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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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2015/0275 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2008/98/EC on waste

(Text with EEA relevance)

{SWD(2015) 259 final}
{SWD(2015) 260 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 General Context

The Union's economy currently loses a significant amount of potential secondary raw materials which are found in waste streams. In 2013, total waste generation in the EU amounted to approximately 2.5 billion tons of which 1.6 billion tons were not reused or recycled and therefore lost for the European economy. It is estimated that an additional 600 million tons could be recycled or reused. By way of example, only a limited share (43%) of the municipal waste generated in the Union was recycled, with the rest being landfilled (31%) or incinerated (26%). The Union thus misses out on significant opportunities to improve resource efficiency and create a more circular economy.

With respect to waste management, the Union also faces large differences amongst its Member States. In 2011, while six Member States landfilled less than 3% of their municipal waste, 18 landfilled over 50%, with some exceeding 90%. This uneven situation needs to be redressed as a matter of urgency.

The proposals to amend Directive 2008/98/EC on waste[1], Directive 94/62/EC on packaging and packaