257/2013. This provision does not apply to ~~any waste on board of a ship other than operationally generated waste~~ **waste generated on board of ships until such waste is offloaded in order to be recovered or disposed of.**

B. Definition

1. Municipal waste (article 3(1a))

The French authorities remain totally opposed to the definition proposed by the Presidency. They consider that this definition is not sufficiently precise for Member States to apply it in a uniform manner. This would result in recycling targets with variable scope from one Member State to another, resulting in a differentiated implementation of the Waste Framework Directive instead of uniform implementation within the EU.

Therefore, in order to ensure that the targets reflect a coherent physical reality from one Member State to another and not a list of waste streams having no relation whatsoever to their production, collection or treatment, the definition of municipal waste should be limited to household waste, market and street cleaning waste and waste from undertakings relying on the same waste management service, implying that their collection and treatment service should be the same as household waste.

Recycling targets would therefore characterize the performance of the service provided to households. A quantitative limit would be satisfactory, **as would the addition at the end of (b) of the definition of municipal waste of the words "*and that benefit from the same waste management*".** This would allow the French authorities to accept this definition

2. Bio-waste (article 3(4))

The French authorities remain in favor of **specifying that bio-waste should be non-hazardous waste.** This will enable to avoid that bleached food waste, to make them non-edible and therefore non-compostable / digestible, be mixed with non-hazardous bio-waste sent in composting / digesting plant at the risk of polluting the compost / digestate produced.

3. Construction and demolition waste (article 3(4a))

This definition is unnecessary because tautological (waste from construction and demolition is waste generated by construction and demolition activities).

4. Other material recovery (article 3(15a))

The French authorities are not in favor of this definition, which they consider unnecessary and incoherent as opposing energy recovery to material recovery, whereas this definition should, according to its title, oppose certain material recovery to others. **The French authorities therefore support the definition of material recovery proposed by the Italian and Danish authorities in Document 11436/16 of 12 September 2016.**

5. Backfilling (article 3(17b))

The French authorities are not in favor of the mention of mines in the definition of backfilling, since the recovery of waste in mines is often questionable. Furthermore, the French authorities consider that it is **necessary to clarify recital 6a** which, because of the use of the verb “*exclude*”, might suggest that the recycling of construction and demolition waste for the construction of roads and infrastructure is systematically covered by the definition of backfilling even when this is not the case: certain road construction and infrastructure operations may be recycling operations, in particular because waste has been the subject of a reprocessing, while other operations can be simple backfilling operations i.e. material recoveries.

6. Extended producer responsibility scheme (article 3(20a))

The French authorities may support the introduction of such a definition provided that it is amended. ***Financial or financial and operational should be replaced by financial and / or operational*** since a producer may decide to assume alone the responsibility for the management of its products that became waste without relying on any third party organization. It will then only have operational and non-financial responsibility.

C. Economic instruments (article 4)

The French authorities have no opposition to the changes proposed by the Presidency.

However, they believe that the European Commission should play a more active role in **developing efficient economic instruments** in order to boost recycling, especially in the case of plastics, whose low oil prices make the economic attractiveness very limited.

To this end, as part of its strategy on plastics, the Commission could carry out a study on the possibility of implementing a mechanism to stimulate the market for secondary raw materials, taking into account their environmental benefits, such as avoided CO2 emissions, compared to the production of the same materials from virgin raw materials. To this end, the French authorities remain favorable to the insertion of the following review clause:

By 31 December 2017 at the latest, the Commission shall examine the framework that would provide support to the production of secondary raw material reflecting their environmental benefits over the production of the same materials from virgin raw materials. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

D. By-products (article 5)

The French authorities are not opposed to the changes proposed by the Presidency in its compromise text, but they consider that they will not have a substantial impact on the current practices and are not in a position to facilitate the transition to a more circular economy. The mere fact of introducing into the WFD some provisions taken from existing jurisprudence would make provisions on by-products more ambitious while keeping control of environmental issues

As the French authorities have suggested since the beginning of the discussions on the waste directives, the mere fact of **adopting in positive law the judgment C-444/00 Mayer Parry Recycling Ltd, which specifies that a production process which uses indifferently products or waste as a raw material produces products and not waste**, would already be a considerable step forward. This could take the form of the following paragraph:

A substance or object resulting from a production process that uses all or part of waste as raw materials shall not be considered as waste when this substance or object possesses characteristics comparable to those that would have been produced without the use of waste.

A process the primary aim of which is waste treatment is not considered a production process as referred to in this paragraph.

E. End of waste status (article 6)

The French authorities **welcome proposals for amending article 6 as suggested by the Presidency**, in particular those specifying the detailed criteria applicable to EU and national end of waste procedure. The proposed criteria appear to be relevant and, in the first approach, to be compatible with the procedure currently in force at the French national level. Such provisions are in fact able of substantially improving the harmonization of the end of waste procedures.

However, the French authorities are not in favor of the reintroduction of paragraph 4a allowing case-by-case end of waste procedure. This procedure is supposed to solve local problems and is primarily aimed for waste that will be used locally and will not be transferred to another Member State. **Thus, to be acceptable, such a provision should be supplemented by another provision requiring Member States to ensure that the non-waste resulting from this case-by-case procedure is not transferred to another Member State.** Without this provision, and therefore without an active role of the Member State granting the case-by-case end of waste, nothing would enable the authorities of an importing Member State to detect an import of waste having benefited from a case-by-case end of waste procedure insofar such waste would have been exported under the product status that it has in the exporting Member State granting the case-by-case end of waste.

Finally, even if they subscribe to the objective of paragraph 4b which takes up an idea developed by Estonian authorities several months ago, the French authorities consider its wording confusing. It would seem simpler to clarify, after the first sentence that should be retained, that compliance with the "chemicals" or "products" regulations is not a presumption of conformity with Article 6 (1) and then delete the last paragraph. The 4b would then be written:

The natural or legal person who places a material on the market for the first time after it ceases being a waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. *Compliance with the chemical or product related legislation does not constitute a presumption of conformity with the provisions of paragraph 1 of Article 6.*

F. Extended producer responsibility (article 8)

The French authorities are in favor of changes to paragraph (1) of article 8 proposed by the Presidency which, combined with the new definition of EPR schemes in Article 3 (20a), clarify the rules for implementing the requirements of Article 8a to EPR schemes established by the Member States (thereby excluding any voluntary agreement) and clarify that a scheme can be operational or financial.

The French authorities are in favor of adding a reference to the reparability of products in Article 8 (2), which resonates with their proposal to facilitate product repair by ensuring access to spare parts and tools for such repairs. However, they regret that this paragraph does not refer to the development of products containing recycled materials as suggested in the various informal documents submitted by the Dutch Presidency.

As regards the amendments proposed by the Presidency in paragraph (5) of Article 8, the French authorities consider that it would be wise to include in this article a reference to **an interpretation procedure comparable to that biocidal products regulation** as suggested by the Dutch Presidency. The exchange of information would lead to a shared understanding / interpretation of the terms of the Directive, which would then make it legal in order to legally secure the economic operators as well as the Member States.

According to the French authorities, such an approach would be particularly relevant in order to clarify the criteria for the modulation of contributions paid by producers and to define in greater detail the concept of optimized cost.

G. General requirements for extended producer responsibility (article 8a)

Paragraph (1)

The French authorities are in favor of the amendments made to paragraph (1) and can now accept the last bullet of the paragraph, the wording of which has been clarified by the Presidency

Paragraph (2)

The French authorities are in favor of the amendments made to paragraph (2).

Paragraph (3)

The French authorities welcome the fact that the Presidency has taken into account in paragraph (3) their concerns regarding the geographical coverage of the EPR schemes, which must be based on the geographical areas where the products are sold but also on the areas where these products are likely to become waste.

Paragraph (4)

The French authorities cannot accept a mandatory full cost coverage by the financial contributions of the producers. The new sentence inserted at the end of the paragraph does not alter the problem repeatedly raised by the French authorities.

The French authorities are asking for flexibility on this provision in order to adapt them to the specificities of each scheme. They recall that the ELV Directive and the Directive on batteries and accumulators provide for the possibility of non-full coverage of costs.

In any event, the French authorities consider that it is preferable to delete paragraph (4) rather than retain it in its present wording.

Paragraph (4a)

In view of their position regarding paragraph (4) above, the French authorities are in favor of the new paragraph (4a), even if they consider that its wording is not sufficiently directive. **To this end, the verb *encourage* could be replaced by the verb *ensure*.**

Paragraph (5)

The French authorities are in favor of the amendments made to paragraph (5) and welcome the introduction of a reference to e-commerce.

Paragraph (6)

The French authorities prefer the wording proposed by the Dutch Presidency in its informal document dated 3 June 2016.

H. Prevention (article 9)

The French authorities encounter some difficulties with Article 9 as amended by the Presidency insofar as it refers to an Article 9a which has not been communicated to the Member States but also because it suggests the definition of aspirational re-use targets where the French authorities consider that it is necessary to **define re-use targets in the framework Directive, following the mechanism set out in the Danish, Finnish and French non-papers.**

The French authorities also face a difficulty with the amendment to the provision dealing with littering, which they believe will prevent a Member State from taking measures to prohibit products whose consumption habits make it the main waste found in the environment, especially marine. The simple addition of the words "***inter alia through consumption restrictions***" at the end of the sentence could solve this problem.

Article 18 of Directive 94/62 / EC on packaging and packaging waste should also be brought into line so that this Directive may echo any restrictions which may have been adopted under paragraph (1) of the Waste Framework Directive. This consistency could be brought by the following modification:

*Freedom to place on the market Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this **Directive with the exception of packaging identified as a source of littering according to article 9(1) of the directive 2008/98/EC.***

I. Re-use and recycling (article 11)

Article 11.2 (c) and (d)

The French authorities are strongly opposed to the Presidency's proposals to reduce the level of ambition of the recycling targets of the Framework Directive which seem to them realistic even if the recycling rate of municipal waste in France is around 40 %.

As much as they could possibly understand that the Council advocates such a position for strategic negotiating purposes with the European Parliament, such a proposal at this point in the negotiations seems to them incongruous.

It is also worth recalling that the proposal by the Danish, Finnish and French authorities for re-use makes recycling targets more accessible because it allows re-use to be taken into account in achieving these targets.

They consider that the differentiation of targets for some Member States is the right way to ensure a good compromise between ambition and realism, provided that the long-term targets remain common and ambitious.

Article 11.1

The French authorities are in favour of the idea of facilitating certain waste stream access to the re-use operators, which would then become involved in the preparation for re-use. Such practice is common and benefit from a legal framework in France, where social economy enterprises have access to the waste streams of some EPR schemes, including WEEE, textiles and furniture. This allows them to select the repairable goods that have become waste, to repair them (i.e. preparation for re-use operation) and put them on the market as used goods. Also, it seems preferable to amend the first sentence of the first subparagraph following:

*Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, by **facilitating the access of preparing for re-use operators to the fraction of the relevant waste stream that might be repaired and subsequently placed on the market as second hand products** ~~advancing the granting of access for personnel of such networks to waste collection points,~~ and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.*

Moreover, as already indicated, the French authorities consider it essential that Article 11 facilitates the repair of products and even facilitates the reuse and preparation for re-use of products or components that became waste. To this end, a prerequisite is to ensure access, in compliance with competition rules, to spare parts and tools for these repairs.

Such a provision would prohibit a producer of mobile phones to block mobile phones that have been repaired outside of its store network via an update of the software of the phone (as it took place earlier this year), or a video games producer to use special screws for which no driver is available on the market, prohibiting their disassembly and therefore their repair.

To do this, the French authorities have already proposed to be introduced to Article 11 the following implementing act:

The Commission shall adopt an implementing act to establish the list of products and components for which Member States shall ensure the prohibition of any restriction to give independent operators access to any spare parts, technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these products and components, taking due consideration of intellectual right properties.

Article 11.3

The French authorities are not opposed to the principle of differentiated targets; on the contrary, they consider that this is a useful element in enabling all the Member States to make progress, taking account of their situation. They note that the differentiation of targets must not, however, lead to a reduction in the overall objectives but only give flexibility within the deadlines for their achievement. The French authorities are also not opposed to the principle of not explicitly mentioning in the Directive the names of the Member States which can benefit from such targets and to define instead the criteria allowing the European Commission to draw up the list of Member States which can benefit from such flexibility. However, the reference method used to calculate these criteria should be specified: does the 20% recycling criterion refer to the Eurostat reporting or to the Method 4 of the WFD or another method including the one proposed by the Presidency in the context of the revision of the Landfill Directive ?

J. Calculation rules (article 11a)

Although they welcome the introduction of the concept of standard loss rates, the French authorities consider that **a number of amendments to this article are still necessary** in order that the latter be acceptable. It seems actually necessary to **better regulate the principle of standard loss rate**. In this respect, the German, Danish and French authorities have submitted a non-paper specifying the provisions necessary for the proper implementation of such standard loss rates.

The French authorities consider it **essential to limit the number of methods used to calculate the recycling targets** in order to ensure comparability of data between Member States and to ensure uniformity in the implementation of the WFD.

It is therefore necessary to **limit the number of methods used to quantify material losses before that occur before the input of the recycling process**. According to the French authorities, only the methods of standard loss rates, electronic registers or even standards published at the EU level by CEN (the European Commission would be advised to mandate the CEN) should be retained. **They therefore believe that it is necessary to delete, in paragraph 4, the words "or any equivalent measure"** otherwise all methods would be allowed making any prescription on the electronic register or standard loss rates and in fact any attempt to harmonize practices, useless.

This would conduct to encounter the same difficulties as those existing in the current Directive, where many calculation methods can be used and where there is no comparability between Member States.

Concerning paragraph 4a, it appears necessary to **recall in this provision that the bio-waste referred to are exclusively bio-waste from municipal waste**, in order that waste from the agro-food industries, that are covered by the definition of bio-waste, are not included in the municipal waste recycling targets (even if the municipal waste definition exclude waste from production).

The French authorities are also in favour of including the wording of Article 2.6 of Decision No 2011/753 in the paragraph. It is therefore necessary to add at the end of the paragraph the words **"for land treatment resulting in benefit to agriculture or ecological improvement"** in order to obtain a complete and clear repetition of the provision whose objective is indeed to recall that composting and digestion of waste can be considered as recycling operations if and only if the compost or the digestate have an agronomic value and are returned to the soil.

Finally, with regard to paragraph 5, the French authorities are in favour of a more open wording in order to encourage the recovery of incineration and co-incineration residues. In order to remove any ambiguity as to the place of incineration without energy recovery in the waste hierarchy, the French authorities would not be opposed to the **introduction of reduction targets for incineration without energy recovery in the WFD**.

K. Waste oils (article 21)

The French authorities **welcome the proposal by the Italian authorities to define targets for the regeneration of waste oils but are not convinced of the need to define a collection target** in Article 11 (2f). The regeneration target is applicable to the oils which can be collected, which implies that, without an efficient collection, the regeneration target would not be achieved.

L. Bio-waste (article 22)

The French authorities are in favour of the amendments to the chapeau of Article 22 proposed by the Presidency, although they would appreciate that the amendments **replace the notion of separate collection of bio-waste by the concept of sorting bio-waste at source**. As they have already indicated, the French authorities understand that a mandatory separate collection of bio-waste involves the installation of collection means, such as collection trucks. This notion seems to them incompatible with local composting (e.g. in the backyard), which is practiced in rural areas. **It is therefore necessary to replace the expression "separate collection" by the expression "source separation"**.

The French authorities consider that the presence of a TEEP provision weakens the article since a TEEP provision can always be used as a loophole for not implementing a provision. **The French authorities are therefore in favour of deleting the words "where technically, environmentally and economically practicable" from Article 22 and replacing it with a provision introducing a mandatory sorting at source of bio-waste in 2030.** French authorities consider that the technical, economic and environmental conditions will already be met by that date, ensuring a generalization of the sorting at source of bio-waste within the European Union.

Moreover, the French authorities consider that the second paragraph should be confined to plastic bags used for the collection of bio-waste, since it is in this context that the new paragraph has been inserted. Finally, they consider that these plastic bags must be recoverable by composting and digestion. A reference to the relevant standards would make it possible to better frame this provision without excluding the standardization work underway on the subject.

II. LANDFILL DIRECTIVE

A. Waste and treatment not acceptable in landfills (article 5)

The French authorities are in principle in favour of the fact that waste which have been separately collected under Article 11 (1) of the Waste Framework Directive are not landfilled, except sorting residues resulting from such collection. This separate collection may lead to waste being recycled but also prepared for reuse (in the case of WEEE). Accordingly, Article 5 (3) (f) should not be limited to recycling and should include preparation for re-use in addition to recycling.

The French authorities are not in favour of the new g) introduced by the Presidency which, as drafted, results in prohibiting the landfill of municipal waste. Indeed, the introduction of a sorting at the source of bio-waste will not lead to diverting 100% of bio-waste from residual waste for at least two reasons:

- The first is that the rate of adhesion to a separate collection is never 100%; some households will not sort their bio-waste, considering, for example, that the bio-waste bin takes up too much space in their kitchen.
- The second is specific to the sorting of bio-waste: the sorting instructions rarely allow the collection of all types of bio-waste. For example, the collection of meat waste is far from being systematic because it can facilitate the appearance of rats.

It therefore seems **more logical to require a landfill ban of all waste that has been separately collected and whose objective is to ensure the recovery of bio-waste.** In order to maintain the objective mentioned in Article 6a, **an obligation for the sorting of bio-waste at source in 2030 could be inserted in the WFD in Article 22.** Thus, in all cases, bio-waste would be sorted in 2030 and prohibited from landfill. Without this last obligation (effective if current technical and economic conditions are met according to the Presidency proposal), landfilling of bio-waste could be prohibited but the sorting of this waste not required, which would be paradoxical.

B. Landfilling reduction target

The French authorities are not in favour of :

- a landfill reduction target which covers only 7% of the actual quantities of waste landfilled according to the figures published by Eurostat
- the alternative target proposed by the Presidency which seems to them difficult to appreciate but also ineffective.

Any target focused on municipal waste will miss real impacts on the amount of waste actually landfilled, so that achieving objectives proposed by the Commission and the Presidency will be costly and without any real benefit for the environment. It would seem more appropriate to construct this target differently by:

- Expanding its scope to cover all non-hazardous non-inert waste;
- Defining a relative target such as halving the quantities of non-hazardous non-hazardous waste entering landfills by 2030 compared to 2012.

Such a target would have the merit of **taking account of the current situation of the Member States** and would make possible to actually reduce the landfill of waste. It would be more readable and understandable by all citizens, since it would mean putting half less waste in landfills.

Such a target is also more efficient from an economic point of view because it allows each Member State to find an efficient distribution of reduction effort between the landfilling of municipal waste (anyway subject to the recycling targets) and waste from economic activities, while facilitating economies of scale by creating infrastructure recovering both municipal waste and waste from economic activities.

Such a target would be easy to control and to compare between Member States avoiding the pitfall of the difference in interpretation of the municipal waste scope.

Moreover, according to Eurostat data, in 2012, of the 2085 Mt of waste landfilled, only 77.6 Mt were municipal waste. These 2085 Mt of waste landfilled were mainly mineral waste and hazardous waste, so that 77.6 Mt of municipal waste can be compared to 424 Mt of non-hazardous non-inert waste landfilled in the same year (according to Eurostat) which demonstrates the inappropriateness of such a target limited to municipal waste.

As already proposed by the French authorities, such a target could be written as follows:

Non hazardous non inert waste: waste which is covered by article 2(d) and article 2(e) at the same time.

Member States shall take the necessary measures to ensure that by 2030 the amount of non hazardous non inert waste landfilled is reduced by 50% compared to the amount of non hazardous non inert waste landfilled in 2012.

In addition, the French authorities fear that **the absence of provision to regulate the incineration without energy recovery, or other disposal operations (as suggested by the Italian authorities)**, could give the impression to economic operators that these operations are higher in the waste hierarchy compared to landfilling which is subject to specific provisions and reduction targets, even if all these operations remain disposal operations.

Thus, it would be appropriate to **introduce some target for incineration without energy recovery reduction in the waste framework directive, the French authorities being also open to the Italian proposal aiming to regulate other disposal operations.** This reduction target could be complemented by a prohibition of issuing a permit for any new facility that could not perform an energy recovery from waste. These provisions would be limited to non-hazardous waste to the extent that the concept of energy recovery as defined in Annex II of the waste framework directive, does not apply to hazardous waste incineration facilities. Thus, such provisions could be written as follow:

Member States shall take the necessary measures to ensure that by 2030 the amount of non hazardous non inert waste incinerated without energy recovery is reduced by 50% compared to the amount of non hazardous non inert waste incinerated without energy recovery in 2012.

By 1st January 2018, Member States shall take the necessary measures to ensure that the competent authority does not deliver permits referred to in article 23 to establishment or undertaking intending to carry out non hazardous waste incineration without energy recovery.

C. Calculation rules (article 5a)

The French authorities consider that **the addition of the new Article 5a is welcomed** and will make it possible to limit the risks of misinterpretation of the landfill reduction targets. In particular, the French authorities are in favour of the reporting of municipal waste that are pre-treated before their landfilling and waste sorting residues that cannot be recovered and which are sent to landfill, as municipal waste landfilled.

However, they consider that this article should not be used as a way of introducing a reduction target for incineration without energy recovery for which it is necessary to define clear targets (see above French proposals). In order to provide greater clarity, the French authorities would be in favour of Article 5a being amended as follows:

Article 5a

Rules on the calculation of the attainment of the targets laid down in Article 5

1. For the purpose of calculating whether the targets laid down in Article 5 (5) (a) and (b) have been attained,

(a) the weight of the municipal waste generated and directed to landfilling shall be calculated in a given calendar year;

(b) the weight of municipal waste entering treatment *referred to in article 6 (a)* with a view to its subsequent landfilling, such as mechanical biological treatment *or stabilization operation* ~~or incineration without energy recovery~~, shall be considered as landfilled;

(c) the weight of *materials that are discarded* ~~waste which is removed~~ by treatment operations prior to recycling *operation of municipal waste referred to in paragraph 1(a) of article 11a of the directive 2008/98/EC*, or other recovery *operation* of municipal waste, such as sorting, and which is subsequently landfilled shall be included in the weight of municipal waste reported as landfilled;

(d) the weight of *materials that are discarded by a recycling operation of municipal waste referred to in paragraph 1(a) of article 11a of the directive 2008/98/EC*, ~~waste from recycling~~ or other recovery operations of municipal waste, which *are* ~~is~~ subsequently landfilled, shall not be included in the weight of municipal waste reported as landfilled.

2. Member States shall establish an effective system of quality control and traceability of the municipal waste landfilled to ensure that conditions laid down in paragraphs 1 of this Article are met. They may use the system established in accordance with Article 11a(4) of Directive 2008/98/EC for this purpose.

3. Waste sent to another Member State or exported from the Union for the purposes of landfilling shall be counted towards the amount of waste landfilled by the Member State in which that waste was collected.'

Modifications des dispositions de la directive emballages

1. Réemploi (considérant n°3a, article 5)

Les autorités françaises sont, **sur le principe, favorables à l'idée d'introduire un considérant, ainsi qu'un article, mettant un accent particulier sur le réemploi.** Cependant, elles ne peuvent accepter la seconde phrase du nouveau considérant proposé par la Présidence dans la mesure où celui-ci suggère l'introduction d'objectifs combinés de réemploi et de recyclage au niveau national par chaque Etat membre, là où les autorités françaises considèrent que c'est à la directive cadre déchets et à la directive emballages de définir ces objectifs au niveau européen.

De même, elles considèrent que le b) du 1) du nouvel article 5 devrait être supprimé afin que soit introduit, comme elles l'ont proposé avec les autorités danoises et finlandaises, des **objectifs combinés de réemploi et recyclage, mais au sein de la directive cadre déchets.**

Il apparaît nécessaire de garder à l'esprit que la révision de cette directive, mais également des autres directives déchets, s'effectue dans un contexte de paquet « économie circulaire » visant à transformer l'économie linéaire de l'Union européenne en une économie circulaire. Conserver un regard exclusivement orienté vers les déchets dans le cadre de ces révisions comporte un risque de ne pas aboutir à un accord avec le Parlement, dont une large majorité des amendements tend à transformer les directives déchets pour améliorer leur lien avec l'économie circulaire, alors que le Conseil refuse d'étudier de telles améliorations car ces directives ne devraient traiter que de déchets.

2. Considérant n°4, 5..., article 6 et 6a.c (Suppression de la référence à la préparation en vue du réemploi)

Les autorités françaises ne peuvent accepter la suppression de toutes les références à la préparation au réemploi dans les dispositions relatives aux objectifs de recyclage.

En effet, contrairement au réemploi qui est effectué sur des produits (rotation de bouteilles ou de palettes dans le cas des emballages), les opérations de préparation en vue du réemploi sont effectuées sur des déchets et devraient donc être prises en compte dans l'atteinte des objectifs de recyclage d'autant plus que ces opérations se situent plus haut que le recyclage dans la hiérarchie des déchets. Par exemple, ce type d'opération est courant en France où des opérateurs récupèrent des palettes cassées pour les démonter et remonter une palette fonctionnelle.

De plus, les objectifs de recyclage des déchets municipaux de la directive cadre, qui incluent la préparation en vue du réemploi dont celle d'emballages, seraient mis en cohérence avec ceux de la directive emballages.

Enfin, supprimer la préparation en vue du réemploi, même si elle n'est actuellement pas prévue par la directive emballages, affectera les taux de recyclage des emballages des Etats membres qui ont logiquement pris en compte ces opérations dans le calcul de leur taux de recyclage des emballages par analogie avec les dispositions de la directive cadre déchets actuellement en vigueur.

3. Objectifs de recyclage (article 6)

Les autorités françaises **ne soutiennent pas la suppression de l'objectif de recyclage spécifique aux emballages en aluminium**. Elles reconnaissent que l'objectif proposé initialement par la Commission européenne pour ce matériau n'était pas approprié mais avait le mérite de mettre l'accent sur l'aluminium dont le recyclage doit être dynamisé.

Aussi, les autorités françaises pensent qu'il est indispensable de **maintenir un objectif de recyclage des emballages en aluminium atteignable et réaliste** afin de s'assurer que les Etats membres mettront en œuvre des mesures visant à assurer le recyclage des emballages en aluminium. Un objectif commun « métaux ferreux + aluminium » n'apporte aucune garantie à cet égard du fait de la forte différence de gisements entre les emballages en métaux ferreux et ceux en aluminium (il y a 10 fois plus d'emballages en métaux ferreux que d'emballages en aluminium en France).

4. Méthodes de calcul (article 6a)

Comme indiqué *supra*, les autorités françaises **ne soutiennent pas l'exclusion de la préparation en vue du réemploi du champ des objectifs** comme le propose la Présidence à l'article 6a.1.c. Une telle inclusion ne serait en rien contraignante pour les éventuels Etats membres qui y seraient opposés dans la mesure où ces derniers seraient toujours libres de ne tenir compte que du recyclage des déchets d'emballages pour atteindre les objectifs et de ne pas tenir compte de la préparation en vue du réemploi de déchets d'emballages.

Il en est **de même pour le réemploi d'emballages réutilisables** n'ayant pas encore acquis le statut de déchet, pour lesquels chaque rotation d'emballage devrait être considérée comme un emballage n'ayant pas acquis le statut de déchet et comme un emballage neuf n'ayant pas été mis sur le marché.

Courtesy translation

Provisions related to the PPWD

1. Re-use (recital n°3a, article 5)

The French authorities **are in favour of introducing a recital, as well as an article, putting emphasis on re-use**. However, they cannot accept the second sentence of the new recital proposed by the Presidency as it suggests the introduction of a combined re-use and recycling target at national level, where the French authorities consider that **it is the WFD and the PPWD that have to define these objectives at the European level**.

They also consider that Article 1 (b) (1) should be deleted in order **to introduce in the WFD combined re-use and recycling targets, as proposed by the Danish, Finnish and French authorities**.

It should be borne in mind that the revision of this directive and of the other waste directives is carried out in the context of a 'circular economy' package aimed at transforming the EU's linear economy into a circular economy. Maintaining an exclusively waste-oriented scope in the context of these revisions entails a risk of not reaching an agreement with the European Parliament, as a large majority of the tabled amendments tends to transform the waste directives to improve their link with the circular economy, while the Council refuses to consider such improvements considering that these directives should only deal with waste.

2. Recitals n°4, 5..., article 6 et 6a.c (deletion of the concept of preparation for re-use)

The French authorities **strongly oppose the deletion of all references to preparation for re-use in the provisions related to the recycling targets**.

Unlike the re-use of products (rotation of bottles or pallets in the case of packaging), preparations for re-use are carried out on waste and should obviously be taken into account in the recycling targets all the more as these operations are higher in the waste hierarchy than recycling. This type of operation is common in France where operators recover broken pallets to dismantle them and reassemble a functional pallet.

Moreover, this would bring consistency between the municipal waste recycling targets of the WFD, which cover preparation for re-use, including packaging, with those of the packaging directive.

Finally, deleting preparation for re-use, even if these operations are currently not covered by the PPWD, could have an impact on the packaging recycling targets of certain Member States which logically took these operations into account in calculating their packaging recycling targets by analogy with the provisions of the WFD currently in force.

3. Recycling target (article 6)

The French authorities are **not in favour of deleting the recycling target specific to aluminium packaging**. They recognize that the target proposed by the European Commission for this material is not appropriate but it had the merit of focusing on aluminium, whose recycling must be stimulated.

It is therefore essential to **maintain a recycling target for aluminium packaging (but to make it realistically achievable)** in order to ensure that Member States implement measures to ensure the recycling of aluminium packaging, which cannot be guaranteed by a common objective of "ferrous metals + aluminium" because of the large difference in quantities between ferrous and aluminium packaging placed on the market (there are 10 times more ferrous metals packaging than aluminium packaging placed on the market in France).

4. Calculation rules (article 6a)

As already mentioned, the French authorities are **not in favour that preparation for re-use be exclude from the scope of the targets**, as proposed by the Presidency in Article 6a.1.c. They believe that their inclusion is relevant. Such inclusion would not be binding for the Member States that are opposed to this inclusion, since they would always be free to consider only the recycling of packaging waste in order to achieve the targets and free to not to take account the preparation for re-use of packaging waste.

The same applies to the re-use of reusable packaging which have not yet acquired the waste status and for which each rotation of packaging should be considered as a packaging which has not acquired the waste status and as a new packaging not placed on the market.

CROATIA

Comments on document no. 14152/16 of 8 November 2016

End of Waste

Recital 6a (p. 3)

„The definition of backfilling does not exclude that reprocessing of waste into secondary raw materials for engineering purposes in construction of roads or other infrastructures may fulfill the definition of recycling, ...“.

Preamble 6a states that reprocessing of waste into secondary raw materials for engineering purposes (construction of roads) **complies with the definition of recycling**, if the use of materials meets all relevant standards, norms, specifications and environmental and health protection requirements for the specific use. In practice these are materials that after use meet the indicated requirements and cease to be waste.

However, in preamble 17b it is stated that the quantities of the materials that cease to be waste, and which are to be used as fuels, **backfilled**, incinerated or landfilled cannot be counted towards the recycling targets.

The issue is whether waste that has undergone the recovery operation, for example R5, and which meets all the requirements for end-of-waste status and can be declared as a product but will be used for backfilling in construction of roads can be counted towards recycling targets or not.

We deem that this issue should be clarified in the provisions of the directive concerning the counting towards recycling targets.

Art. 6 para 4b

„The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.“

Article 6 para. 4b of the Waste Framework Directive provides that the conditions laid down in paragraph 1 of that Article have to be met before the legislation on chemicals and products applies.

However, para 1 states that meeting the legislation applicable to products is one of 4 conditions that a substance or object has to comply with in order to cease to be waste, and it is unclear whether first the other 3 conditions have to be verified, and then ascertain if the substance or object meets the legislation on products or chemicals or whether we are talking about another (new) requirement.

Definition of construction and demolition waste (Art. 3.)

We propose that a link to the group 17 of the List of Waste is added to the definition, not only in recital 6b, thus avoiding any possibility of broadening the definition to waste not classified under group 17 LoW.

Targets, derogation (Art. 11.)

We support the direction of the SK Presidency to reduce the targets by 5% points, although we still have the scrutiny on the proposed numbers.

We agree with the new text in which the criteria for derogation are formulated in a different manner. **We understand that data on the total recycled municipal waste are based on the calculation according to Method no. 4 (or data the Eurostat has on SDI indicator).**

With regard to the „**Interim target**“ it is necessary to clarify who determines the „**Interim-targets**“ – according to the indicated text it might be concluded that the interim-targets are listed in implementation plan prepared by the Member State. However, the text on page 22 (f) states „*In the event of an extension, the Member State shall take the necessary measures to increase the preparing for re-use and the recycling of municipal waste to a minimum of 50% and 55% by weight, by 2025 and 2030 respectively*“. It is not clear from this statement if this refers precisely to those interim targets which would mean that we can only depart by 5% from the targets in the indicated years. Our proposal would be that this sentence is deleted.

Calculation rules (Art. 11.a)

It is unclear which are the „strict conditions“ mentioned in recital 17a, and under which it is allowed to use data on „separately collected waste which undergoes no further sorting“ instead of „inputs in the recycling operation“.

In any case we support the addition of this amendment which will facilitate the administrative process of data collection.

We support the possibility of using the standard/average loss rates at the national level, however it is not clearly stated what happens in cases when a Member State did not determine such loss rates and we therefore ask for clarification or propose an amendment in this regard. Therefore, we support DE, FR, DK proposal to add provision for establishment of harmonised EU average loss rates. We also support the proposal to oblige installations to provide necessary data on losses related to municipal waste streams.

We support the joint proposal on reward of re-use in the recycling target by FI, DK, EE, FR, IE, HR.

Prevention (Art. 9)

We agree with the proposal that an „implementing act“ is adopted by which prevention indicators would be established – in view of the fact that at the national level very different measures are prescribed for prevention of waste, we believe this will be a very demanding task.

Other provisions

We have already stated our position with regard to a number of other amendments.

We agree with the proposed text of the Directive which concerns early warning system, reporting, establishment of electronic registries (for hazardous waste), reporting relating to the extended producer responsibility – for this two topics implementation was satisfied through the establishment of e-ONTO and the Register of special categories of waste, abolishment of three-year reports on implementation of Directives and relying exclusively on reporting of statistical data, biennial reporting on food waste based on the methodology to be developed by the Commission.

Proposal for a Directive of the EP and of the Council amending Directive 1999/31/EC on landfill of waste – presidency compromise text

Comments on document no. 14169/16 of 9 November 2016

We welcome the inclusion of alternative (absolute) target on landfill and in principle the rules on calculation, although we still have the scrutiny on the proposed numbers.

Calculation rules (Art. 5a, para 1 p. b)

- (b) *the weight of municipal waste entering treatment with a view to its subsequent landfilling, such as mechanical biological treatment or incineration without energy recovery, shall be considered as landfilled;*

We have concerns with the proposed rule that “**the weight of municipal waste entering treatment**” would be taken into account, since *e.g.* in incineration the weight changes significantly, and according to this it would mean that the calculation takes into consideration the weight before treatment was carried out, although only the incinerated matter will be landfilled (*e.g.* ash). The proposed principle is also questionable from the perspective of the *Malagrotta* case and the obligation to treat waste before landfilling.

Proposal for a Directive of the EP and of the Council amending Directive 94/62/EC on packaging and packaging waste – presidency compromise text

Comments on document no. 14198/16 of 9 November 2016

Targets and calculation rules

Art. 6

Although we support the direction of the SK Presidency, especially regarding the combined target for metals, we still deem the targets for plastic, wood and metal to be too high.

Art. 6.a

Same comments as for Waste Framework Directive on calculation rules.

Art 12. para 3a

We still have scrutiny on the changes in this provision together with proposed changes in Annex III.

ITALY

DOC. 14152/16 WASTE FRAMEWORK DIRECTIVE (2008/98/CE)

Recital

Recital 6a. Italy can accept the possibility of considering the reprocessing of waste into secondary raw materials for engineering purposes in construction of roads or other infrastructures as recycling only if it will be made clear that municipal waste used for such purposes cannot be counted towards the recycling targets set in art.11.

Regarding recital 17a. Following the article reformulation on the calculation method, Italy believes that is not appropriate anymore to talk about “derogation”. The two options (separate collection or output of sorting) should be considered as alternatives calculation methods. Therefore Italy believes that the words “*way of derogation from the general rule be allowed under strict condition*” should be deleted.

Regarding recital 17b. Italy believes that the last sentence is still not sufficient in order to explain that End of Waste operations cannot be considered as “recycling” if the secondary raw material produced is destined to an operation that has the same purpose of a other material recovery operation. Therefore Italy suggests the following reformulation.

“...In line with the definition of recycling, the reprocessing of waste into materials which are to be used as fuels, ~~backfilled or landfilled~~ **or in an operation that has the same purpose of a waste operation such as backfilling, other material recovery, incineration and landfilling** cannot be counted towards the recycling targets.”

Regarding recital 17c For the same reason explained above, Italy suggests to reformulate the sentence as follow.

“In line with the definition of recycling, the reprocessing of biodegradable waste into materials which are to be used as fuels, ~~backfilled or landfilled~~ **or in an operation that has the same purpose of a waste operation such as backfilling, other material recovery, incineration and landfilling** cannot be counted towards the recycling targets.”

Definition of municipal waste

Italy considers important to maintain the term “*quantity*” in the definition of municipal waste. As an alternative proposal Italy suggests the following.

Municipal waste does not include waste from production, agriculture, forestry, **large commerce and industry**, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles and construction and demolition waste **except waste arising from minor construction and demolition activities by individual households**.

Definition of “other material recovery”

Art. 3 definitions new point 15a

Italy cannot accept the proposed definition of “other material recovery” which seems to be useless if the “material recovery” definition is missing. Therefore Italy believes that it is essential to introduce a definition of “material recovery” as follow.

“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”.

Definition of “recycling”

Art. 3 point 17

In order to distinguish “recycling” from “other material recovery” Italy proposes to modify the recycling definition as follow (for more clarity see the august comments and the table attached):

Recycling means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes **and such operation does not prevent the future potential reprocessing of those products, materials or substances once they have become waste.** It includes the reprocessing of organic material waste but does not include energy recovery, **backfilling** and the reprocessing into materials that are to be used as fuels or for **operations that have the same purpose of backfilling operations.**

End-of-waste Status

Art. 6 WFD End of Waste

Italy supports the Presidency proposal on article 6 however, in order to make clear that not all recovery and recycling operations generate an EoW (see comments of august) Italy proposes the introduction of a specific recital.

Incomplete recovery operation which generates secondary raw materials which will be further used to fulfil a particular function in the plant or in the wider economy, can be considered not being waste anymore, even if the final reprocessing into materials and products has not occurred yet, if specific conditions set at European or national level are met.

List of Waste

Art. 7 WFD

Italy believes that it should be clarified the way of implementing the provisions contained in article 7(2) and (3). In fact the Commission has explained that MS could have national List of Waste which are different from the European Waste List for both:

- the hazardousness of certain waste codes
- addition of new code

Italy believes that such aspects should be addressed in the article 7.

Extended producer responsibility

Art. 8 WFD Extended producer responsibility

Italy believes that it should be made explicit that the provisions of article 8a also apply to the responsibility schemes established under the packaging directive which at the moment does not mention the EPR. Furthermore it should be made clear the relationship with the specific provisions contained in the WEEE batteries and ELV directives which do not comply with the requirements of article 8a. For this reason Italy proposes the following changes in paragraph 8(1), 8(4) and 14(2)

Where the measures [...] referred to in this paragraph take the form of extended producer responsibility schemes [...] the general requirements in article 8a shall apply. Such requirements shall apply also to existing and new producer responsibility schemes established under the packaging directive.

8.4 The extended producer responsibility shall be applied without prejudice to the operational responsibility for waste management as provided for in article 15. **The extended producer responsibility shall be applied also to the schemes for particular waste and product streams covered by specific legislations except when these last ones contain specific provisions which are more detailed or non compliant compared to the ones of article 8a.**

14 (2) Member States may decide that the cost of waste management are to be born ~~partly or wholly~~ by the producer of the product from which the waste came in accordance with article 8 and 8a. ~~and that the distributors of such product may share these costs.~~

Art. 8a WFD General requirements for extended producer responsibility schemes

Italy believes that the EPR schemes should be NON-PROFIT systems because the cost of the functioning of the waste management are then transferred to the final user. Therefore the financial contribution paid by the producers (and then incorporated in the cost of the final product) must be only and exclusively used for the purpose of fulfilling the obligations under the extended producer responsibility and not for other purposes. Therefore, Italy suggests to add a new letter d) like follow.

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:

- a)..
- b)..
- c)..

(d) are exclusively used for covering the cost of waste management as referred to in letter a).

Furthermore Italy believes that the financial contribution paid by the producers should be based on the optimised cost of the services regardless the public or private nature of the waste management operator; Italy suggests the following rephrasing.

(c) are based on the optimised cost of the services provided in cases where **public** waste management operators are responsible for implementing, operational tasks on behalf of the extended producer responsibility scheme.

Prevention of waste

Art. 9 WFD Prevention of waste

Italy believes that indent in 6 of article 9(1) should be deleted because it should be addressed in the relevant product legislation. As an alternative Italy proposes the following reformulation.

Promote the reduction of the content of harmful substances in materials and products and the communication about hazardous substances in the supply chain.

Regarding **paragraph 2** Italy rejects the use of the “*quantity of waste that is disposed of or subject to energy recovery*”.

9.4 Italy believes that in order to make Member States performances comparable, indicators should be set by the Commission for the whole waste prevention and not only for food waste, therefore we ask to reinforce, in the first sentence the word “*may*” with “*shall*”.

Reuse and recycling

Art. 11 WFD Reuse and recycling

First of all, Italy believes that as proposed by Belgium and Netherland in the last WPE meeting, the “reuse” issue should have a specific article as introduced by the Presidency in the Packaging directive.

Italy suggests to change the title of article 11 introducing the reference to “***Preparing for reuse***”

In paragraph 1 Italy is not in favour of facilitating the access to waste collection points to reuse and repair networks. Italy believes that a reuse operator cannot enter a waste collection point because is not authorized to operate under the waste regime. Therefore Italy prefers the actual formulation of the WFD which reads as follows:

“1.Member States shall take measures, as appropriate, to promote the re-use of products and preparing for reuse activities, notably by encouraging the establishment and support of re-use and repair networks, the use of economic instrument, procurement criteria, quantitative objectives or other measures.”

Rules for the calculation of the target

Art. 11a WFD rules on the calculation of..

11a.3 Italy is in favour of the Presidency proposal. However, regarding the use of “standard average loss rates” Italy may accept the proposal only if:

- Member States will send to the European Commission a detailed explanation of the national calculation method of such “standard average loss rate”;
- The Commission will evaluate the national calculation methods and eventually makes a proposal for the harmonization of such methods.

11a.4b Italy welcomes the Presidency proposal however, mentioning only the use as fuel is absolutely not sufficient in order to explain which End of Waste operations cannot be considered as “recycling”. Italian proposal is the following:

“...or other purposes but not to be used as fuels **or in any operation that has the same purpose of a waste operation such as backfilling, other material recovery, incineration and landfilling**”.

Furthermore, Italy believes that, as in the current Commission Decision 753/2011, MS may account “home composting” and “community composting” in the calculation of the recycling target of municipal waste. Therefore Italy suggests to introduce the following point.

4c. For the purpose of calculating the targets laid down in article 11(2)(c) and (d) and article 11(3), the amount of biodegradable waste which is composted on the site of production by the producers themselves may be counted as recycled when that treatment generates compost which is to be used as a recycled product, material or substance.

Bio-waste

Art. 22 WFD.

Italy believes that is important to establish a deadline for the establishment of the bio-waste separate collection. Therefore Italy suggests the following.

Member States shall ensure **by 2025** the separate collection of biowaste where technically, environmentally and economically practicable and appropriate to ensure the

Reporting

Art. 37 WFD.

Italy believes that an annual report is a huge administrative burden for Member States. Italy advocates for a reporting period of at least 2 years.

ANNEX I AND II

Recovery and disposal operations.

Italy asks for the review of Annex I and II in order to distinguish Recovery operations from the Recycling operations and to delete disposal operations which are not necessary anymore (D2, D3, D4, D6, D7). Furthermore Italy is in favour of the introduction of a new code for “backfilling” and asks for the introduction of a new specific code for “Preparation for Reuse”

Waste oil

Recital article 3,11 and 21.

Italy proposes to strengthen the requirements set for the management of waste oil. In fact, according to the hierarchy, regeneration of oil should be preferred to energy recovery however a full implementation of article 21 is not yet achieved. Therefore Italy suggests to include a new recital and to modify article 3, 11 and 21 as follow. (more details and rationale on the proposal are contained in the Italian position in the document 5778/16 add. 7.

New Recital

Separate collection and regeneration of waste oils has significant economic and environmental benefits including the raw materials security of supply, and contributes moving the Union closer to a Circular Economy. The collection and regeneration targets for waste oils should take into account the divergences among the Member States in relation to the collection and recycling performance. The targets are beneficial to create a level playing field and harmonize the EU single market whilst ensuring protection of the environment.

Art 3. “Collectable waste oil” means waste oil that remains after use and which can be effectively collected.

2e) By 1st January 2020 at the latest, regeneration of waste oils shall be increased to a minimum of 60% of the collectable waste oils. By 2025 regeneration of waste oils shall be increased to a minimum of 85% of the collectable waste oils. Member States that have no waste oil regeneration facility shall be deemed to achieve these regeneration targets by exporting the collected waste oil from their country, in line with the requirements on transboundary shipments of hazardous waste set down in Regulation (EC) No 1013/2006, to another Member State.

Member States that already achieve the minimum targets set out in the previous paragraph shall not reduce the historical regeneration performances they have already achieved.

(2f) For the purpose of achieving the targets for the regeneration of waste oils and without prejudice to the obligations set out in Article 21, annual collection of waste oils shall be increased to at least of 95% by 2020 and 100% by 2025 of collectable waste oils.

Article 21

Waste oils

1. Without prejudice to the obligations related to the management of hazardous waste laid down in Articles 18 and 19, Member States shall take the necessary measures to ensure that:

(a) waste oils are collected separately, where this is technically feasible;

(b) waste oils are treated in accordance with Articles 4, 11 and 13;

(c) where this is technically feasible and economically viable, waste oils of different characteristics are not mixed and waste oils are not mixed with other kinds of waste or substances, if such mixing impedes their treatment.

2. In furtherance of the targets set out in Article 11 for the collection and regeneration of waste oils for the purpose of separate collection of waste oil and their proper treatment, Member States may, according to their national conditions, apply additional measures such as technical requirements, producer responsibility, economic instruments or voluntary agreements.

3. If waste oils, according to national legislation, are subject to requirements of regeneration, Member States may prescribe that such waste oils shall be regenerated if technically feasible and, where Articles 11 or 12 of Regulation (EC) No 1013/2006 applies apply, Member States shall restrict the transboundary shipment of waste oils from their territory to incineration or co-incineration facilities in order to give priority to the regeneration of waste oils.

4. Member States will calculate the amount of the collectable waste oil in their respective territories. The value cannot be below the 50% of the annual lubricants consumption in the Member States.

TARGET ON DISPOSAL

Target on disposal for all waste produced.

Italy believes that the Waste Package does not achieve the aim of a circular economy as it is only focused on municipal waste. Italy asks for the introduction of a more general reduction target of disposal for the totality of the waste produced and not only for municipal waste.

For more details and rationale of this proposal it can be seen document 5778/16 containing the Italian national position on this issue.

DOC. 14169/16
LANDFILL DIRECTIVE (1999/31/CE)

Article 3

Scope. The landfill directive should be aligned with the more recent Mining waste directive (2006/21/EC). In fact the deposit of mining waste is regulated by special provision of the mining waste directive and it is called “mining waste facility”. These “mining waste facilities” are excluded from the scope of the landfill directive because are regulated in detail by the *lex specialis* 2006/21/CE.

In article 2 par 4 of the Mining waste directive it is written: “*Without prejudice to other Community legislation, waste which falls within the scope of this Directive shall not be subject to Directive 1999/31/EC*”. Therefore the whole article 3 of the landfill directive should be reformulated as follow. The whole paragraph 3 should be deleted because the deposit of mining waste is always excluded from the landfill directive and not only from some particular provisions of it.

2. ~~Without prejudice to existing Community legislation, the following shall be excluded from the scope of this Directive~~ **The following shall be excluded from the scope of this directive to the extent that they are covered by other Community legislation:**

- the spreading of sludges, including sewage sludges, and sludges resulting from dredging operations, and similar matter on the soil for the purposes of fertilisation or improvement,
- the use of inert waste which is suitable, in redevelopment/restoration and filling-in work, or for construction purposes, in landfills,
- the deposit of non-hazardous dredging sludges alongside small waterways from where they have been dredged out and of non-hazardous sludges in surface water including the bed and its sub soil,
- the deposit of unpolluted soil or of **hazardous**, non-hazardous **and** inert waste resulting from prospecting and extraction, treatment, and storage of mineral resources as well as from the operation of quarries.

~~3. Without prejudice to Directive 75/442/EEC Member States may declare at their own option, that the deposit of non-hazardous waste, to be defined by the committee established under Article 17 of this Directive, other than inert waste, resulting from prospecting and extraction, treatment and storage of mineral resources as well as from the operation of quarries and which are deposited in a manner preventing environmental pollution or harm to human health, can be exempted from the provisions in Annex I, points 2, 3.1, 3.2 and 3.3 of this Directive.~~

Article 5 targets

Paragraph 3 point f). Italy agrees that separately collected waste should not be accepted in landfill however the ban shall not be applied to the waste produced by the subsequent sorting of the separately collected waste.

Paragraph 3 point g). Italy agrees in theory with the proposed provision however the practical application may be difficult. In fact the interpretation of what is suitable for preparing for reuse, recycling or other recovery may be very different from one place to another.

Paragraph 5 target on landfill. Italy is not satisfied with a landfill target for municipal waste. Italy advocates for a more ambitious target for all disposal operations contained in annex I of the WFD and all types of waste, not only municipal waste.

Regarding the alternative target proposed by the Presidency (50 kg per capita per year) Italy is positive because such approach takes into account also the reduction of the production of waste and is stimulating prevention as well as recycling and recovery. However for harmonization purpose, Italy believes that only one target should be included in the directive and therefore the deletion of the 10% target should be necessary.

Article 5a

Rules for the calculation of the target. Italy is very positive on the Presidency proposal on this regard. In fact Italy believes that harmonize the calculation method for the attainment of the target is very important. Furthermore the Presidency proposal is in accordance with Italian request on the clarification regarding the nature of municipal waste after “treatments” operation which change their waste code but it should not constitute an excuse for not accounting them as municipal waste landfilled.

Italy suggest to reformulate letter b) because the sentence “incineration without energy recovery” is not correct and it should be **“incineration that does not reach energy efficiency values established in annex I of WFD”**

Article 6

Requirement of “treatment”. The definition of treatment should be aligned with the sentence of the Court of Justice which established in the case “Malagrotta” what should be meant for “treatment” prior to landfilling. Italy believes that it should be better clarified that the requirement of treatment should refer to the all the operations that decrease the impact on the environment, reducing the organic content of the waste in order to lower the biogas emission and leachate production. Volumetric reduction and other simple sorting operation which does not comprehend a stabilization of the organic fraction of the waste cannot be considered useful in other to fulfill the notion of “treatment”. Italy believes as well that it should also be establish in the directive when exactly the “treatment” prior the landfilling is not necessary anymore. Italy proposes that if the recycling targets established in the WFD and the biodegradable waste reduction target of the Landfill directive are achieved, the treatment should be considered unnecessary.

Article 15

Reporting. Italy believes that the annual report is an excessive burden for the MS. Italy asks for a report period of at least two years.

DOC. 14198/16
PACKAGING DIRECTIVE (94/62/CE)

Recital

Recital 3a. Italy asks for the deletion in the recital of the words “*including combined reuse and recycling targets*”.

Recital 4 and 5. Italy believes that the words “preparation for reuse” should be kept in order to be accounted for the attainment of the target of preparation for reuse and recycling.

Article 3

Definition of packaging waste. Italy asks for the maintenance of the words “*excluding production residues*” from the definition, like in the actual formulation of the directive.

Definition of “final recycling process”. The reference to the “final recycling process” definition should be deleted in accordance to the deletion of such definition in the WFD.

Article 5

Reuse. Italy is in favor of the specific article on reuse that has been proposed by the Presidency. However, like suggested by SL, Italy believes that the formulation of paragraph should be:

MS shall take measures to encourage the placing on the market increase the share of reusable packaging
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Article 6

targets. Italy asks for the maintenance of the words “prepared for reuse” in letter f) and g). Italy believes that the target should be a preparation for reuse and recycling target and not only a recycling target.

Wood target. Italy believes that the value proposed by the Presidency is too low. In Italy in year 2014 the recycling of wood packaging reached the value of 59,7% and we believes that is still possible to improve this record.

Metal targets. Italy is in favor of a separate target for aluminum.

Glass target. Italy believes that the value proposed for year 2030 is too ambitious and asks for a value of 80% in 2030.

Italy is in favor of the review clause introduced by the Presidency although if the proposed year (2024) for the review seems to be too close.

Article 6a

Calculation methodology. Italy asks for the maintenance of the “preparation for reuse” in the calculation method. Italy believes that the target should be a preparation for reuse and recycling target and not only a recycling target.

Paragraph 4a. In accordance with the WFD Italy believes that it is not sufficient to mention the use of fuel as an operation that cannot be accounted toward the recycling target. Also backfilling and other material recovery should be excluded from the recycling calculation of material that has ceased to be waste.

Standard losses. See comments made in WFD

Article 12

Reporting. Italy believes that the annual report is an excessive burden for the MS. Italy asks for a report period of at least two years.

Annex III

Modification of table 1 and 2. Italy believes that the reporting of the packaging and packaging waste divided in the 3 categories (primary, secondary and tertiary) is not possible because the data are not available neither for the products put on the market nor for the waste produced. Furthermore it is not clear which will be the added value of such added burden.

DOC. 14228/16 ELV, WEEE and BATTERY's directives

Definition

Definition. As emerged during the last two TAC meetings, in order to have more reliable data on the amount of ELV treated and recycled and to better calculate the attainment of the target, it is necessary that a definition of "spare parts" is introduced in the directive.

LATVIA

14152/16 – WASTE FRAMEWORK DIRECTIVE

Article 2

Latvia would welcome another wording for Article 2(2) (f) to avoid misunderstanding of the real object of exclusion from the scope of Directive.

Latvia supports the current definition of “municipal waste” without reference to quantity in (b) subparagraph.

Article 8a

Point 1

In the 1st indent we completely support the change of scope to “the market of the Member State”.

We do not support the exclusion of any derogation possibilities for SME in the 4th indent.

In the 5th indent it is producer, not schemes that can contribute to the incorporation of costs. We do not consider this point appropriate because in product or waste export cases it is not possible to verify the fulfilment of this requirement.

Point 2

The current redaction of “centers for reuse and preparation for reuse” requires creation of new forms of entities to correspond to an unclear notion of “centers”. Thus Latvia suggests generalising this informing requirement to “informed about ... possibilities for reuse”.

Point 4 last sentence

Defining competences of public authorities in Member States are up to Member States themselves. This sentence is redundant.

Article 9

We consider this article too prescriptive. Directive should include objectives, leaving the choice of methods and instruments up to Member States.

Article 37

2nd paragraph

Latvia prefers biennial reporting on food waste prevention. This would provide higher added value than an annual report.

Article 5

Paragraph 3 (g)

Latvia considers this requirement too strict as all waste under particular circumstances can be considered suitable for preparation for reuse, recycling or other recovery.

We see it more as an instrument that some Member States might want to introduce but we do not support this requirement in the Directive.

Paragraph 5, 6 and 7

We support the alternative objectives whether as a percentage or generated waste per capita.

Current targets in the derogation case (25% or 125 kg per capita in 2030) demands great efforts for Latvia but we can work towards it. In turn, the general target of 10% or 50 kg per capita in 2030 or 2035 in derogation case is unrealistic for Latvia. Such a target would require disproportional investments.

It is still not defined how the derogations will be granted.

Year 2024 seems too early for the examination of targets of 2030 (and 2035 with derogations).

Article 5a

Point 1 (a)

Could the Presidency explain the term “directed to landfilling”.

Point 1 (b)

The same principle but in reverse direction that is defined in (c) should be applied also here – i.e. weight of waste which is removed prior to MBT or incineration without energy recovery with a view to its recovery shall be considered as recovered.

Article 16

We would like to see the conditions under which the Commission can make legislative proposals amending annexes.

14198/16 – PACKAGING WASTE DIRECTIVE

Article 5

Point 1

We support the addition of (b) and (c) as a more balanced approach because previously too much stress was put on deposit system.

Article 6

Even though targets for plastic and wood packaging were reduced, Latvia considers that the over all level of targets is too high.

We appreciate the deletion of a separate target for aluminium packaging.

We would like to keep in the text an average loss rate of 10%.

Annex III

Latvia would welcome an explanation of necessity to add information on primary, secondary and tertiary packaging separately. We consider it as an addition administrative burden for business (difficult to assess the packages in this way, accounting errors). Such an approach had already been in the past, but with time has been abandoned. There is no reason why it should be restored.

HUNGARY

Hungary is fully committed to accomplish an environmentally sustainable and competitive low-carbon economy. Hungary welcomes and generally supports the objectives of the circular economy package proposed by the Commission. We recognize the importance of keeping the waste in the economic circle as long as possible. We share the view that the environmental and resource-efficient economy in the long run can contribute to the sustainable low-carbon and competitive economic growth.

In Hungary a comprehensive (economic, social and environmental) impact assessment is still under preparation.

Hereby Hungary gives preliminary comments on the texts, modified under the Slovakian presidency.

Firstly, we would like to draw the MSs' attention to the *Impact Assessment Institute* report (Henceforth: Report), which scrutinizes the Commission's Impact Assessment and the Commission staff working document.

According to the Report *„the method for determining derogations to the recycling and landfill targets is inconsistently applied **does not reflect the needs of Member States and creates a two-sizes-fit-all policy where multiple different starting conditions apply.***

Concerning the above mentioned report, we suggest being careful with setting too ambitious targets.

Regarding the ambitious waste management targets laid down in the proposals, we are of the opinion that it is crucial to take into account the different starting positions and economic performance of each Member State. In Hungary major investments are needed to achieve the objectives set out in the legislative proposals requiring large-scale capital investments and a fundamental change in the national short- and medium term planning.

We need feasible targets and to ensure adequate timeframe for the implementation of them.

WASTE FRAMEWORK DIRECTIVE (WFD)

Definitions:

For the sake of compromise we can support the definition of **municipal waste**, although we are among those MSs that wanted to refer to the LoW codes. We found the „*Guidance on municipal waste data collection*” by Eurostat really useful as its Annex II determines exactly the scope of municipal waste based on selected LoW codes. The guidance also explains how we can link the allocation of outputs to the municipal waste inputs. We still find difficult to determine the exact amount of packaging waste (1501) generated as municipal waste. We would welcome if MSs shared their best practices on this issue.

We welcome also the definition of **backfilling** as we supported to include the term non-hazardous into its definition. We are among those MSs that want to understand why “mines” are necessary to include in the definition of backfilling. Do excavated areas not cover all of types of mines?

In case of the third sentence of the recital (6a) we need some further clarification. Definition of backfilling refers to clearly wastes, not to recycled secondary raw materials. We should distinguish backfilling and recycling activities.

We need also some clarification on the term of **other material recovery**. This term is used in the framework of construction and demolition waste target (Art 11. para (2) b); therefore it seems it has relevance exclusively in case CWD. **Material recovery** is determined by 2011/75/EU COM Decision paragraph (5) Article 1. We would rather use the definition of *material recovery* as it is determined by the Decision. What is the reason for using other material recovery (which covers reprocessing into materials used as fuel) rather than material recovery (which does not cover it)? We would like to get some examples of other material recovery operations in the light of CWD.

We agree with the definition of **construction and demolition waste** and we also support the reference to the LoW in the recital. We would like to draw the attention here to the fact that those **metal wastes** (aluminum, lead, zinc, iron and steel, tin) that are really important for both economic and waste management purposes, can be listed exclusively under the Chapter 17 of the LoW. For this reason those metal wastes which do not result from construction and demolition activities are currently reported under the construction and demolitions wastes. This problem needs to be solved in order to calculate with accurate numbers.

We generally support the term of **bio-waste**, although we should avoid determining strict definitions without possible flexibility to incorporate other bio-wastes from other sources which are not listed in the definition. Perhaps the text could mention examples instead of the list of the sources.

In case of collection of bio-waste (Art 22 second indent) we suggest to refer to the biodegradable bio-waste plastic collection bags instead of mentioning “waste with similar biodegradability and compostability properties. We have to exclude other kind of wastes and protect bio-waste from contamination.

We welcome the **new R-code** for **backfilling** and we recommend a special introduction of an R-code for **preparation for re-use** with which we could accurately determine products that are prepared for re-use and products that become waste. Data provision could be solved this way.

Targets, time extension and criteria

Hungary recycled below 30 % of its total amount of municipal waste and landfilled more than 60 % of it in 2013. With regard to the proposed targets by the Commission (min. 65 % preparation for reuse and recycling rate for the total municipal waste generated) it is clear that Hungary cannot achieve the targets by 2030 without recourse to use derogation.

We strongly support the compromise text of the Slovakian Presidency on the Waste Directive, which aims to reduce the target for recycling (60 %) of the municipal waste. The Presidency also grants derogation to those Member States that recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013.

We should take into consideration that the EP may want to increase the level of the ambition; therefore we should leave room for negotiations and aim for a potentially acceptable landing point of the targets.

Calculation methods

We welcome some of the changes made by the Presidency on this Article. We find difficult to identify the original waste stream (municipal, commercial, industrial) of the secondary raw material. The municipal waste goes under several sorting processes and it is mixed with waste from other origins. We only have clear data about the amount of separately collected waste, and waste which goes to further recycling processes after the first sorting operation. We support DE/DK/FR non-paper on modifying the calculation method.

Therefore we support the latter modifications of Article 11a:

“Article 11a

3. By way of derogation from paragraph 1(a), the weight of separately collected waste or of the output of the first sorting operation may be reported as the weight of the municipal waste recycled provided that:

(a) such waste is [...] subsequently recycled;

(b) the weight of materials or substances that are [...] removed by further operations preceding the actual recycling operation and are not subsequently recycled [...] is not included in the [...] weight of waste [...] reported as recycled.

We support introducing a reference to the **standard average loss rates** in paragraph 4 Article 11a. Table 5.1 of Eunomia Report „Support to the waste target review” contains examples of some existing average loss rates used by MSs. As the Commission clearly expressed that setting average loss rates would be impossible at EU level, we ask the Commission to help the MSs in finding the best method to do their own calculations regarding the losses. Sharing MSs’ best practices would also be welcomed.

Reuse in calculation

Proposal on reward of re-use in the recycling target non paper by DK, FI, EE, FR, IE, HR

DK/FR/IE/HR proposal suggests incorporating reuse into the recycling targets. In WFD reuse of furniture, textiles WEEE can be taken into account. Only re-use organised by registered re-use operators within the eligible sectors could be taken into account in the targets, which would make simpler to report and calculate.

We agree with the importance of rewarding the reuse activities, because as a way of prevention it is higher on the waste hierarchy than recycling. The problem with reuse, that as it is not a waste management activity, we do not have data about such activities. Also we are not sure that from a legal point of view it is appropriate to incorporate reuse into recycling targets. The conceptual problem could be easily solved by asking CLS’s opinion about it. The more difficult part is to solve the problem of lacking data on reuse activities, and the uncertainty concerning both the calculation and the definition of reuse. If there are no legal obstacles, it is important to develop clear rules on how to report, track and measure the reuse of the proposed materials.

The MSs, which proposed the abovementioned calculation of reuse, offered to explain in details their experience in reporting and calculating the reuse of materials and reuse activities at expert level meetings. We would really welcome, if they shared their best practices on this issue. We do not want to exclude the possibility of counting reuse until we have not seen the possible practical solutions. However, incorporating those targets cannot result in increased ambition level of targets or introduction of a separate targets for reuse. We would also like to avoid significant increase in administrative burdens.

PACKAGING WASTE DIRECTIVE

Preparation for reuse

We agree with the Commission that the relevance of preparation for reuse in case of packaging is marginal. But we would not like to exclude it, as it seems that there are some MSs where the preparation for reuse of packaging waste counts. Perhaps getting some examples would be useful for understanding the importance of this activity.

Reuse

Proposal on reward of re-use in the recycling target non paper by DK,FI, EE, FR, IE, HR

See previous comment in the WFD section In case of PPWD reuse of all packaging waste can be taken into account.

Calculation methods

See previous comment in WFD section. We support the DE/DK/FR non-paper on modifying the calculation method in case of the PPWD as well. Reference to **standard average loss rates** is also welcomed.

We would also like to draw the attention to the need for a uniform calculation method in case of packaging waste. MSs can calculate and report differently, which may cause uncertainty and result in inaccurate data.

According to Article 2 Paragraph (2) second indent of 2005/270/EK COM Decision „For the purposes of this Decision, 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.”

If one MS reports about the rate of material recovery of packaging waste according to the amount of packaging placed on the market, the outcome will significantly differ from that MSs' report which calculates with the exact amount of packaging waste generated/year.

It has a relevance in case of hazardous packaging waste (glass pharmaceutical bottle, pesticide contaminated packaging, paint cans).

If a MS reports according to the method mentioned in the Decision the total amount of packaging will consist of hazardous packaging as well, however hazardous packaging waste cannot be recycled. Therefore the amount of hazardous packaging placed on the market should be deducted from the total amount of packaging for the purposes of reporting.

In Hungary 10 % of the total amount of glass packaging waste is pharmaceutical bottles waste, which most of the cases cannot be recycled, but only disposed.

Another example is the state of jars. Jars are reused in Hungary over and over for years until they have become waste. If we report the data according to the amount of jars placed on the market, our recycling target will be lower as jars have not yet become wastes in the same year.

Targets

We agree with realistic targets on packaging waste considering the fact that Hungary is still struggling to achieve the actual targets concerning wood and glass. The direction is certainly good, but we would like to see even more realistic targets to be set on glass and wood.

LANDFILL DIRECTIVE

Target, derogation

We strongly support the Presidency approach concerning the method of calculation (maximum 10 % for landfilling of municipal waste or 50 kg/capita/year) and the derogation levels. According to the modified text 5 additional years is granted to those Member States that recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013.

We should also be aware of the fact that those MSs which are close to the proposed target on landfilling (or already achieved it) have really high incineration levels. These MSs built incinerating facilities. Those with high landfill rates and low incineration rates like Hungary has more landfill capacities. Therefore for MS that does not have the proper infrastructure for incineration have to make major investments to achieve the proposed targets on landfilling.

THE NETHERLANDS

In general

The Netherlands is in favor of an ambitious waste package for the EU to support the transition to a Circular Economy. Therefore we cannot support a weakening of the recycling targets in general as presented by the Presidency, in combination with broadening the application of time extensions and changing the review clause.

Directive 2008/98/EC on waste - WFD

Exclusion from the scope of WFD to the extent that it is covered by other Community legislation (Article 2(2) e and f and recital 11 – WFD)

- Regarding **Article 2(2)e** on ‘feed’ NL prefers the text as proposed by the Commission. In our view the addition of “*which do not consist of or contain animal by-products*” is superfluous, since substances containing animal by-products are already excluded based on 2(2)b.
- NL would like to raise the following important point:
The WFD is dealing with waste. Any substance or object can be classified as “waste”. Article 2 WFD is therefore also dealing with substance or object classified as waste. Furthermore, the wording of Article 2 WFD seems to indicate that it is applicable to substances and objects which have already been classified as waste. The provision mentions radioactive waste and waste waters. The exclusions mentioned in Article 2 therefore are waste streams for which the WFD does not apply.
Finally the Commissions Guidance to the WFD states: *The exclusions in Article 2(1) to Article 2(3) WFD refer to items which would fulfill the definition of waste yet for various reasons should not be subject to the provisions of the WFD.*
It should however be underlined that the above does not imply that the listed substances and objects should be classified as waste per se.
In light of the above, article 2 WFD should only apply in so far the listed substances and objects have been classified as waste. Therefore, the application of this article must always be superseded by the question whether a substance or subject has been discarded.

The Presidency has proposed to formulate **Recital 11** as follows:

Plant based substances from the agri-food industry and food of non-animal origin no longer intended for human consumption, which are destined for oral animal feeding in full compliance with the feed legislation are not regarded as waste [...]

NL would like to raise a point with regard to the underlined part above. The conclusion that the described substances are “not regarded as waste”, implies that the requirement for the waste definition, “to discard”, has not been met. However, if such substances are not considered to have been discarded, there will be no need for the inclusion of the described substances under article 2 of the WFD.

- The described difference between the proposed recital and the proposed addition to article 2 WFD also has implications for the regime of transboundary shipments. If, as concluded in recital 11, the described substances will not be regarded as waste, the Regulation (EC) 1013/2006 on shipments of waste (WSR) will not apply. But if, as article 2 WFD implies, the described substances are regarded as waste (upon meeting the “discard” test), the WSR will apply.

In the latter case, exclusion of the described substances (if classified as waste) from the scope of the WSR is possible. However, special attention should be paid to the link between Article 2 WFD and the WSR. Article 1 sub 3 of the WSR lists certain substances which shall not be covered by the scope of the regulation. An exclusion of “feed materials” through article 2 WFD could be linked to this article, either as an independent exclusion or under (e) of article 1 sub 3.

- Article 1 sub 3 (e) of the WSR states that shipments of the waste referred to in point 1(b)(ii), (iv) and (v) of Article 2 of Directive 2006/12/EC (*now Directive 2008/98/EC*), where such shipments are already covered by other Community legislation containing similar provisions.

Extending the exclusion of “feed materials” from the WFD to the WSR requires:

- The amendment of Article 1 sub 3 (e) of the WSR to include the proposed exclusion of “feed materials”; and
 - The creation of other Community legislation regarding former foodstuffs or feed, containing similar provisions as the Regulation (EC) 1013/2006 on shipments of waste.
- Regarding **Article 2(2)f** NL would like to propose the following:

(f1) ships falling in scope of EU flying the flag of a Member State covered by Regulation (EU) 1257/2013.

(f2): This provision does not apply to any waste on board of a ship other than operationally generated waste on board of ships regulated by IMO

Byproducts and End-of-waste (Article 5, 6 and recital 28a - WFD)

- NL can support the changes made to **Recital 28a**
- Regarding **Article 5** NL can support the changes made in the Presidency compromise text.
- Article 6:
 - NL supports the changes made to **Article 6(1)**

- NL cannot support the changes made to **Article 6(2a-2e) and 6(4a-4e)**. The main obligation in this article is that the conditions have to be fulfilled when setting criteria on EU or national level. The additional points made here should be mentioned in Guidance from the Commission (which has been done already by the JRC of the Commission). Furthermore Articles 5 and 6 should be as harmonized as possible from the point of view of procedures and structure.
- The inclusion of the new paragraph **Article 6(4a)** should be deleted. The reason is that in case there are no EU or national EoW-criteria, it is based on this paragraph only possible to obtain the EoW-status in case there is a formal prior decision of a competent authority which verifies that the conditions of paragraph 1 are met. Several Member States, including NL, have clearly opposed the inclusion of requiring such a decision in all cases. Such a new obligation would impose an administrative burden and would hinder the transition to a circular economy. For NL it is very important that the provisions on the application of the conditions, when transposed in national law, also leaves room for self-assessment on EoW by the holder.
In our view a case by case decision by Member States should be an option, and not an obligation as proposed in the Presidency compromise text. Therefore we would like to delete paragraph 4a and amend Recital 8a to further explain case by case decisions as follows:

Recital 8a

(8a) Member States should take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if all the conditions laid down in Article 5(1) of this Directive are met. Member States should take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of this Directive. Such measures may include the establishment of material and application-specific by-product and end of waste criteria and procedures for their implementation, guidance documents, **case by case decisions, and **other** procedures for the ad-hoc application of the conditions laid down in Article 5(1) and 6(1) of this Directive.**

The wording of Article 5(1) and Article 6(1) gives, together with this recital, sufficient basis for case by case decisions on By-products and End of Waste. “*Member states shall take appropriate measures to ensure*”: e.g. case by case decisions or transposition of the conditions in national law.

- **Article 6(4b)** in our view could be deleted, since we do not see the added value of this paragraph. To fulfill condition 6(1c), the relevant requirements under the applicable chemical and product legislation clearly have to be met already. This could be further explained in Guidance or maybe in a recital, but not in the text in this paragraph. The last part of this paragraph does also not have any added value in our view. Union law always applies where appropriate.

Extended Producer Responsibility (Articles 3(20a), 8 and 8a - WFD)

- NL does not feel the need to include a definition for EPR schemes in Article 3 of the WFD. In our view a new definition has no added value and only leads to more discussion. Therefore, NL proposes to delete the definition for EPR-schemes under **Article 3(20a)** and to change **Article 8(1)** as:

Article 8 (1)

Extended producer responsibility

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

These changes also foresee in a clear difference between legislative and non-legislative schemes. The requirements as stated in Article 8a only apply to legislative EPR-schemes.

- **Article 8a(1), fifth indent:** NL can support the text in general, but has some questions regarding the clarity of the text. What does for example 'into production cost' exactly mean in practice? Therefore we prefer to get back to the previous version of the text of this indent.
- **Article 8a(4)(c):**

Article 8a

General requirements for extended producer responsibility schemes

4 (c) are based on the **optimised necessary** cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.

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

NL proposes to replace 'optimised' by 'necessary'. In our view this is more clear and leaves less room for discussion when public authorities are responsible for the waste management. Furthermore we would like to delete the last added sentence since we do not see the added value.

- **Article 8a(4a):** NL is wondering why the modulation has been removed from paragraph 4 to a new 4a, and why it has been watered down? NL is not in favor of these changes.

Prevention (Article 9 – WFD)

- NL cannot support the addition of the last four indents to **Article 9(1)**. In our view these indents describe specific measures while we should focus on the goals we have to achieve in this article. Possibly these measures mentioned here could be placed in a recital as suggested measures.
- In order to monitor besides recycling also prevention NL wants to emphasize again the use of *the amount of household waste per capita that is disposed and subject to energy recovery*, as an indicator. Using this indicator gives insight in both recycling and prevention. Household waste should be used instead of Municipal waste, since the later is much broader and can be different between MS, for example because of a bigger service sector of which the waste is included in Municipal waste. That should make the indicator less comparable between MS.

Re-use and recycling (Article 11 – WFD)

- NL would like to get back to the previous version of the text in **Article 11(1) first subparagraph** for the granting access to waste collection points.

This approach seems to work in practice based on the provision in the WEEE Directive. Many places have already adopted this and provide specific containers where products can be placed, if they are still functioning well.

Only reliable organizations should be allowed to access materials for reuse and preparation for reuse. In the end it is all about finding a way of cooperation with reuse centers. In our view this text leaves enough room for a MS for a flexible implementation that takes into account the specific situation in a MS.

Proposed text:

Article 11

Re-use and recycling

1. Member States shall take measures, as appropriate, to promote **the re-use of products and** preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, **by advancing the granting of access for personnel** of such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Calculation method (Article 11a – WFD) (and Article 6a – PPWD)

- NL is interested in the suggestion of using *standard average loss rates* when calculating the recycling percentage. This might be a possible approach, but we have some questions on the application of these loss rates, for example:
 - How accurate are these loss rates?
 - How will they be defined?
 - Will they be updated regularly?
 - Will they stimulate innovation in recycling?
- The Presidency proposes a calculation method that focuses on effective recycling. The option of not including a certain percentage of losses has been deleted. In principle NL can support an approach where effective recycling is calculated. Losses occurring during the various treatment stages must be deducted from recycling rates, to avoid counting them as recycled.
- As we read the article now there seems to be no need any more for a separate derogation paragraph (para 3). The system to be used for calculating recycling is described in paragraph 4 and leaves room for a method to choose and for example for using loss rates or other ways of assessing as long as reliability and accuracy will be ensured and the condition laid down in paragraph 1(a) is met. In doing so, paragraph 3 seems to become irrelevant. And the essence of paragraph 3 namely, that waste which is not recycled is not included, is described already in paragraph 1 (a).
- It is important, in order to establish a uniform calculation method, that it is clear where the point of measurement will be for the different waste streams.

Interpretation and adaptation to technical progress (Article 38 – WFD)

- NL can support the changes proposed to Article 38.

We would like to propose further study on the following, after support for this idea of some MS in previous WPEs. A possibility to reduce uncertainty and dependence on court proceeding regarding the waste status could be the adoption of a provision like Article 3(3) of the Biocidal Products Regulation (528/2012) in the WFD, in order to give the Commission a mandate, by means of implementing acts, to decide on classification and interpretation issues in specific cases¹. This Article then could read as follows:

¹ Art. 3(3) BPR Commission decisions are available at:
<http://echa.europa.eu/nl/regulations/biocidal-products-regulation/legislation>.

The Commission may, at the request of a Member State, decide, by means of implementing acts, whether or not a substance or object is to be regarded as waste, having regard to the definition of waste referred to in point (1) of Article 3, the conditions on By-products in article 5(1) and the conditions on End-of-waste in Article 6(1). Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).

If something like this approach were followed here in the WFD, it would mean that, thanks to the involvement of Member States experts and the Commission, there would be more uniformity at EU level, probably fewer court cases, and so greater predictability and legal certainty for operators.

Directive 1999/31/EC on the landfill of waste

Recital 6 - LFD

- NL can support the inclusion of **Recital 6** on the restriction of landfilling for recyclable waste. But the last part of the recital (“*for example, waste ... (SVHC)*”) should be deleted. This suggests that waste containing harmful substances such as SVHCs should always be landfilled and that for waste containing harmful substances such as SVHCs, recycling cannot be the best overall environmental outcome. Therefore it is very important for NL to delete the last part of the recital:

(6a) In order to ensure proper application of the waste hierarchy, by 2030 restrictions on landfilling should apply to all waste, including bio-degradable waste, that is suitable for recycling and other material or energy recovery. Such restrictions should not apply where it can be demonstrated that waste is not suitable for recycling or recovery and landfilling would result in a better overall environmental outcome; for example, waste containing harmful substances such as substances of very high concern (SVHC).

Waste and treatment not acceptable in landfills (Article 5 – LFD)

- NL supports a landfill ban on waste that can be recycled or recovered. The **added points (f) and (g) to Article 5(3)** seem to be more or less in line with this idea. Point (f) might even be superfluous when (g) is also added.
- NL has some questions on the formulation of (g):
 - What is meant by ‘appropriate collection and treatment’ and why it is added?
 - Why only starting from 2030?

- Even though an approach of using *kg per capita* is welcomed by NL, we have some doubts by the level of these new numbers. Furthermore NL cannot support the increase of the 2030 target in case of a time extension. And NL cannot support the change of the review clause by deletion of the provision to reduce the targets and introduce reductions.

Directive 94/62/EC on packaging and packaging waste

Reuse (Article 5 - PPWD):

- NL can support the idea of gathering data on reuse by the Commission the upcoming years in order to support the discussion on a possible separate target for reuse in the future and/or other measure that could support reuse. This examination of data on reuse could in our view be broadened also to more waste streams and should not be limited to packaging waste alone.

Targets (Article 6 - PPWD):

- NL cannot support the deletion of “preparing for reuse” in this article.
- NL can support one target for metals as proposed in the Presidency compromise text.
- NL can support the reduction of the target for wood, as mentioned before.

Calculation method (Article 6a - PPWD):

- For our comments on the calculation method see under Article 11a WFD.

AUSTRIA

Presidency compromise text 14152/16 from 8. November 2016 on Directive 2008/98/EC

Recital on the definition of municipal waste (Recital 6):

(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 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, should be adapted to be in line with the definition of municipal waste in Directive 2008/98/EC **Municipal waste should be defined as waste from households and similar waste from other sources, inter alia from market and street cleaning services, including street sweepings and the content of litter containers, and from park and garden maintenance, such as leaves, grass and trees clipping. Member States may use relevant categories in the List of Waste for statistical purposes.** The definition of municipal waste in this Directive is neutral with regard to the public or private status of the operator managing waste.

Rationale:

AT is in favor of an alignment of the existing definitions for municipal waste. But reading this recital it may sound as if the definition of municipal waste in the WFD needs to be aligned with the definition of municipal waste used for statistical purposes. We do not support this understanding and it should be the other way around. Thus, we suggest a change in word order of this sentence in the recital.

Recitals on by products and end-of-waste (Recital 8 and 8a):

(8) In order to provide operators in markets for secondary raw materials with more certainty as to the waste or non-waste status of substances or objects and promote a level playing field, it is important to establish at the Union level harmonized conditions for substances or objects to be recognised as by-products and for waste that has undergone a recovery operation to be recognised as having ceased to be waste. Where necessary to ensure the smooth functioning of the internal market or a high level of environmental protection across the Union, the Commission should be empowered to adopt implementing acts establishing detailed criteria on the application of such harmonized conditions to certain waste, including for a specific use.

Rationale:

Considering the amendment in Article 5 para 2.

(8a) The control of the waste status of materials remains exclusively the responsibility of authorities (EU or national) based on all relevant information provided by the producer of the materials.

(8b) Measures taken by Member States regarding end-of-waste materials may include the establishment of material and application-specific end of waste criteria and procedures for their implementation, guidance documents, and procedures for the case by case application of the conditions laid down and 6(1) of this Directive. The control of exit of materials from waste status remains exclusively the responsibility of authorities (EU or national) based on all relevant information provided by the holder of the waste.

Rationale:

AT suggests splitting this recital in two in order to clearly signal that the provisions for by-products and end-of-waste are covering two totally different principles. Additionally we think that the first sentence in the recital on by-products should be deleted completely because it merely repeats the wording of Article 5 para 1.

We agree with the Presidency's idea to strengthen Member States' role on both instruments by adding "take appropriate measures to" in the introductory phrase of both provisions. But this idea should be extended. Member States should play an active role in the determination if the conditions are met and in the end it should always be up to a competent authority to decide based on information made available by an applicant. Because this is necessary in order to reach greater harmonization on by-products and end-of-waste status within the EU.

Also take note of the non-paper sent out by the Commission on the links between Article 6 of the Waste Framework Directive and the REACH Regulation. We think what's written in this non-paper holds true for by-products as well. One of the conclusions of this non-paper is that it is important that additional enforcement and/or notification mechanisms need to be established to enable Member States to effectively ensure the conditions of Article 6 of the WFD were met appropriately by the recovery operator.

So AT would like to see it stated in the text that it is the competent authority that should decide whether the end-of-waste and by-product conditions are fulfilled.

Recital on food waste prevention (Recital 12)

(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. Member States are left to set priorities on the measures on food waste along the value chain. 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.

Rationale:

Having all the responsibility for prevention measures transferred from the European Commission to Member States, we think that Member States should at least be allowed to set their own priorities on measures to prevent food waste generation.

Recitals on the development of guidelines and exchange of information (Recital 28a):

(28a) To facilitate adequate interpretation and implementation of the requirements set out in Directive 2008/98/EC, it is appropriate to develop guidelines for and ensure the exchange of information between Member States. Such guidelines and information exchange should inter alia facilitate a common understanding and application in practice of the definition of "waste" including the term "discard" and the integration of the status of waste in circular business models. '

Rationale:

We believe further guidance developed by the Commission on the definitions of the WFD can be a very useful tool. At the same time we think that new business models should take into account the definition of waste and the numerous ECJ rulings interpreting this definition.

By-products (Article 5 WFD)

1. A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste referred to in point (1) of Article 3 but as being a by-product only if the following conditions are met:

End-of-waste (Article 6 WFD)

1. Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

Rationale:

See Rationale on Recital (8a and 8b). The currently applicable introductory phrase of Article 5 and 6 is maintained.

Targets (Article 11 WFD)

AT is open to a separate recycling target for bio-waste combined with compulsory, separate collection of bio-waste according to Article 22. Only separate collection of bio-waste combined with thresholds for the input material guarantees high quality input for the production of compost and digestate. Consequently, a separate target for recycling of bio-waste only makes sense if this recycling target is limited to the recycling of separately collected bio-waste.

For the waste with similar biodegradability and compostability we would like a reference to already existing European standards in order to rule out low quality.

Exemption from registration (Article 26 WFD)

We regret that the Presidency has left the added subparagraphs to Article 26 unchanged. AT does not support any exemption of establishments or undertakings collecting or transporting only small quantities of non-hazardous waste on an annual basis from any registration obligation under the WFD. We think that all establishments or undertakings collecting waste carry out the same activity and an exemption based on them amount collected annually as the only condition (with any further conditions to be fulfilled, e.g. EMKAS-certification) does not seem justified. Furthermore, we don't see how such an exemption can be practically accomplished by Member States. What if an operation exceeds the minimum quantity within the year? How can it be controlled without any registration, whether an operation exceeds the amount of 20 tons or not? Especially for Member States where no written records for non-hazardous wastes need to be maintained control is simply impossible.

Moreover, we see contradictions to the Commissions efforts to fight against illegal waste trafficking and the introduced harmonized provisions on the development of inspection plans by Member States. With no registration obligations it is very easy for waste collectors to enter one Member State, collecting legally below the amount of 20 tonnes of waste and illegally leaving the Member States again. For the competent authorities of waste shipments inspections would only be possible right at the borders of the Member State. But the registration of waste collectors helps to monitor waste streams from its source to its destination and serves as an effective control instrument for inspection authorities in connection with illegal shipment of wastes. And according to Article 50 para 3 waste Shipment Regulation inspections of shipments should not only take place physically at the frontiers of Member States but also at the point of origin. The latter would not be possible in case of no registration.

SLOVENIA

Waste Framework Directive (doc. 14152/16)

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2008/98/EC is amended as follows:

(1) in Article 2(2), the following points (e) **and (f) are** added:

'(e) substances which do not consist of or contain animal by-products that are destined for use as "feed materials" in accordance with Regulation (EC) No 767/2009;

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

(2) Article 3 is amended as follows:

(a) the following point 1a is inserted:

'1a. "municipal waste" means

(h) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, **packaging**, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses **and** furniture;

[...]

(i) mixed waste and separately collected waste from other sources **including market and street cleaning services** that is comparable to household waste in nature **and** composition [...];

(j) [...]

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

(b) [...]

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

(c) point 4 is replaced by the following:

'4. "bio-waste" means biodegradable garden and park waste, food and kitchen waste from households, restaurants, **wholesale, canteens**, caterers and retail premises **and** comparable waste from food processing plants [...].';

(d) the following point 4a is inserted:

'4a. "construction and demolition waste means **waste [...] generated from construction and demolition activities;**"

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

'15a. “;

'material recovery' means any recovery operation, excluding energy recovery and the reprocessing into materials which are to be used as fuel;

Rationale: We propose to include the definition of “material recovery” from Decision 2011/753 EU instead of “other material recovery” to be consistent and to have all necessary definitions in WFD

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

[...]

'17b. "backfilling" means any recovery operation where suitable **non-hazardous** waste is used for-purposes **of reclamation** in excavated areas and **mines** or for engineering purposes in landscaping **and infrastructure and construction foundation** [...]. **Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve these purposes.'**

(g) the following point 20a is inserted:

'20a “Extended producer responsibility scheme/system” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the post-consumer stage of a product’s life cycle.’

Rationale: To aligne the definition with the OECD definition of EPR and to put stress on the product’s life cycle, not only waste stage.

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

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

[...]

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

(4) Article 5 is amended as follows:

(5) Article 6 is amended as follows:

(6) Article 7 is amended as follows:

(7) Article 8 is amended as follows:

(8) The following Article 8a is inserted:

'Article 8a

General requirements for extended producer responsibility schemes

1. **Where [...]** extended producer responsibility schemes/systems **are** established in accordance with Article 8, paragraph 1, Member States shall:

- define in a clear way the roles and responsibilities of producers of products placing [...] **products** on the market of the [...] **Member State**, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, [...] **reuse and** preparation for re-use operators and social enterprises;
- define [...] waste management targets, in line with the waste hierarchy, aiming to attain at least the quantitative targets relevant for the scheme as laid down in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU, **and other quantitative targets and qualitative objectives that are considered relevant for the extended producer responsibility scheme;**
- **ensure that** a reporting system **is established** to gather data on the products placed on the [...] market **of the Member State** by the producers subject to extended producer responsibility [...] **and** data [...] on the collection and treatment of [...] waste **resulting from these products** specifying, where appropriate, the waste material flows;
- ensure equal treatment [...] **of** producers of products [...] **regardless of their origin or size;**

- **ensure that the schemes contribute to the incorporation of [...] end-of-life costs into [...] production cost and provide thereby incentives for producers [...] for improved product design.** – *this provision is more subject to products legislation than waste legislation – not possible to interfere into production costs through the EPR.*
2. Member States shall take the necessary measures:
- to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8, paragraph 1, are informed about [...] waste **prevention measures, centers for reuse and preparation for reuse [...], take back and** collection systems and the prevention of littering. Member States shall also take measures to create incentives for the waste holders to take part in the separate collection systems in place, notably through economic incentives or regulations, when appropriate.
3. Member States shall take the necessary measures to ensure that any organisation [...] **implementing** extended producer responsibility schemes obligations [...]:
- (a) has a clearly defined geographical, product and material coverage [...] **without limiting these areas to the territories in which the collection and management of waste are most profitable;**
 - (aa) provides an appropriate availability of waste collection systems covering the sales area as well as the area where the products are likely to become waste;**
 - (b) has the necessary operational and financial means to meet its extended producer responsibility obligations;
 - (c) puts in place an adequate self-control mechanism, supported, **where relevant** by regular independent audits, to appraise:
 - the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b);
 - the quality of data collected and reported in accordance with paragraph 1, third indent, and the requirements of Regulation (EC) No 1013/2006.
 - (d) makes publicly available the information about:
 - its ownership and membership;
 - the financial contributions paid by the producers;
 - the selection procedure for waste management operators.

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

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:
- (a) cover the entire costs of waste management for the products it puts on the [...] market **in that Member State**, including all the following:

We ask to align this provision with the WEEE - EPR system in which not the entire costs of waste management are covered by the producer - Producer should bear costs starting from the collection points.

- costs of separate collection, [...], sorting and treatment operations, **and where appropriate of reuse and preparation for reuse**, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;
 - costs of providing adequate information to waste holders in accordance with paragraph 2;
 - costs of data gathering and reporting in accordance with paragraph 1, third indent.
- (b) [...]
- (c) are based on the optimised cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.

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

4a) Member States shall take measures to encourage that the financial contributions paid by the producer are modulated for individual products or groups of similar products by taking into account their reusability and reparability as a contribution to waste prevention and preparation for reuse, and their recyclability;

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, **irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU** are implementing their extended producer responsibility obligations, the financial means, [...] are properly used, and all actors involved in the implementation of the schemes report reliable data.

Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, **the Member State concerned shall [...] appoint an [...] authority independent of private interests** to oversee the implementation of extended producer responsibility obligations.

6. Member States shall [...] ensure a regular dialogue between [...] **relevant** stakeholders involved in the implementation of extended producer responsibility [...].
7. Member States shall take measures to ensure that extended producer responsibility schemes that have been established before [*insert date eighteen months after the entry into force of this Directive*] comply with the provisions of this article within **thirty-six** months of that date.’;
- (9) Article 9 is replaced by the following:

'Article 9

Prevention of waste

1. Member States shall take measures to prevent waste generation. These measures shall:
 - encourage the **design, manufacturing and** use of products that are resource efficient, durable, repairable, **reusable** and [...] **upgradable**;
 - [...] [...] target products **containing critical raw [...] materials [...] to prevent that those materials become waste**;
 - **encourage the re-use of products and [...] setting up of systems promoting repair and** reuse activities **as referred to in Article 9a**, including in particular for electrical and electronic equipment, textiles, and furniture, **as well as packaging and construction materials and products**;
 - reduce waste generation in processes related to industrial production, [...], **manufacturing**, construction and demolition, taking into account best available techniques;
 - reduce the generation of food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households;
 - **reduce the content of harmful substances in materials and products and promote communication about hazardous substances in the supply chain**;
 - **identify products that are the main sources of littering notably in the natural including the marine environment and take appropriate measures to reduce [...] litter from such products**;
 - **include the development of continuous communication and education campaigns to raise awareness on the issues surrounding waste prevention and littering**;

- **encourage the use of deposit return schemes;**
- **incentivise re-use, as appropriate, through the setting up of aspirational quantitative targets;**

Rationale: To leave MS more flexibility on which measures to take to incentivise re-use

- **provide, as appropriate, adequate economic incentives to producers. '**

Packaging Directive (doc. 14198/16)

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 94/62/EC is amended as follows:

- (1) Article 3 is amended as follows:
- (2) in the second subparagraph of Article 4(1), the first sentence is replaced by the following:

'Such other 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 designed to bring together and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1(1).';

(2a) Article 5 is replaced by the following:

Article 5

Reuse

- 1. Member States shall take measures to encourage placing on the market of re-useable packaging and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such measures may include:**

Rationale: We propose to slightly modify the text as we have problem to identify a current share of re-usable packaging on the market. We need to gain reliable data; therefore we propose a broader wording with the same message

(a) the use of deposit return schemes;

(b) the setting of quantitative targets;

(c) the use of economic incentives.

2. (By 31 December 2024) the Commission shall examine data on reuse 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 and any further measures to promote reuse of packaging. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

(3) Article 6 is amended as follows:

(a) [...];

(b) in paragraph 1, the following points (f) to (i) 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) **50** % of wood; - *the target is too high for SI*

(iii) 75 % of [...] metals;

(iv) [...];

(v) 75 % of glass;

(vi) 75 % of paper and cardboard;

(h) no later than 31 December 2030 a minimum of 75% 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 wood; - *the target is too high for SI*

FINLAND

Finland – comments on Presidency compromise text on WFD 14152/16

The Presidency has developed the text in many parts to the direction which Finland considers functional. This is the case especially with compromise proposals on articles 3, 5 and 6 and 37. We have still scrutiny reservation to several articles as they still are examined by our experts. The most problematic compromise texts from our perspective are proposals to articles 8, 8a, 9 and article 11 a. On EPR we wish that a solutions is found to allow for national EPR schemes shared financial responsibility between producers, public organizations and distributors, if this is considered necessary for the proper functioning of waste management.

The problems with articles 9 and 11 a are related to the different understanding on how activities on upper levels of the waste hierarchy should be taken into account also at the EU-level. Finland finds that in order to improve circular economy a clear signal should be given to consider activities enhancing reuse of product important and supportable. The Commission suggested in its original proposal that reuse of products could be taken into account in attaining the recycling targets by way of setting a combined target. We are still searching for a solution to this issue.

Article 1 (1) – WFD Article 2(2) Exclusion concerning ships

Scrutiny reservation on this proposal. We understand that the need for this proposal is stated in the recital 10 of the shiprecycling regulation. We need a little more time to analyse the implications of the proposed exclusion concerning ships flying the flag of a Member State covered by Regulation (EU) 1257/2013.

Recital 6 - Definition of municipal waste

Fi proposal

6. To ensure that recycling targets are based on reliable and comparable data and to enable more effective monitoring of progress in attaining those targets, the definition of municipal waste in Directive 2008/98/EC should be in line with the definition used for statistical purposes by the European Statistical Office and the Organisation for Economic Co-operation and Development, on the basis of which Member States have been reporting data for several years. Municipal waste should be defined as waste from households and similar waste from other sources, inter alia **from commerce and trade, small businesses, offices and institutions (schools, hospitals, government buildings)**, from market and street cleaning services, including street sweepings and the content of litter containers, and from park and garden maintenance, such as leaves, grass and trees clipping. Member States may use relevant categories in the List of Waste for statistical purposes. The definition of municipal waste in this Directive is neutral with regard to the public or private status of the operator managing waste.

We support the Presidency's approach where the definition of MSW is kept fairly concise in Article 3(1a) and further clarification on the interpretation of the definition is given in recitals. We are also satisfied that the definition is to large extent in line with the OECD/Eurostat definition. In order to ensure further harmonization with the OECD/Eurostat definition, **we propose that in recital 6, a reference is also made to similar waste from commerce and trade, small businesses, offices and institutions.**

Article 1(2) – WFD Article 3 Definitions

Definition of non-hazardous waste

We can accept the proposed **deletion of the definition of non-hazardous waste** from the WFD, and keeping it in the Landfill Directive. - **We also could accept** inclusion of the definition in WFD, since the term “non-hazardous waste” is used at least in three different Articles of the WFD (definition of backfilling art 3(17), target for material recovery of C&D waste art 11(2) and registration of waste carriers (art 26)).

FI proposal –material recovery

‘15a. “Other material recovery” means any recovery operation other than energy recovery;

We are not sure whether the definition is necessary, since this term is used in the Directive only once in art 11(2). However, we can accept the definition but **would like to suggest that instead of “Other material recovery” the definition would cover “material recovery”**. This would be consistent with article 1(5) of the Commission Decision 2011/753.

If the intention is to define “other material recovery”, it should cover any recovery operation other than preparation for reuse, recycling or energy recovery.

Is the intention not to exclude the reprocessing of waste into materials which are to be used as fuel? This is excluded from the current definition of material recovery set out in Commission Decision 2011/753.

FI proposal - backfilling

‘17b. "backfilling" means any recovery operation where suitable non-hazardous waste is used for purposes of reclamation in excavated areas [and mines] or for engineering purposes in landscaping and infrastructure and construction foundation. Waste used for backfilling must substitute non-waste materials, be suitable for the afore-mentioned purposes, and be limited to the amount strictly necessary to achieve these purposes.’
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We read the definition of backfilling/ WFD Article 3(17b) now together with the recital 6 b, which contains important clarifications from our perspective. Under certain conditions using waste in the construction works on infrastructure can be considered as recycling. We welcome this and can accept the suggested wording of definition of backfilling.

However, we have reservations on the proposed reference to mines and its relation to the scope of the Mining waste directive. We would prefer deletion of a reference to mines. If this is not possible, it would be useful to clarify that the use of waste falling under the scope of the Mining Waste Directive are not covered by this definition.

FI proposal - definition of extended producer responsibility

~~‘20a “Extended producer responsibility scheme” means a set of legislative and/or non-legislative measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle.’~~

Scrutiny reservation. We are concerned that the definition refers to schemes established by non-legislative measures, particularly taking into account that the definition is directly linked to the application of general requirements on EPR schemes set out in article 8a. We also think that the definition is somewhat unclear as to whether it allows shared financial responsibility. As stated in comments on art 8a(4) below, Finland considers it necessary to allow shared financial responsibility between producers, public organisation and distributors, if this is considered necessary for the proper functioning of waste management. We do not consider this definition necessary and thus would prefer its deletion.

Article 1 (5) – WFD Article 6 on End-of-Waste status

We are still studying these amendments, but tentatively we are fine with the introductory phrase – especially when the article is read together with the recital 8a.

We find Presidency’s suggestions on paragraphs 2-4 and 4a very welcome. It is relevant that the regulations on end-of-waste both at EU-level and at the national level are required some consistency by way of defining in WFD detailed criteria on the application of the conditions laid down in Article 6 paragraph 1 to certain types of waste.

Scrutiny reservation on paragraph 4b. Tentatively it looks fine but we are still examining this proposal in more detail.

Article 1(7) and (8) – WFD Articles 8 and 8a on EPR

Scrutiny reservation on the binding nature of EPR general requirements. As stated earlier, we are not comfortable with the binding and prescriptive nature of the proposed general EPR requirements. In that respect, we are also concerned that the proposed definition in art 3 for “Extended producer responsibility scheme” seems to make the scope of the general requirements (in art 8a) broader so that they would apply also to other than legislative producer responsibility systems.

We would prefer recommendations, general principles or guidance instead of binding requirements. Binding requirements should preferably be designed for each product group separately (cf directives on WEEE, ELV and batteries), or if introduced in the WFD, their prescriptiveness should still be lowered, e.g as follows:

Presidency text/ FI proposal	Comment
<p>Where extended producer responsibility schemes are established in accordance with Article 8, paragraph 1, Member States shall</p> <p>====</p> <ul style="list-style-type: none"> - ensure equal treatment of producers of products regardless of their origin or size; <p>— ensure that the schemes contribute to the incorporation of end-of-life costs into production cost and provide thereby incentives for producers for improved product design.</p>	<p>Would the requirement for equal treatment of producers mean that small producers are not allowed to be excluded from EPR obligations? In Finland, for example, packaging producers with a turnover below 1 M€ are excluded from the EPR obligations.</p> <p>We would prefer deletion of this indent, since this amendment is relatively general and somewhat obscure even though it is written in a very prescriptive format. For example, what is meant with “end-of-life costs” and how is “improved product design” evaluated and what will be taken into account.</p>
<p>3. Member States shall take the necessary measures to ensure that any organisation [...] implementing <u>ing</u> extended producer responsibility schemes obligations [...]:</p> <p>====</p> <p>(aa) provides an appropriate availability of waste collection systems covering <u>at least</u> the sales area as well as the area <u>within a Member State</u> where the products are likely to become waste;</p> <p>====</p>	<p>(aa) The obligation of producers should not be extended to the area of other Member State even if their products are likely to become waste there.</p>
<p>4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:</p> <p>(a) cover the entire costs of waste management for the products it puts on the market in that Member State, including all the following: costs of separate collection, sorting and treatment operations, and where appropriate of reuse and preparation for reuse, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products; costs of providing adequate information to</p>	<p>SCRUTINY RESERVATION – We find it important that shared financial responsibility is allowed for national EPR schemes between producers, public organisations and distributors, if this is considered necessary for the proper functioning of waste management. The Commission has indicated that shared responsibility would be possible only for WEEE and batteries based on respective EU directives. In our view, there may also be similar reasons within other product groups which favour shared responsibility over full cost coverage by producers. Shared responsibility is considered necessary and useful in Finland for example in in packaging sector.</p>

<p>waste holders in accordance with paragraph 2; costs of data gathering and reporting in accordance with paragraph 1, third indent.</p> <p><u>What is provided above on full cost coverage does not prejudice the right of a Member State to provide for shared division of costs between producers and other operators such as distributors or public organisations for certain product groups where deemed necessary for the proper functioning of waste management.</u></p> <p>====</p> <p><i>Last paragraph of paragraph 4:</i> This provision is without prejudice to the competence of the public authorities with respect to waste management.</p> <p>4a) Member States shall take measures to encourage that the financial contributions paid by the producer are modulated, <u>as appropriate</u>, for individual products or groups of similar products by taking into account their reusability and reparability as a contribution to waste prevention and preparation for reuse, and their recyclability;</p>	<p>This concern could be taken into account, for example, by adding a new paragraph in point a) allowing derogation from full cost coverage where deemed necessary for the proper functioning of waste management.</p> <p><i>Last paragraph of paragraph 4:</i> It is not clear to us what is the purpose of this paragraph. If the purpose is to allow shared financial responsibility between producers and public authorities, it should be stated more clearly (cf our comment on para 4 (a)). In its present form, we would prefer deletion of the paragraph.</p> <p>Para 4a: Scrutiny reservaton. We support the principle but see a need for some more flexibility to allow smooth implementation of this principle in individual EPR schemes.</p>
<p>5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products, irrespective of the selling technique used[, including by means of distance contract within the meaning of Directive 2011/83/EU are implementing their extended producer responsibility obligations,] the financial means, are properly used, and all actors involved in the implementation of the schemes report reliable data.</p> <p>Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, the Member State concerned shall appoint an authority independent of private interests to oversee the implementation of extended producer responsibility obligations.</p>	<p>Scrutiny reservation concerning the proposed addition of “irrespective of the selling technique used, including by means of distance contract within the meaning of Directive 2011/83/EU”</p> <p>Although we find it very important to develop the EPR legislation to take better into account the cross-border distance selling, we do not understand how a Member State could comply with the requirement to establish adequate monitoring and enforcement framework with regard to distance selling from one MS to another MS, since the EPR schemes are established nationally. For example:</p> <ul style="list-style-type: none"> • How and by which procedure can a national authority have jurisdiction based on national legislation over a foreign

	<p>company, e.g. in order to ensure that the company fulfils its waste management obligations and bear its costs under the EPR?</p> <ul style="list-style-type: none"> • Which administrative measures, and by which procedures, can a national authority, if necessary, use on a foreign company, and what kind of appeal procedure is connected to these decisions?
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Article 1(9) – WFD Article 9

FI proposal

<p>1. Member States shall take measures to prevent waste generation. These measures shall: == = <i>indent 4:</i> - <u>promote reduction of</u> reduce waste generation in processes related to industrial production, [...], manufacturing, construction and demolition, taking into account best available techniques; == = <i>indent 6.</i> - <u>encourage reduction of</u> reduce the content of harmful substances in materials and products and promote communication about hazardous substances in the supply chain; == = <i>indent 9 -11</i> -encourage the use of deposit return schemes; -incentivise re-use through the setting up of aspirational quantitative targets; -provide, as appropriate, adequate economic incentives to producers.'</p> <p>2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, <u>notably such as</u> on the quantity <u>or per capita quantity</u> of <u>municipal</u> waste that is generated, disposed of, or subject to energy recovery.</p>
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Indents 4 and 6: We support the obligation of Member States to take measures towards these reduction goals. However, it is difficult for a Member State to ensure that these measures result in actual reduction, since the final result is dependent on many other measures and factors. Therefore, we propose some softening of the language used in these indents.

Indents 9-11: We do not consider it necessary to define in such a detail the measures which Member States are obliged to take in order to achieve the waste prevention goals. The measures mentioned in indents 9-11 could be mentioned in recitals as examples of measures which Member States may take. Indent 11 overlaps with article 4(3) and could be deleted.

Para 2: “Quantity of waste” refers to total amount of all waste generated which is very much dependent on production structures in Member States. Therefore, we do not consider it a very useful indicator to monitor the implementation of waste prevention measures. The generation of municipal waste, despite its limitations, is a more workable indicator in that respect.

Article 1 (10) – WFD Article 11

Scrutiny reservation on numerical target levels. We do not find it possible to commit ourselves to any numeric target level before the definitions, scope of targets and calculation methods are more specifically defined and the baseline data concerning the Member States is evaluated accordingly. In general we support setting targets for re-use and recycling of municipal waste and packaging waste which are ambitious but realistic and take into account the conditions in the Member States. According to recent studies carried out in Finland, it seems that even attainment of 50 % recycling rate for MSW will be quite a challenge for Finland, cf our earlier comments. Tentatively, we welcome the Presidency’s proposal for slightly lowered target levels and consider them more realistic but still very ambitious from Finland’s perspective.

Finland can tentatively support the proposals made by other Member States for requesting the Commission to

- to review the targets for **C&D wastes** by certain year (e.g. 2020).
- explore possibilities to set requirements for separate collection of **textile wastes** and targets for reuse and recycling
- explore possibilities to set requirements for separate collection of **waste oil** and targets for their regeneration.

Article 1 (11) – WFD Article 11a (1) and (3) Rules on the calculation of the attainment of the targets

Concerning Article 11a(2), Finland supports approaches where **re-use of products** could in one way or another be taken into account in the target setting of the WFD and PPWD. Reference is made to the joint proposal by FIN, DK, EE, FR, IE, HR dated 29.11 2016 “Proposal on reward of re-use in the recycling target” for further consideration of this issue.

Otherwise we are fairly satisfied with the proposed calculation rules proposed by the Presidency. This rule defines the basic principles by which the recycled amount shall be calculated much more clearly than in the current directive, and thus contributes to the harmonization of the data within the EU. **We also support the flexibility provided by paragraph 4 for the exact methods Member States may use** to calculate recycled amount, in accordance with the basic calculation principles. Reporting requirements in article 12 sufficiently ensure the transparency of the calculation rules applied in Member States.

Concerning the proposed approach based on average loss rates:

- we consider it as a good tool but we do not want that it is the only way by which derogation in paragraph 3 can be applied.

- average loss rates may be workable particularly in MS level, but we have doubts whether they could function well at EU level. Although the EU loss rates harmonise calculation, we are not convinced whether this would lead to more accurate reflection of the actual situation in Member States. EU standard loss rates would allow the use of these rates irrespective of the actual loss rates. This may create a significant loophole in calculation: for example, if an EU loss rate is 5 %, but the actual loss rate (if it was calculated) in a MS is 15 %, the MS could use a loss rate 5 % in the calculation and would get 10 % free in its recycling rate!
- it means a very heavy work load for the Commission, to gather the necessary information on different collection schemes and treatment methods in each Member States and to identify differences between them as regards loss rates.
- it is not realistic to assume that EU standard loss rates could be revised sufficiently often to reflect changes in collection schemes, technological innovations etc. Static loss rates would not encourage high-quality separate collection and recycling.

For the above reasons, **we are broadly supportive to the proposal be DK, FR and DE** on “the possibility to use EU-standard loss rates to calculate recycling” (5 October 2016), **except para 4a(a) concerning the Commission’s obligation to adopt** implementing acts on EU harmonized average loss rates. This should merely be a possibility for the Commission to establish such loss rates (The Commission may adopt ...)

Article 1 (11) – WFD Article 11 a (4a)

FI proposal

4a. For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost, digestate **or other similar material** which is to be used as a recycled product, material or substance.

4b. **Without prejudice to paragraph 4a, the** amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be as fuels.

Recital 17 b

With the alignment of the definitions in this Directive 2008/98/EC, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU the provision in Article 6 of this Directive 2008/98/EC on considering waste that ceases to be waste for the purposes of the recovery and recycling targets set in these Directives is no longer necessary. Materials that cease to be waste through a recovery or recycling operation will be counted for the attainment of the respective recovery or recycling targets set in these Directives in line with the applicable calculation methods. Where waste materials cease to be waste as a result of a preparatory operation before being actually reprocessed, such materials may be counted as recycled provided that they are subsequently **used for purposes referred to in respective recovery or recycling targets. 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.**

Recital (17c)

Where the calculation of the recycling rate is applied to aerobic or anaerobic treatment of biodegradable waste, the waste amounts that enter aerobic or anaerobic treatment may be counted as recycled provided that such treatment generates compost, or digestate **or other similar material [such as mash]** which is to be used as a recycled product, material or substance. **~~In line with the definition of recycling, the reprocessing of biodegradable waste into materials which are to be used as fuels, backfilled, incinerated or landfilled cannot be counted towards the recycling targets.~~**

Para 4a: It is important for Finland to ensure that those biological treatment methods which produce advanced biofuels from waste are equally treated in calculation rules compared with composting and anaerobic digestion. In the production of advanced biofuels, depending on the process and raw materials used, other output material than biofuels is produced which can be used as soil improver or fertilizer on land, or for animal feed. According to the proposal, biogas recovered from the anaerobic digestion process would not prevent the input amount of waste to be calculated as recycled; in the same way, input amount of waste to the production process of advanced biofuels should also be calculated as recycled.

Para 4b: The proposed addition “without prejudice to paragraph 4aa” would clarify the relationship between paragraphs 4a and 4b.

For *recital 17 b*, an alternative wording is proposed to simplify the message of this clause.

In *recital 17c*, the last sentence is proposed to be deleted, or the sentence should be clarified to avoid contradiction with the first sentence e.g. with regard to production of biogas in anaerobic digestion.

Art 1 (14) / WFD Art 26

We do not see a real need for this exemption but do not oppose it provided that the exemption remains optional for Member States.

The proposed exemption raises several questions, for example: How could the proposed quantity limit be monitored in practice? How can transporters know in advance the quantities of waste which they are going to transport in the course of the following year, and what are the measures to be taken if the limit is exceeded? Would the quantity be assessed and monitored per each calendar year? What would be the implications administrative burden of authorities and enterprises compared to present situation? Is there a risk that different exemptions applied in Member States could lead to problems in relation to transfrontier shipments and equal treatment of waste transporters in EU area? We would welcome the clarification of these questions in the Working Party.

FI proposal

1. The establishments or undertakings referred to in Article 23(1), establishments and undertakings producing **producers of hazardous waste** and the establishments and undertakings which collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall keep a chronological record of the quantity, nature and origin of that waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste. They shall make that data available to the competent authorities **by request through the electronic registry or registries to be established pursuant to paragraph 4.**
- ~~4. Member States shall set up an electronic registry or coordinated registries to record the data on hazardous waste referred to in paragraph 1 covering the entire geographical territory of the Member State concerned. Member States may establish such registries for other waste streams, in particular those waste streams for which targets are set in Union legislation. Member States shall use the data on waste reported by industrial operators in the European Pollutant Release and Transfer Register set up under Regulation (EC) No 166/2006 of the European Parliament and of the Council.~~
- ~~5. The Commission may adopt implementing acts to establish minimum conditions for the operation of such registries. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).~~

The requirement for bookkeeping and continuous reporting to authorities on hazardous wastes is too wide and should be restricted to concern professional operators only. Producers of hazardous wastes are numerous (e.g. almost all offices and businesses produce small amount of mercury lamps, batteries, WEEE etc) and only domestic producers are now exempted from the requirement. We also doubt whether it is necessary to oblige each operator to report on their hazardous wastes through an electronic registry or registries. Member States should have more freedom to choose the means on how to ensure sufficient traceability and reliable data collection on hazardous waste. Concerning the reporting requirement, we would prefer the existing wording of the WFD.

We would prefer deleting paragraph 4 and 5. Any requirement on the establishment of electronic registries should be formulated in a way that leaves sufficient freedom to Member States to integrate the registry on hazardous waste to existing national registries concerning wastes. The proposed requirements may lead to heavy administrative burden in Member States. Furthermore, any mandate for the Commission to adopt implementing acts on operation of registries should be more limited, and general framework for the minimum conditions should be defined in the directive.

Art 1 (21) / WFD Art 37

FI proposal

1. Member States shall report the data concerning the implementation of Article 11(2)(a), **(c) and ~~to~~ (d)** and Article 11(3) for each calendar year, **and of Article 11(2)(b) for every second year** to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting on the targets set out in Article 11(2) (c) and (d) and Article 11(3) shall start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and will cover the data for the period from 1 January 2020 to 31 December 2020.
2. Member States shall report the data concerning the implementation of Article 9(3) to the Commission every ~~first~~ **second** year. They shall report this data electronically within 18 months of the end of the reporting period for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting shall start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), **and will cover the period from 1 January 2020 to 31 December 2021.**
6. The Commission shall adopt implementing acts laying down the format for reporting data on the implementation of Articles 9(3), 11(2)(c) and (d) and 11(3) [...] and for the reporting on backfilling operations before 1 **July-January 2019.**

Although we in general can accept annual reporting of waste data, this may be administratively too heavy for the reporting of construction and demolition waste and food waste. Reporting period of every second year would be appropriate for these waste streams.

Reporting on food waste is possible to start only if the common methodology is defined in accordance with article 9(4) and formats for reporting established in accordance with 37(6). Therefore, we wonder whether it is too risky to define an exact date for the start of the reporting in this Article.

In line with the Make it work recommendations, the mandate for the Commission to update the forms should ensure that the reporting formats are available to Member States well in advance of the beginning of the reporting period. Half-a-year may not be sufficient time-frame for Member States to prepare for reporting; therefore we propose that the time-frame be extended to one year before the start of the reporting period.

Art 1(22) / WFD Art 38

According to paragraphs 2 and 3, the Commission's power the adopt delegated acts to amend annexes of the WFD would be restricted to Annexes III to V. Would this mean that Annexes I and II would be amended in the legislative procedure ?

Art 1(1)(b) / PPWD Art 3(2)

Presidency text	FI proposal
'2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council ;	'2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council, <u>excluding production residues</u> ;

As far as we have understood, the purpose of the Commission was not to propose any change to the scope of the definition. We find the existing specification "excluding production residues" useful for the interpretation of the definition, and are afraid that its deletion may cause unnecessary confusion.

Art 1(1)(d) / PPWD Art 3 second paragraph

Presidency text	FI proposal
'In addition, the definitions of 'waste', 'waste producer', 'waste holder', 'waste management', 'collection', 'separate collection', 'prevention', 're-use', 'treatment', 'recovery', 'preparing for re-use', 'recycling', 'final recycling process' and 'disposal' laid down in Article 3 of Directive 2008/98/EC shall apply.';	'In addition, the definitions of 'waste', 'waste producer', 'waste holder' , 'waste management', 'collection', 'separate collection', 'prevention', 're-use', 'treatment', 'recovery', 'preparing for re-use', 'recycling', 'final recycling process' and 'disposal' laid down in Article 3 of Directive 2008/98/EC shall apply.';

A reference to final recycling process should be deleted since this definition does not exist in the compromise text of the WFD any more. The need for other definitions shall also be reviewed in light of the contents of the PPWD. It seems that the terms "waste producer" and "waste holder" are not used in the PPWD at all, so the definitions would not be needed in this Directive.

Art 1(2 a) / PPWD Article 5

Presidency text	FI proposal
<u>Article 5</u> <u>Reuse</u> 1. Member States shall take measures to <u>increase the share of re-useable packaging placed on the market and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such</u>	<i>Article 5</i> Reuse Member States shall take measures to increase the share of re-useable packaging placed on the market and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such measures may include:

<p><u>measures may include:</u></p> <p><u>(a) the use of deposit return schemes;</u></p> <p><u>(b) the setting of quantitative targets;</u></p> <p><u>(c) the use of economic incentives.</u></p> <p><u>2. By 31 December 2024 the Commission shall examine data on reuse 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 and any further measures to promote reuse of packaging. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.</u></p>	<p>(a) the use of deposit return schemes;</p> <p>(ab) the setting of quantitative targets;</p> <p>(be) the use of economic incentives, including where appropriate, deposit return schemes.</p> <p><u>2. In order to promote waste prevention Member States may let re-use of packaging make a contribution to the attainment of the targets laid down in Article 6 (1) (f) to (i) according to the calculation rules stated in Article 6a. [c.f. joint proposal by FIN, DK, EE, FR, IE, HR dated 29.11 2016 “Proposal on reward of re-use in the recycling target”]</u></p>
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While we appreciate that the Presidency has taken some steps towards recognizing the importance of and encouraging reuse of packaging – which is highest in the waste hierarchy – we think that this is not sufficient and further steps could and should be taken in the context of this revision of the directive. The joint proposal by like-minded countries would offer a good basis for further development of the compromise text by allowing some reward from reuse of packaging in recycling targets. We think that such a reward mechanism, which would be voluntary for Member States and would not water down the ambitiousness of recycling targets, would be possible to establish already now without the need to wait for next ten years to take this step.

We are not in favor of setting separate targets for re-use of packaging. It is important to note that re-use and recycling are often interrelated. For example, the use of re-usable packaging is often a viable alternative for the use of one-way packaging. If re-use packaging is not included as a part of the attainment of the targets there is a strong bias to favour one way packaging.

In Finland, we have had a combined target for reuse and recycling for packaging in our national legislation since 1997, almost twenty years so far. The current target is 90 % of reuse and recycling by 2020. The reuse and recycling rate was over 80 % in Finland in 2015. This target has been considered useful in Finland in order to recognize the important role which the reusable packaging play in material efficient management of packaging.

We do not find it necessary to pay special attention to deposit schemes as a means to promote reuse. Deposit schemes are only one of the economic instruments that can be used for organizing reuse, and in fact at least in Finland, deposit schemes are currently more widely used for organizing recycling of packaging.

Art 1(3) / PPWD Art 6 Numerical targets

We are not yet in the position to commit ourselves to exact numerical targets. We find that the key definitions and calculation rules for targets should be clarified and baseline data analysed accordingly before any numerical targets are set. The questions that need to be clarified are, for example:

1. **Can the reuse of packaging contribute towards the attainment of targets**, e.g. in line with the joint proposal by like-minded countries? In Finland, this will have a significant impact to the base line data and attainability of targets, in particular as regards plastic and wood packaging
2. **What is the distinction between reuse, preparation for reuse and recycling and which treatment of packaging can be counted towards the targets and which not?** Will the preparation for re-use be included in targets of the PPWD, as in the targets of the WFD? This is particularly important for us as regards treatment of wooden pallets. In Finland, we have considered repair of wooden pallets as preparation for reuse and calculated it in our recycling targets. At present, our recycling rate (including repair of wooden pallets) is 15-17 %, but if we exclude repair of wooden pallets, our rate will decrease under 5 %. If re-use and preparation for reuse cannot be calculated towards the attainment of targets, Finland will face serious problems in achieving the proposed targets. Furthermore, it would water down the motivation of economic operators to develop sorting practices in order to extract reusable or repairable wooden pallets out of wooden C&D waste.
3. **To what extent the losses removed by further operations preceding the actual recycling operation shall be reduced from the recycled amount of waste?** The Commission proposal allowed losses below 10 % but the current PRY proposal requires all losses to be reduced. This means a significant difference in baseline data, e.g. as regards recycling rates of plastics.

Irrespective of the calculation methods, it seems obvious that the **proposed recycling targets for wooden packaging waste are very challenging for Finland**. Most of the wood waste is dirty or contaminated and therefore, is not suitable for recycling as easily as, for example, by-products of wood processing. It also seems very difficult to increase recycling of wooden pallets, since there is practically no demand for recycled wood waste in Finland (because of abundant supply of more high-quality by-products from forest industry). The important role of the wooden waste as a source of renewable energy should also be taken into account. According to a recent Finnish study on life cycle environmental impacts of different treatment methods for wooden waste, the energy recovery of wooden waste is a justified option in Finland and results in an overall better environmental outcome in regard to life cycle impacts compared to the other recycling methods examined. Export of wood waste for recycling to other countries having more demand for wood waste than in Finland, would not either be economically viable nor environmentally justified. This should be taken into consideration in the setting targets for recycling of wooden waste.

According to **recital 9**, targets for recycling of plastic packaging have been set taking into account what was technically feasible at the time of the revision. While we understand the purpose of the recital, we would like to emphasize that technical feasibility should by no means be a sole factor which shall be taken into account in setting targets at levels which are ambitious but achievable to Member States.

With regard to **plastic packaging**, separate collection often results in mixture of numerous plastic types, which may not be fit for recycling as such. If the aim is to produce pure plastic granules fit for high-quality recycling the plastic waste needs to undergo thorough sorting process which inevitably leads to high amount of losses. If the calculation rules require reduction of all such losses, ambitious numerical targets are hard to be achieved. Although we agree with the principle that recycling rates should reflect the amount of waste that is actually recycled, we are afraid that **strict application of these calculation rules may act as an disincentive for high-quality recycling** and even encourage low-quality recycling where there is less need to take out impurities from the waste material.

There are plenty of technical uncertainties connected with the numerical targets and their calculation. We think it would be useful to try to solve these questions at an expert level. We would consider an **organization of a meeting of technical experts very welcome**.

We can accept the proposal **not to have separate targets for aluminium and ferrous metal packaging** - although we would have seen some merit in separate targets as well.

Art 1(4) / PPWD Art 6a Calculation of the attainment of targets

Concerning articles 6a (1) – (4), **reference is made to our comments on corresponding articles 11 a (1) and (3) of the WFD.**

In addition, we propose that a paragraph defining **calculation rules for aerobic or anaerobic treatment of biodegradable waste, similar to article 11a(4a) of the WFD, be incorporated in the PPWD.** At least wooden packaging waste can be recycled by composting or anaerobic digestion. We also propose a slight rewording of the paragraph which would ensure that the use of waste as raw material for production of advanced biofuels is equally treated in calculation rules compared with composting and anaerobic treatment. Furthermore, paragraph 4a should be modified similarly to article 4b of the WFD. Paragraphs 4aa and 4a would thus read as follows:

Presidency text	FI proposal
	<p><u>4aa. For the purpose of calculating the targets laid down in Article 6 (1) (f) to (i), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate, or other similar material in corresponding quantities, which is to be used as a recycled product, material or substance.</u></p>

<p><u>4a. The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.</u></p>	<p>4a. <u>Without prejudice to paragraph 4aa, the</u> amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.</p>
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Art 1(6) / PPWD Art 11(3) Concentration levels of heavy metals present in packaging

It would be necessary to analyze whether these provisions can be established by delegated acts, or whether the legislative procedure is more appropriate.

Art 1(7) / PPWD Art 12 Information systems and reporting and Annex III

FI proposal

3d. The Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 3a **before 1 January 2019**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).';

Annex III.

(1) [...];

~~(1a) In Tables 1 and 2, additional columns need to be added to require information on primary, secondary and tertiary packaging separately.~~

(2) [...].

We can accept the obligation for Member States to report data on reuse of packaging. Finland has already long reported such data to the Commission on voluntary basis, in accordance with Art 8(b) of Commission Decision 2005/270/EC . Reporting on reuse is essential in order to assess the functioning of target-setting and the need for its review. However, if considered burdensome by other MS, we could also accept that the reporting obligation is directed to only those countries using the possibility to calculate certain part of re-use towards the attainment of targets, as proposed by like-minded countries, For other countries, the reporting on re-use would be voluntary.

It is necessary to ensure that the formats for reporting are updated well in advance of the beginning of the reporting period. Therefore, and in line with the Make it work recommendations, **an exact time-frame should be defined in Article 12(3d) by which the Commission is obliged to adopt implementing acts** to update the forms to the new requirements. This provision would correspond with the proposal for WFD article 37(6).

We do not support the proposal set out in Annex III to provide information on primary secondary and tertiary packaging separately. This would be a new requirement and would mean a significant increase of administrative burden in MS and economic operators. It may even be impossible to collect reliable data separately on these packaging groups, since they are mixed with each other in waste management.

Presidency compromise text on Landfill Directive 14169/16

Article 1 (1a) / LWD Art 3(3) Scope

Scrutiny reservation on the proposed exclusion concerning mining wastes. It is not clear to us what is the value added of this exclusion, taking into account the existing exemption in Article 2(4) of the Mining Waste Directive 2006/21/EC.

Article 1 (2) / LWD Art 5 (b) Landfill bans and targets

The proposed ban for landfilling of waste that is separately collected for recycling in accordance with Article 11 of the WFD is supportable in principle. As pointed out earlier, the requirement may need to be complemented by **some flexibility for certain exceptional situations** (like for wastes which are proved to be unfit for recycling or incineration because of impurities). If such a clause is not possible to incorporate in Article 5(b), some clarification regarding the need for flexibility in exceptional cases **should at least be given in recitals**.

The proposed ban for landfilling of all recoverable waste is tentatively acceptable to us when read together with recital 6a referring to the necessary flexibility in accordance with the waste hierarchy.

Article 1 (2a) / LWD Art 5a Calculation of the attainment of targets

Scrutiny reservation. The calculation method seems very complicated and raises some questions. For example, regarding point (b) it is not clear to us whether all municipal waste entering mechanical biological treatment be counted as recycled, including those fractions that are subjected to recycling or energy recovery? And furthermore, if waste entering incineration without energy recovery shall be counted as landfilled, how can double-counting of this waste stream be avoided in waste statistics (i.e would this waste be reported both as incinerated and landfilled?).

These calculation rules should be carefully analyzed in close cooperation with Eurostat and the statistical experts of Member States.

Article 1(6) / LWD Art 15 Reporting

Para 5: It is necessary to ensure that the formats for reporting are updated well in advance of the beginning of the reporting period. Therefore, and in line with the Make it work recommendations, **an exact time-frame should be defined in Article 15 (4)** by which the Commission is obliged to adopt implementing acts to update the forms to the new requirements. This provision would correspond with the proposal for WFD article 37(6).

Amendment of Directive 2000/53/EC (ELV)

- The definitions of the ELV directive should also be harmonized with the WFD definitions (like in the PPWD and landfill directives) as much as possible. For example, the definitions of recovery and disposal in the current ELV directive refer back to the definitions included in Directive 75/442/EEC (=the oldest waste directive), the definition of “hazardous substances” refer to out-dated Dangerous Substances Directive 67/548/EEC; at least these definitions should be updated.
- 5 d. In line with the Make it work recommendations, the mandate for the Commission to update the forms should ensure that the reporting formats are available to Member States well in advance of the beginning of the reporting period (e.g. one year before the reporting period). This provision would correspond with the proposal for WFD article 37(6).

Article 2

Amendment of Directive 2006/66/EC (batteries)

- The definitions of the batteries directive should also be harmonized with the WFD definitions (like in the PPWD and landfill directives) as much as possible. For example, definitions of recycling, disposal and treatment should be updated.
- Art 23. The dead-line for the Commission to draw up a report (by the end of 2016) seems strange taking into account the preparation schedule of this directive.
- In this connection, we would like to remind on the urgent need to include in the Battery directive similar provisions on distance selling and authorized representative to those of the WEEE directive. For the moment there are different requirements for electronic equipment (EEE) and batteries, which are sold by distance selling into a Member State, even though they may be the same product (like mobile phone). The differences in these directives may result in a situation, where there are different responsible actors for and electronic appliance and for batteries contained in it*. These provisions of WEEE and Battery directives should be harmonized as soon as possible (if this is not possible in the context of this revision).

Article 3

Amendment of Directive 2012/19/EU (WEEE)

- 5 d. In line with the Make it work recommendations, the mandate for the Commission to update the forms should ensure that the reporting formats are available to Member States well in advance of the beginning of the reporting period (e.g. one year before the reporting period). This provision would correspond with the proposal for WFD article 37(6).

SWEDEN

Waste Directive

Recitals

- (6) To ensure that recycling targets are based on reliable and comparable data and to enable more effective monitoring of progress in attaining those targets, the definition of municipal waste in Directive 2008/98/EC should be in line with the definition used for statistical purposes by the European Statistical Office and the Organisation for Economic Co-operation and Development, on the basis of which Member States have been reporting data for several years. **Municipal waste should be defined as waste from households and similar waste from other sources, inter alia from littering ~~[market and street cleaning services, including street sweepings]~~ and the content of litter containers, and from park and garden maintenance, such as leaves, grass and trees clipping. Member States may use relevant categories in the List of Waste for statistical purposes.** The definition of municipal waste in this Directive is neutral with regard to the public or private status of the operator managing waste.
- (6a) The definition of backfilling should be introduced to clarify that it means any recovery operation of suitable non-hazardous waste for the purposes of reclamation in excavated areas ~~[and mines]~~ or for engineering purposes in landscaping and infrastructure and construction ~~[foundation]~~ such as for roads. The waste used for backfilling should be limited to the amount strictly necessary to achieve these purposes. The definition of backfilling does not exclude that reprocessing of waste into secondary raw materials for engineering purposes in construction of roads or other infrastructures may fulfill the definition of recycling, if the use of materials is based on proper quality control and meets all relevant standards, norms, specifications and environmental and health protection requirements for the specific use.**
- ~~(9a) [Public authorities play an important role in the organisation of municipal waste collection and treatment and related communication with citizens. Provisions relating to the financial responsibility of producers introduced as part of the general requirements for extended producer responsibility schemes shall apply without prejudice to the competence of public authorities as regards the collection and treatment of municipal waste.]~~**
- (17) In order to ensure the reliability of the data gathered [...], it is important to lay down more precise rules on how Member States should report what is effectively recycled and can be counted towards the attainment of the recycling targets. To that effect, as a general rule, the reporting on the attainment of the recycling targets must be based on the input to the [...] **actual recycling operation [...]. This operation starts after completion of ~~[the]~~ all 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.**

- (17a) In order to limit administrative burdens, Member States should **by way of derogation from the general rule** be allowed, under strict conditions, to report recycling rates on the basis of **separately collected waste which undergoes no further sorting or of the output of [...] any sorting operation. [...] Losses of materials occurring before the waste enters the actual recycling operation, for instance due to further sorting or other preliminary operations, should not be included in the waste amounts reported as recycled.** ~~**These losses can be established on the basis of electronic registries, technical specifications, detailed rules on the calculation of standard average loss rates for various types of waste, collection and treatment systems and practices, or other equivalent measures.**~~ **Member States should report on such measures in the quality check reports, accompanying the data on waste recycling. [...] Losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the [...] recycling [...] operation where waste materials are actually reprocessed into products, materials and substances** should not be deducted from the weight of the waste reported as recycled.
- (18) Member States should, for the purposes of calculating whether the preparation for re-use and recycling targets are achieved, be able to **a certain amount** take into account [...] the recycling of metals that takes place in conjunction with incineration. In order to ensure a uniform calculation of this data, the Commission will adopt detailed rules [...] on the quality criteria for recycled metals and on the collection, verification and reporting of data.

Articles

(2) Article 3 is amended as follows:

(a) the following point 1a is inserted:

'1a. "municipal waste" means

(k) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, **packaging**, waste electrical and electronic equipment, waste batteries and accumulators; bulky waste including [...] mattresses **and** furniture;

[...]

(l) mixed waste and separately collected waste from other sources **including from littering** ~~**market and street cleaning services**~~ that is comparable to household waste in nature **and** composition [...];

(m) [...]

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

Rationale: Due to the slippery roads during wintertime the waste from street sweepings contains massive amount of polluted sand and gravel which don't have any similarity with waste from households and this should be deleted:

(c) point 4 is replaced by the following:

'4. "bio-waste" means biodegradable garden and park waste, food and kitchen waste from households, **and other sources such as** restaurants, **wholesale, canteens,** caterers and retail premises **and** comparable waste from food processing plants [...].';

(d) the following point 4a is inserted:

'4a. "construction and demolition waste means **waste [...] generated from construction and demolition activities including all waste falling under the construction and demolition waste categories referred to in chapter 17 of Decision 2000/532/EC establishing a list of wastes.**

Rationale SE considers that the definition on biowaste should be non exhaustive and suggests since there may be activities generating bio-waste that is not listed in the definition. The definition of construction and demolition waste should be more develop to make sense.

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

[...]

'17b. "backfilling" means any recovery operation where suitable **non-hazardous** waste is used for-purposes **of reclamation** in excavated areas **and mines** or for engineering purposes in landscaping **and infrastructure and construction foundation** [...]. **Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve these purposes.'**

Rationale: SE cannot support the inclusion of "mines", as backfilling in the extractive industry is used to reduce the footprint of the mining activity. Therefore it is not relevant or accurate to limit the amount backfilled to "strictly necessary". Secondly, extractive waste is excluded from this directive in article 2. Furthermore, SE would like the word "foundation" to be deleted so for example noise reduction barriers can be included.

(g) the following point 20a is inserted:

‘20a “Extended producer responsibility scheme” means a set of legislative ~~and/or non-legislative~~ measures taken by Member States to ensure that producers of products bear financial or financial and operational responsibility for the management of the waste stage of a product’s life cycle. ’

Rationale: Voluntary schemes should not be required to follow the requirements in article 8a.

(5) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory phrase and point (a) are replaced by the following:

‘1. Member States shall **take appropriate measures to** ensure that waste which has undergone a recovery operation is considered to have ceased to be waste if it complies with the following conditions:

(a) the substance or object [...] **is** used for specific purposes.

(ii) the second subparagraph is deleted;

(b) paragraphs 2, 3 and 4 are replaced by the following:

‘2. The Commission **may** [...] adopt **implementing** acts [...] in order to establish detailed criteria on the **uniform** application of the conditions laid down in paragraph 1 to certain **types of** waste . Those detailed criteria shall [...] take into account any possible adverse environmental **and human health impacts** [...] of the substance or object **and shall include:**

a) permissible waste input material for the recovery operation;

b) allowed treatment processes and techniques;

c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;

d) requirements for quality management, self-monitoring and accreditation;

e) requirement for a statement of conformity.]

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

3. [...]

4. Where criteria have not been set at Community level under the procedure set out in paragraph 2, Member States may establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain types of waste. Those detailed criteria [...] shall take into account any possible adverse environmental and human health impacts [...] of the substance or object **and shall include:**

[a) permissible waste input material for the recovery operation;

b) allowed treatment processes and techniques;

c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards including limit values for pollutants where necessary;

d) requirements for quality management, self-monitoring and accreditation

e) requirement for a statement of conformity.]

Member States shall notify the Commission of [...] these criteria in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provisions of information in the field of technical regulations and of the rules on information Society services where so required by that Directive.

4a. Where criteria have not been set at Community or national level under the procedure set out in par. 2 and 4, Member States may decide case by case whether certain waste has ceased to be waste having verified that the conditions of paragraph 1 are met and taking into account limit values for pollutants where necessary and any possible adverse environmental and human health impacts. Case by case decisions do not have to be notified to the Commission according to Directive 2015/1535/EC .

[4b.]

5. The natural or legal person who places a material on the market for the first time after it ceases being waste, must ensure that the material meets any relevant requirements under the applicable chemical and product related legislation. The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.

The application of of this Article shall be without prejudice to the application of other provisions of Union law, particularly regarding chemicals and legislation concerning the placing on the market of certain products.

Rationale: SE are hesitant towards to the detailed prescriptions in the implementing acts para 2 and 4 i.e to specify allowed treatment process and techniques might hinder innovation and accreditation is often administrative burdensome. Furthermore, SE has moved para 4b to a standalone paragraph as it connects with the whole article and not only in relation to national criteria.

(8) The following Article 8a is inserted:

'Article 8a

General requirements for extended producer responsibility schemes

1. **Where [...]** extended producer responsibility schemes **are** established in accordance with Article 8, paragraph 1, Member States shall:
 - define in a clear way the roles and responsibilities of producers of products placing [...] **products** on the market of the [...] **Member State**, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, [...] **reuse and** preparation for re-use operators and social enterprises;
 - define [...] waste management targets, in line with the waste hierarchy, aiming to attain at least the quantitative targets relevant for the scheme as laid down in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU, **and other quantitative targets and/or qualitative objectives that are considered relevant for the extended producer responsibility scheme;**
 - **ensure that** a reporting system **is established** to gather data on the products placed on the [...] market **of the Member State** by the producers subject to extended producer responsibility [...] **and** data [...] on the collection and treatment of [...] waste **resulting from these products** specifying, where appropriate, the waste material flows;
 - ensure equal treatment [...] **of** producers of products [...] **regardless of their origin or size;**
 - **ensure that the schemes contribute to the incorporation of [...] end-of-life costs into [...] production cost and provide thereby incentives for producers [...] for improved product design.**

2. Member States shall take the necessary measures:
- to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8, paragraph 1, are informed about [...] waste **prevention measures, centers for reuse and preparation for reuse [...], take back where relevant** and collection systems and the prevention of littering. Member States shall also take measures to create incentives for the waste holders to take part in the separate collection systems in place, notably through economic incentives or regulations, when appropriate.
3. Member States shall take the necessary measures to ensure that any organisation [...] **implementing** extended producer responsibility schemes obligations [...]:
- (a) has a clearly defined geographical, product and material coverage [...] **without limiting these areas to the territories in which the collection and management of waste are most profitable;**
 - (aa) provides an appropriate availability of waste collection systems covering the sales area as well as the area where the products are likely to become waste, within the territory of a Member state;**
 - (b) has the necessary operational and financial means to meet its extended producer responsibility obligations;
 - (c) puts in place an adequate self-control mechanism, supported, **where relevant** by regular independent audits, to appraise:
 - the organisation's financial management, including the compliance with the requirements laid down in paragraph 4(a) and (b);
 - the quality of data collected and reported in accordance with paragraph 1, third indent, and the requirements of Regulation (EC) No 1013/2006.
 - (d) makes publicly available the information about:
 - its ownership and membership;
 - the financial contributions paid by the producers;
 - the selection procedure for waste management operators.

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

4. Member States ~~may~~ **shall** take the necessary measures to ensure that the financial contributions paid by the producer to comply with its extended producer responsibility obligations:
- (a) cover ~~the entire~~ costs of waste management for the products it puts on the [...] market **in that Member State**, including all the following:
 - costs of separate collection, [...], sorting and treatment operations, **and where appropriate of reuse and preparation for reuse**, required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from reuse or sales of secondary raw material from their products;
 - costs of providing adequate information to waste holders in accordance with paragraph 2;
 - costs of data gathering and reporting in accordance with paragraph 1, third indent.
 - (b) [...]
 - (c) are based on the optimised cost of the services provided in cases where public waste management operators are responsible for implementing operational tasks on behalf of the extended producer responsibility schemes.

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

~~4a) [Member States shall take measures to encourage that the financial contributions paid by the producer are modulated for individual products or groups of similar products by taking into account their reusability and reparability as a contribution to waste prevention and preparation for reuse, and their recyclability;]~~

Rationale The entire paragraph 4 should be deleted or made voluntary for Member States. Like others we believe that it should be possible to have shared responsibilities between different actors, such as municipalities and producers SE considers it should be up to the producers and other operators on the market to regulate the financial means. The producers have self-interest to minimise costs. This is not an issue that needs to be reviewed through or prioritized for supervision.

(9) Article 9 is replaced by the following:

'Article 9

Prevention of waste

1. Member States shall take measures to prevent waste generation. These measures shall:
 - encourage the **design, manufacturing and** use of products that are **non-toxic**, resource efficient, durable, repairable, **reusable** and [...] **upgradable**;

- [...] [...] target products **containing critical raw [...] materials [...] to prevent that those materials become waste;**
 - **encourage collaborative consumption and business models that prevent waste and promote the re-use of products as well as redesign and [...] setting up of systems promoting **repair and reuse activities as referred to in Article 9a**, including in particular for electrical and electronic equipment, textiles, and furniture, **as well as packaging and construction materials and products;****
 - reduce waste generation in processes related to industrial production, [...], **manufacturing**, construction and demolition, taking into account best available techniques;
 - reduce the generation of food waste in primary production, in processing and manufacturing, in retail and other distribution of food, in restaurants and food services as well as in households;
 - **reduce the content of harmful substances in materials and products and promote communication about hazardous substances in the supply chain;**
 - **identify products that are the main sources of littering notably in the natural including the marine environment and take appropriate measures to prevent ~~reduce~~ [...] litter from such products;**
 - **include the development of continuous communication and education campaigns and other actions to change behaviour to raise awareness on the issues surrounding waste prevention and littering;**
 - **encourage the use of deposit return schemes; as appropriate**
 - **incentivise re-use through the setting up of aspirational quantitative targets;**
 - **provide, as appropriate, adequate economic incentives to producers. '**
2. Member States shall monitor and assess the implementation of the waste prevention measures. For that purpose, they shall use appropriate qualitative or quantitative indicators and targets, notably on the [...] **quantity of waste that is generated**, [...] disposed of, or subject to energy recovery.

Rationale, SE welcomes the article in general and especially the promotion of non-toxic material cycles which is a precondition for a circular economy. Article 9 should not be limited only to re-use and the way products are designed, but should also include encouragement of systems for sharing / collaborative consumption and new business models that prevent waste. We have concerns as to how reuse can be quantified. We believe reuse is a preventive action which is already included in para 2 and there is no need to repeat in indent 10

(10) Article 11 is amended as follows:

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

'1. Member States shall take measures, as appropriate, to promote **the ~~re-use of products and~~** preparing for re-use activities, notably by encouraging the establishment of and support for re-use and repair networks, **by advancing the granting of access [...]** of such networks to waste collection points, and by promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors [...];

(b) in paragraph 1, the following sub-paragraphs **are** inserted:

- 'Member States shall take measures to promote **selective demolition in order to enable removal and safe handling of hazardous substances and materials, as well as** sorting systems for construction and demolition waste for at least the following: wood, [...] **~~mineral fractions~~(concrete, bricks, tiles and ceramics)**, metal, glass, **plastics** and plaster, **in order to attain the target set out in paragraph 2(b).**;

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

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

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

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

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

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

'(c) by 2025, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of ~~55~~ **60** % by weight;

(d) by 2030, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of ~~60~~ **65** % by weight;

(e) by 2025, the recycling of municipal bio-waste shall be increased to a minimum of 50 % by weight.

(f) paragraphs 3 and 4 are replaced by the following:

[...]

'3. A Member State which prepared for re-use and recycled less than 20 % or landfilled more than 60 % of their municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in point (c) and (d) of paragraph 2.

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the respective deadlines laid down in paragraphs 2(c) and (d). In the event of an extension, the Member State shall take the necessary measures to increase the preparing for re-use and the recycling of municipal waste to a minimum of 50% and **55**% by weight, by 2025 and 2030 respectively

The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts

4. By 31 December 2024 at the latest, the Commission shall examine the target laid down in paragraph 2(d) with a view to **increasing**[...] ~~**reviewing**~~ it and considering the setting of targets for other waste streams. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

5 new By 31 December 2020 at the latest, the Commission shall examine the target laid down in paragraph (b) with a view to develop the target into material specific recovery targets, taking into account the presence of harmful substances such as substances of very high concern (SVHC) and their potential for adverse effect on health or the environment as a result of recycling under different conditions. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

6 new 5. By 31 December 2020 at the latest, the Commission shall carry out an assessment with a view to setting requirements for separate collection and a target preparation of reuse and recycling of textile waste. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

Rationale: SE consider re-use is defined as prevention and is included in Art 9 and no need for repetition here. SE would like to see ambitious targets and suggest return to CION proposal. Further a target on bio-waste is proposed as there is a requirement for separate collection. We would further like to see C&D waste separated in material to counter the dominance of the heavy construction and demolition material in the recycling target. Textile waste is another waste stream that's needs special consideration.

(11) The following Article 11a is inserted:

'Article 11a

Rules on the calculation of the attainment of the targets laid down in Article 11

- '1. For the purpose of calculating whether the targets laid down in Article 11(2)(c) and (d) and 11(3) have been attained,
 - (a') **Member States shall calculate the weight of the municipal waste generated and prepared for reuse or recycled in a given calendar year;**
 - (a) the weight of the municipal waste recycled shall be understood as the weight of [...] waste **which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling,** enters the [...] recycling operation whereby waste materials are actually reprocessed into products, materials or substances;
 - (b) the weight of the municipal waste prepared for reuse shall be understood as the weight of **products or components of products that have become** municipal waste [...] and **have** undergone all necessary checking, cleaning or repairing operations to enable reuse without further sorting or pre-processing;
 - (c) [...]
2. [...]
3. By way of derogation from paragraph 1(a), the weight of **separately collected waste which needs no further sorting or of the output of any sorting operation** may be reported as the weight of the municipal waste recycled provided that:
 - (a) such output waste is [...] **subsequently recycled;**
 - (b) the weight of materials or substances that are [...] **removed by further operations preceding the actual recycling operation and are not subsequently recycled [...]remains below 5% of the total weight ~~is not included in the~~ [...] weight of waste [...] reported as recycled.**

4. Member States shall establish an effective system of quality control and traceability of the municipal waste to ensure that conditions laid down in paragraphs **1(a)**, 3(a) and **3(b) of this Article** are met. The system may consist of electronic registries set up pursuant to Article 35(4), technical specifications for the quality requirements of sorted waste, ~~standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices~~ or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.
 - 4a. **For the purpose of calculating the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3), the amount of biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost or digestate which is to be used as a recycled product, material or substance.**
 - 4b. **The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.**
5. For the purposes of calculating whether the targets laid down in Article 11(2)(c) and (d) and Article 11(3) have been achieved Member States may take into account the recycling of metals [...] **separated after waste** incineration in proportion to **half of** the share of the municipal waste incinerated provided that the recycled metals meet certain quality requirements.

Rationale: SE thinks that we would strive for better harmonisation between MS. By the new approach with standard loss rates we believe that the proposal goes in the opposite direction. CION original method with a lowered fixed reject-quota gives better harmonisation and less administration. SE could consider that metals can be counted as recycled to an amount less than metals source separated, for example 50 % as an encouragement to separate the metals from the ash.

(13) Article 22 is replaced by the following:

'Member States shall ensure the separate collection of bio-waste where technically **feasible** , environmentally **justified** and economically **viable** [~~practicable and appropriate~~] to ensure the relevant quality standards for compost, **digestate and other recycled products, materials or substances** [...].

~~**Waste with similar biodegradability and compostability properties may be collected together with bio-waste./**~~

They shall take measures, as appropriate, and in accordance with Articles 4 and 13, to encourage the following:

- (a) the recycling, including composting and digestion, of bio-waste;
- (b) the treatment of bio-waste in a way that fulfils a high level of environmental protection;
- (c) the use of environmentally safe materials produced from bio-waste.;

Rationale: SE considers that the derogation is too extensive and suggests additions to secure a better and coherent implementation. The collection of bio-waste is an important measure to reduce the amount of biodegradable waste to landfill and thereby reduce climate impact. SE considers it very unfortunate that the waste with similar biodegradability properties is possible to add to the treatment of biowaste as we have concerns of the degradation and it will lowers the quality and purity of the material

(21) Article 37 is replaced by the following:

'Article 37

Reporting

1. Member States shall report the data concerning the implementation of Article 11(2)(a) to (d) and Article 11(3) for each calendar year to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting **on the targets set out in Article 11(2) (c) and (d) and Article 11(3) shall start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and will cover the data for the period from 1 January 2020 to 31 December 2020.**
2. Member States shall report the data concerning the implementation of Article 9(3) to the Commission every **second** [...] year. They shall report this data electronically within 18 months of the end of the reporting period for which the data are collected. The data shall be reported in the format established by the Commission in accordance with paragraph 6. The first reporting shall **start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with 37(6), and will cover the period from 1 January 2020 to 31 December ~~2021~~-2022**

Landfill Directive

(2) Article 5 is amended as follows:

(a) in paragraph 2 the following sentence is deleted:

'Two years before the date referred to in paragraph c) the Council shall reexamine the above target, on the basis of a report from the Commission on the practical experience gained by Member States in the pursuance of the targets laid down in paragraph a) and b) accompanied, if appropriate, by a proposal with a view to confirming or amending this target in order to ensure a high level of environmental protection.'

(b) in paragraph 3 the following points (f) and (g) are added:

'(f) waste that has been separately collected for **preparing for re-use or recycling or other recovery** pursuant to Article 11(1) and 22 of Directive 2008/98/EC;

(g) all waste, including biodegradable waste which, which following appropriate collection and treatment, that is suitable for preparing for reuse, recycling or other recovery by 2030.'

(c) the following paragraphs 5, 6 and 7 are added:

'5. Member States shall take the necessary measures to ensure that by 2030, the amount of municipal waste landfilled is reduced to, **either:**

a) 10% of the total amount of municipal waste **generated, or,**

b) 50 kg per capita per year.

6. **[...] A Member State which prepared for re-use and recycled less than 20% or landfilled more than 60 % of its municipal waste in 2013 may obtain five additional years for the attainment of the target referred to in paragraph 5.**

The Member State shall notify the Commission of its intention to make use of this provision at the latest 24 months before the deadline laid down in paragraph 5. In the event of an extension, the Member State shall take the necessary measures to reduce by 2030 the amount of municipal waste landfilled to, **either:**

a) 25% of the total amount of municipal waste **generated; or**

b) 125 kg per capita per year

The notification shall be accompanied by an implementation plan presenting the measures needed to ensure compliance with the targets before the new deadline. The plan shall **be drafted on the basis of an evaluation of the existing waste management plans and shall** also include a detailed timetable for the implementation of the proposed measures and an assessment of their expected impacts.

7. By 31 December 2024 at the latest, the Commission shall examine the targets laid down in paragraph 5 with a view to **decreasing ~~reviewing~~ them [...]**. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.;

Rationale, The targets in 11(1) also contains the concepts preparing for re-use and other recovery. We believe that an ambitious target on landfilling is important to minimise climate impact and improve circular economy. SE supports paragraph 2 g and had only made amendments to align it with the wording in recital 6a. SE are confident with that some MS have more time to achieve the targets. However, SE believe that a derogation should also be supportive towards the original target. SE can see a problem with setting different targets, as high as 25 % or 125 kg, to be achieved by 2030, and then give the MS very short time to achieve the lower targets by 2035. SE suggest not to set different targets for the fulfilment of municipal waste

UNITED KINGDOM

WFD Article 2

The UK supports the Presidency's amendments to Article 2.

Definitions:

Municipal waste - WFD Article 3(1a)

The UK supports the Presidency's amendments and the definition as a whole.

Non-hazardous waste - WFD Article 3(2a)

The UK welcomes the definition as written in the Landfill Directive.

Construction and demolition waste – WFD Article 3(4a)

The UK supports this definition of construction and demolition waste with the accompanying recital. This is a useful compromise.

Other material recovery – WFD Article 3(15)

The UK welcomes this amendment.

Backfilling – WFD Article 3(17b)

The UK supports the text on backfilling but does not believe that the inclusion of 'mines' is appropriate.

Extended producer responsibility scheme – WFD Article 3(20a)

The UK considers that a definition is unnecessary here. It may be simpler to make the distinction between "schemes" and "regimes" through clear wording in Article 8

By-product and End-of-waste Status

WFD Article 5

The UK supports the use of implementing acts in paragraph 2.

WFD Article 6

The UK supports the use of implementing acts in paragraph 2 and the addition of criteria in paragraphs 2 and 4. The UK supports the sentiment of paragraph 4b, that product laws apply immediately to end of waste materials. However the wording is not yet clear.

WFD Article 7

The UK supports the amendment.

Extended Producer Responsibility

Article 8 WFD

The UK can accept the changes taken together with Article 3 paragraph 20a, but would prefer the use of a different term such as regime.

Article 8a WFD

The UK believes that this proposal may be counter-productive in some cases, in that it could discourage the creation of new PR schemes and threaten the operation of existing ones. The Directive should recognise that there are multiple valid approaches to achieving extended producer responsibility and be less prescriptive on the precise allocation of who picks up costs. The UK recognises the value of indicative guidelines to improve consistency on EPR and therefore suggests that “shall” be changed to “may” throughout all clauses of the article. Moreover, the UK does not consider that fiscal measures such as the economic incentives in paragraph 2 can be a mandatory obligation in an instrument not subject to unanimity.

Data, SMEs and End of life costs (WFD 8a.1)

Many Member States use different systems to track data on a range of products. It is clearer to refer to reporting “systems” so that Member States can be certain that using existing systems together and building on them can fulfil this condition.

The UK operates a system of exemptions for from certain producer responsibility schemes for producers of very small quantities of the affected products. This is in line with the Interinstitutional Agreement on Better Law-making. However, we also recognise the need to regulate SMEs that produce large quantities of products with significant end of life costs. The UK proposes this wording which would allow Member States to avoid undue burdens on small producers without constraining the potential for regulating significant waste streams:

*ensure equal treatment of producers of products regardless of their origin or size, **without placing a disproportionate regulatory burden on producers of small quantities of products;***

The producers of products and equipment specified in the existing legislation are already obliged to fund the recycling and final disposal costs through the compliance schemes or other arrangements that have been put in place by each Member State and which complement the national waste infrastructure. Member States should be permitted flexibility in the way they promote the design of products that facilitate re-use, dismantling and/or recovery.

Scope (WFD 8a.3)

The UK would like clarification on the purpose of the text at paragraph 3(aa).

Monitoring (WFD 8a.5)

While recognising the value of common guidelines for extended producer responsibility regimes, the UK believes that the measures in Article 8a must respect the principle of subsidiarity and allow Member States to decide their own approaches. Tracking the EPR obligations of distance sellers would be almost impossible and enforcement would require new powers. We would like to understand more about how to achieve full coverage.

Timetable (WFD 8a.7)

The UK is happy with the proposed timetable although it would prefer for Member States to have flexibility in creating their EPR schemes.

Article 9 Prevention

Para 1: indent 6: The UK is broadly supportive of the articles addressing waste prevention. We do believe the following bullet point should be deleted. ‘- **reduce the content of harmful substances in materials and products and promote communication about hazardous substances in the supply chain;**’. EU chemicals regulation already drives substitution with safer alternatives, so we believe it does not need to also be covered in waste legislation as this risks creating dual regulation and confusion.

Para 1: indent 7: In the list of policy measures under the article on littering, the UK would suggest the following amendments to make the text clearer: identify products **and packaging** that are **commonly littered** notably in the natural including the marine environment and take appropriate measures to reduce litter from such **items**

Para 1: indent 8: include the development of [continuous]~~delete~~ communication and education campaigns to raise awareness on the issues surrounding waste prevention and littering;

Para 1 indent 9: Should be deleted - [encourage the use of deposit return schemes]~~delete~~;

Article 11 Calculation methods

At this stage we are unable to comment on specific targets but we feel the technical elements are moving in the right direction.

Para 1: sub para 2: The UK considers the reference to TEEP is very important and should be retained in this paragraph

Article 11a

Para 4: The possibility of using standard loss rates in accounting for fractions removed from waste after counting the output of sorting will reduce administrative burdens.

Para 5: The UK would support the inclusion of the mineral fraction recovered from Incinerator Bottom Ash where it is recycled into products and replaced the use of virgin materials.

Art 26 Registration

The UK supports the intention of this proposal but is concerned by some elements of the current wording. A set de minimis limit may be difficult to decide, and 20 tonnes seems arbitrary and far too large. We also think that this exemption should be for companies that generate waste but are not employed in the waste sector eg a gardener. We would suggest the following language: ‘Member States may exempt the competent authorities from keeping a register of establishments or undertakings which transport small quantities of their own non-hazardous waste’.

Landfill Directive

Non-hazardous waste

The UK supports the amendment to Article 2.3.

Waste not accepted in a landfill

The UK asks the Presidency to consider what would happen to separately collected waste that became contaminated, under the new provision in Article 5.3(f).

The UK is unsure of the aim and purpose of the amendment in Article 5.3(g).

Targets

Discussions related to the setting of numerical or proportional targets should not take place until definitions and methods of calculation have been agreed.

Calculation

We support this way of calculating the attainment of the targets.

It would be helpful to have clarification in point d) on what is meant by “subsequently”. Is it immediately after the material has been recycled?

Annexes

The UK is content with the Presidency amendments.

Packaging and packaging waste Directive

Art 3.2 Definition of packaging waste: The directive should not lose its focus on post-consumer waste so the words ‘excluding production residues;’ should be reinserted at the end.

Definitions for “waste producer” and “waste holder” should be deleted as these are not used in the Directive.

Art 5: Reuse: We recognise that some Member States are keen to reward the reuse of packaging, agreeing the methodology of what can be counted, and how it would be measured in a consistent way will take a lot of work. We think the Psy compromise text provides a good basis for further work. We would recommend two amendments to the Psy text:

1. This should not be mandatory at this stage as not all MS have established systems, so replace ‘shall’ with ‘may’

2. MS should have flexibility to introduce schemes – deposit return schemes – are just one example. So delete this ref to keep the requirement broad.

Art 6: While we are unable to comment on specific targets at this stage, the target for wood still seems high. The target should cover both recovery and recycling.

DENMARK, GERMANY and FRANCE

Joint non-paper on Average Loss Rates (ALR)

The question of data collection arises with the acceptance of the Commission's proposal to calculate the recycling rate according to Article 11 of the WFD on the basis of all municipal waste, with deduction of treatment losses.

Statistically, by means of a comprehensive periodic query in the individual treatment plants, the necessary figures cannot be generated, since a continuous monitoring of individual municipal waste fractions from the collection via several recycling steps, combined with sorting, mixing with other waste, trade, import and export, is not possible. The traceability from the final recycling plant to the individual collection points, as claimed by industry associations, is also not feasible, as has been shown in discussions with the associations.

All Member States have data on the separately collected amount of waste or the output of first sorting operation after collection. On the basis of those is it possible to quantify an estimated value for the amount that typically are lost in the different steps of sorting, due to impurities or process loss before it enters the actual recycling operation (Average Loss Rate).

The concept of the Average Loss Rate (ALR) appears to be already applied in some Member States. It also leads to acceptable results even in cases where more than one treatment step is necessary. The concept is conceived for the waste fractions separately collected for recycling. Examples of separately collected waste fractions are waste paper and paperboard, glass, packaging, textiles, bulky waste, WEEE, batteries. In this process, individual analyzes of individual treatment plants are documented with regard to their losses, thus obtaining a flow picture (including the losses) through the chain of successive recycling steps. Investigating different plants results in an average value.

The recycling rate for municipal waste is then calculated from the collected amount of the individual waste fractions minus their average losses in relation to the total quantity. Alternatively the rate can be calculated based on the outputs amount from the first sorting minus the average losses.

To illustrate, a hypothetical example:

1. WEEE as a municipal waste is collected in Denmark, the collected volume is 10,000 tons / year. The whole amount is exported to a dismantler to Germany.
2. There the devices are separated into the following fractions: plastic (10%), glass (20%), copper cable (10%), iron, aluminum and other metals (40%), circuit boards (10%).

10% (insulation materials, cardboard, etc.) are used for energy recovery and the loss here is therefore 10%. The different fractions are sold and transported to different enterprises.

3. **Plastics** are sorted, washed and processed into pellets (loss: 15%) together with other plastic waste. In a further (final recycling) step, the pellets are processed into new housings. **Glass** is further processed with a loss of 5% and melted to a new glass. The **metal** goes to a scrap treatment plant where it is sorted and graded with other waste by means of varieties and sold as a variety through the international trade to steel mills and other metal melts. This results in a 10% loss. For the sake of simplicity, a loss of 10% in the following recycling chain is also assumed for the other fractions.

4. For the Recycling of WEEE an ALR can be calculated:

$$(0.1 + (0.1 \times 0.15) + (0.2 \times 0.05) + (0.1 \times 0.1) + (0.4 \times 0.1) + (0.1 \times 0.1))$$

Dism. Plastic glass cable metals circuit boards

$$= (0.1 + 0.015 + 0.01 + 0.01 + 0.04 + 0.01) = \mathbf{0.185 \text{ or } 18.5\%}$$
 of the collected amount.

8,150 tonnes of the 10,000 tonnes of the Danish WEEE are to be reported to be recycled, 1,850 tonnes are losses. As a starting point the Member States shall apply EU ALRs, which have to be developed by the Commission supported by the MS. If a Member State wants to apply lower or other rates than the EU rates this shall of course be accepted, if the Member State can document such values.

In the case of the export of separately collected waste for recycling abroad, and if the recipient country has developed its own ALRs, these values shall be applied to the collected amount or output of the first sorting.

The ALRs should be linked to the different main types of waste, different sources (municipal, commercial etc.), different collection schemes and different types of sorting processes. For example, the loss rates for glass waste will differ depending on whether the waste is separately collected for green, brown, clear glass respectively, or colored glass and clear glass respectively or all three types of glass in the same bin.

Examples of estimated ALRs are shown in the Commission's own studies sent to the attaches of Member States on 10th November 2016. In the report 'Support to the waste target review – final report' is in Table 5.1 on page 48-51 given several examples of losses not only for sorting but also for the final recycling itself.

http://ec.europa.eu/environment/waste/pdf/target_review/Eunomia_support_waste_targets_review.pdf

Joint proposal on reward of re-use in the recycling target

The Commission's Circular Economy Package includes new ambitious targets for recycling and preparation for re-use of municipal waste and packaging waste by 2025 and 2030. The Commission proposed that not only recycling and preparing of waste for re-use, but also re-use of products and components could under certain conditions be taken into account in the calculation of attaining the proposed targets.

At the WPE meetings some Member States have supported the Commission's proposal. Some Member States have been against the proposal, and it has been argued that it will be too easy for Member States with a high level of re-use to attain the proposed targets.

The below compromise is therefore proposed and where the possibility to include re-use in targets is kept but where the contribution of re-use is limited in such a way that all Member States including the ones with a high level of re-use have to increase their recycling performance on the generated waste.

The compromise is necessary, because:

- Re-use is an important part of waste prevention. If waste prevention shall not be only rhetoric but reality, it is important to increase re-use. The inclusion of re-use in targets is one of the few concrete and measurable means to encourage waste minimization,
- It is logical and necessary if Circular Economy is to be supported that respect is given to the priority order of the waste hierarchy. Re-use is above recycling in the waste hierarchy and it is therefore at the outset environmentally preferable to promote re-use,
- Re-use and recycling are often interrelated. For example, the use of re-usable packaging is often a viable alternative for the use of one-way packaging. If re-use packaging is not included as a part of the attainment of the targets there is a strong bias to favour one way packaging.
- The European Parliament is expected in its amendments to have many suggestions on how re-use is to be underlined in the text of the Directives including that there shall be an obligation for all Member States to fulfil certain re-use targets. Therefore it is reasonable that the Council comes up with constructive ideas on how re-use can be recognised and included in the target setting in a way which does not force Member States to establish compulsory reuse or deposit systems.

Below is suggested how the wording of re-use can be integrated into the Waste Framework Directive (WFD) and the Packaging and Packaging Waste Directive (PPWD).

Main elements of the proposal are:

- Definition of preparation of re-use is maintained as it is in the current WFD
- Re-use contribution is kept as an integrated part of the recycling targets
- In the WFD, re-use of furniture, textiles, electrical and electronic equipment and sales packaging products could be taken into account; in the PPWD, reuse of all packaging falling under the scope of PPWD could be taken into account in the targets
- Only re-use organised by registered re-use operators within the eligible sectors could be taken into account
- Re-use can as a maximum contribute only half of the proposed target increase (from current target to target for 2025/2030) – meaning that if there for instance is a 10 pct. increase in the target, max 5 pct. reuse can be counted.
- Re-use can always be counted (regardless of recycling performance), but the contribution from reuse, can never exceed half of the proposed target increase. Thereby it is up to Member States whether to let re-use contribute to the attainment of the targets.
- All Member States have to make an effort on recycling to achieve the new recycling targets
- Those Member States that let re-use contribute to the attainment of targets shall report the data on re-use separate from the data on preparation for re-use/ recycling; the detailed requirements for data collection would be defined in an implementing act by the Commission
- Early driver and incentive for reuse and establishment of data and knowledge

NOTE: The text is based on compromise text from PRY 14152/16. Amendments are stated in bold.

Amendments of the Waste Framework Directive in relation to the PRY proposal

Amendment to Article 3

16. “preparing for re-use” means checking, cleaning or repairing recovery operations, by which ~~waste, products and components of products that have~~ **become waste** ~~been collected by a recognised preparation for re-use operator or deposit scheme~~ are prepared so that they can be re-used without any other pre-processing;

Justification: Broad agreement among MS to keep the existing definition of “preparing for re-use”.

Amendment to Article 9

1a. In order to promote waste prevention Member States may let re-use make a contribution to the attainment of the targets laid down in Article 11(2) (c) and (d) and 11(3) according to the calculation rules stated in Article 11a.

Justification: To further encourage reuse it is suggested that re-use can contribute to the proposed targets in art. 11(2)(c) and (d) and art. 11(3). Since re-use is part of waste prevention, it is necessary to include a reference to this rewarding mechanism of re-use in this article.

Amendment to Article 11a

1.

'1. For the purpose of calculating whether the targets laid down in Article 11(2)(c) and (d) and 11(3) have been attained, **Member States shall apply Annex VI.**

(a') Member States shall calculate the weight of the municipal waste generated and prepared for reuse or recycled in a given calendar year;

(a) the weight of the municipal waste recycled shall be understood as the weight of waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances;

(b) the weight of the municipal waste prepared for reuse shall be understood as the weight of products or components of products that have become municipal waste and have undergone all necessary checking, cleaning or repairing operations to enable re-use without further sorting or pre-processing;

c) Member States may include the weight of products and components of sales packaging as defined in Directive 94/62/EC on packaging and packaging waste, furniture, textiles and electrical and electronic equipment re-used by registered re-use operators or deposit-refund schemes. Member States shall use verified data from the operators.

d) Re-use included following paragraph 1 (c) can contribute to the attainment of the targets laid down in Article 11 (2) (c) and (d) and Article 11 (3) by a maximum of:

- (i) XX**[half the increase of the target compared to the target in Article 11 (2) (a)] **percentage points regarding the 2025-target laid down in Article 11 (2) (c)**
- (ii) YY**[half the increase of the target compared to the target in Article 11 (2) (a)] **percentage points regarding the 2030-target laid down in Article 11 (2) (d)**
- (iii) ZZ** [half the increase of the target compared to the target in Article 11 (2) (a)] **percentage points regarding the 2030-target laid down in Article 11 (3)**
- (iv) WW**[half the increase of the target compared to the target in Article 11 (2) (a)] **percentage points regarding the 2035-target laid down in Article 11 (3)**

2. In order to ensure harmonised conditions for the application of paragraph 1(c), the Commission shall adopt implementing acts in accordance with Article 38a establishing minimum quality and operational requirements for the determination of registered re-use operators and deposit-refund schemes, including specific rules on data collection, verification and reporting.'

9. By 31 December 2024 at the latest, the Commission shall examine with a view to considering extension of the product groups covered by paragraph 1(c) and examine the share of targets set out in paragraph 1(d) with a view to, if necessary, increasing or reducing the share.

Justification: The re-use contribution is kept as an integrated part of the recycling targets. The calculation method in Annex VI which is quite simple can be used, but re-use can only be counted for a certain amount. At this stage, the possibility would be restricted to re-use of sales packaging, furniture, textiles and electrical and electronic equipment organized by recognized re-use operators, but the scope could be extended later through review procedure set out in paragraph 9. Restriction to sales packaging is assumed to broadly correspond to packaging having “municipal origin”.

A maximum contribution on half of the target increase is suggested. This has the consequence that all MS has to make an effort on recycling to achieve the new recycling targets, because half of the increase has to be met by actual recycling. E.g., the target increase of MW suggested by the Commission is 10% by 2025 (from 50 % to 60 %) and therefore in 2025, recycling rate in Member States shall be at least 55 % (50 % + 5 %) and the contribution from re-use can be at maximum 5 %. The target increase of MW suggested by the Presidency is 5 % by 2025 (from 50 % to 55 %) and therefore in 2025, the recycling rate in Member States shall be at least 52.5 % (50 % + 2.5 %) and the contribution from re-use can be at maximum 2.5 %. Establishing the possible contribution from re-use as half of the target rise ensures that all MS increase their waste recycling and at the same time have a strong incentive to increase waste prevention by re-use. Re-use can always be counted, but never contribute with more than half the target increase.

Amendments to annex VI

ANNEX VI

Calculation methods for attaining the targets in article 11 (2) (c) and (d) and article 11 (3)

The targets in article 11 (2) (c) and (d) and article 11 (3) can be attained by preparation for reuse and recycling of waste by applying the following formula:

$$E_{\text{recycling}} = \frac{(A) * 100}{(P)}$$

The targets can also be attained by a combination of re-use of products or component and preparation for re-use and recycling of waste as decided in article 11a (1) (d). The calculation method for this is:

$$E = \frac{(A+R) * 100}{(P+R)}$$

When using the above formula re-use can contribute with a maximum of half the increase of the target in 2025 or 2030 compared to the target in 2020 cf. Article 11 a (1) (d).

The re-use contribution can be calculated by using the following formula:

$$E_{\text{re-use}} = \frac{R \cdot 100}{(P+R)}$$

If $E_{\text{re-use}}$ exceeds the maximum contribution rate cf. Article 11 a (1) (d), R will have to be replaced by a R_{max} , which is the allowed maximum weight of re-use that can be included in the formula for calculating E :

$$E = \frac{(A+R_{\text{max}}) \cdot 100}{(P+R_{\text{max}})}$$

R_{max} can be calculated by using the following formula:

$$R_{\text{max}} = \frac{X \cdot P}{(100-X)}$$

$E_{\text{recycling}}$: recycling and preparation for reuse rate in a given year;

$E_{\text{re-use}}$: re-use rate of products and components in a given year;

E : adjusted recycling, **preparation for reuse** and re-use rate in a given year;

A : weight of municipal waste recycled or prepared for re-use in a given year;

R : weight of products and components re-used in a given year;

R_{max} : The maximum weight of products and components re-used allowed to be included in the defined E formula;

P : weight of municipal waste generated in a given year;

X : half the increase of the target stated in percentage points in 2025 or 2030 compared to the target in 2020, cf. Article 11a (1) (d).

Member States are free to attain targets in article 11 (2) (c) and (d) and article 11 (3) either by $E_{\text{recycling}}$ or by E .

Justification: Further explanation on how to calculate attainment of the targets

Amendments of Article 6a of the Packaging and Packaging Waste Directive

NOTE: The text is based on compromise text from Presidency 14198/16. Amendments are stated in bold.

Amendment to Article 5

2. In order to promote waste prevention Member States may let re-use of packaging make a contribution to the attainment of the targets laid down in Article 6 (1) (f) to (i) according to the calculation rules stated in Article 6a.

Justification: To further encourage reuse it is suggested that re-use can contribute to the proposed targets in art. 6(1)(f) to (i).

Amendment Article 6a

Rules on the calculation of the attainment of the targets laid down in Article 6

'1. For the purpose of calculating whether the targets laid down in Article 6 (1)(f) to (i) have been attained, **Member States shall apply Annex IV.**

(a) the weight of the packaging waste recycled shall be understood as the weight of [...] waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances;

(b) the weight of the packaging waste prepared for re-use shall be understood as the weight of packaging waste that has been recovered or collected by a preparation for re-use operator and has undergone all necessary checking, cleaning and repairing operations to enable re-use without further sorting or pre-processing;

(c) Member States may include the weight of products and components of packaging re-used by registered ~~preparation for re-use~~ operators or deposit-refund schemes. Member States shall use verified data from the operators.

(d) Re-use included following paragraph 1 (c) can contribute by a maximum of AA [half the increase of the target compared to the target in Article 6 (1) (f)] percentage points regarding the 2025-target on total packaging waste laid down in Article 6 (1) (f), and by a maximum of:

- (i) BB [half the increase of the target compared to the target in Article 6 (1) (g)] percentage points regarding the 2025-target on plastic waste laid down in Article 6 (1) (g)**
- (ii) CC [half the increase of the target compared to the target in Article 6 (1) (g)] percentage points regarding the 2025-target on wood waste laid down in Article 6 (1) (g)**
- (iii) DD [half the increase of the target compared to the target in Article 6 (1) (g)] percentage points regarding the 2025-target on metal waste laid down in Article 6 (1) (g)**
- (iv) EE [half the increase of the target compared to the target in Article 6 (1) (g)] percentage points regarding the 2025-target on glass waste laid down in Article 6 (1) (g)**
- (v) FF [half the increase of the target compared to the target in Article 6 (1) (g)] percentage points regarding the 2025-target on paper and cardboard waste laid down in Article 6 (1) (g)**

(e) Re-use included following paragraph 1 (c) can contribute) by a maximum of GG [half the increase of the target compared to the target in Article 6 (1) (h)] percentage points regarding the 2030-target on total packaging waste laid down in Article 6 (1) (h), and by a maximum of:

- (i) HH [half the increase of the target compared to the target in Article 6 (1) (i)] percentage points regarding the 2030-target on wood waste laid down in**

<p>Article 6 (1) (i)</p> <p>(ii) II [half the increase of the target compared to the target in Article 6 (1) (i)] percentage points regarding the 2030-target on metal waste laid down in Article 6 (1) (i)</p> <p>(iii) JJ [half the increase of the target compared to the target in Article 6 (1) (i)] percentage points regarding the 2030-target on glass waste laid down in Article 6 (1) (i)</p> <p>(iv) KK [half the increase of the target compared to the target in Article 6 (1) (i)] percentage points regarding the 2030-target on paper and cardboard waste laid down in Article 6 (1) (i)</p>
<p>2. In order to ensure harmonised conditions for the application of paragraph 1(b) and 1c, the Commission shall adopt implementing delegated acts in accordance with Article 21a establishing minimum quality and operational requirements for the determination of registered preparation for re-use operators and deposit-refund schemes, including specific rules on data collection, verification and reporting.</p>
<p>7. By 31 December 2024 at the latest, the Commission shall examine the share of targets set out in paragraph 1 (d) with a view to if necessary, increasing or reducing the share.</p>

Justification: The re-use contribution is kept as an integrated part of the recycling targets. The calculation method in Annex IV which is quite simple can be used, but re-use can only be counted for a certain amount.

Re-use operators would be recognised, e.g., through a simple registration in order to avoid excessive administrative burden.

A maximum contribution of half of the target increase is suggested. This has the consequence that all MS has to make an effort on recycling to achieve the new recycling targets, because half of the increase has to be met by actual recycling. E.g., the target increase of wood packaging is 35 % (from 15 % to 50 %) by 2025 and therefore in 2025, recycling rate of wood packaging waste in Member States shall be at least 32,5 % (15 % + 17,5 %) and the contribution from re-use can be at maximum 17,5 %. Establishing the possible contribution from re-use as half of the target increase ensures that all MS increases their waste recycling and at the same time have a strong incentive to increase waste prevention by re-use. Because the limit on half of the increase is applied to each recycling target separately, this solution will also mean that re-use can contribute with a bigger share of the targets which are increased the most, namely the targets on wood and plastic in the PPWD.

A very important consequence of this approach is that besides the moral imperative to increase the level of re-use, there would also be a strong business incentive for extended producer responsibility schemes to make serious efforts to provide for re-use of packaging as the new method would allow re-use to contribute to the fulfilment of the legally binding targets that are imposed through the PPWD.

ANNEX IV

Calculation method for attaining the targets in Article 6 (1) (f) to (i)

The targets in article 6 (1) (f) to (i) can be attained by preparation for reuse and recycling of packaging waste by applying the following formula:

$$E_{\text{recycling}} = \frac{(A) * 100}{(P)}$$

The targets can also be attained by a combination of re-use of packaging products or component and preparation for re-use and recycling of packaging waste as decided in article 6a (1) (d). The calculation method for this is:

$$E = \frac{(A+R) * 100}{(P+R)}$$

When using the above formula re-use can contribute with a maximum of half the increase of the target in 2025 or 2030 compared to the target in 2020 cf. Article 6a (1) (d).

The re-use contribution can be calculated by using the following formula:

$$E_{\text{re-use}} = \frac{R * 100}{(P+R)}$$

If $E_{\text{re-use}}$ exceeds the maximum contribution rate cf. Article 6 a (1) (d), R will have to be replaced by a R_{max} , which is the allowed maximum weight of re-use that can be included in the formula for calculating E:

$$E = \frac{(A+R_{\text{max}}) * 100}{(P+R_{\text{max}})}$$

R_{max} can be calculated by using the following formula:

$$R_{\text{max}} = \frac{X * P}{(100-X)}$$

$E_{\text{recycling}}$: recycling and preparation for reuse rate in a given year;

$E_{\text{re-use}}$: re-use rate of products and components in a given year;

E: adjusted recycling, preparation for reuse and re-use rate in a given year;

A: weight of packaging waste recycled or prepared for re-use in a given year;

R: weight of products and components re-used in a given year;

R_max: The maximum weight of products and components re-used allowed to be included in the defined E formula;

P: weight of packaging waste generated in a given year.

X: half the increase of the target stated in percentage points in 2025 or 2030 compared to the target in 2020, cf. Article 6 a (1) (d).

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Member States are free to attain targets in article 6 (1) (f) to (i) either by E_recycling or by E.

Annex IV in the PPWD is amended in the same way as annex VI in the WFD.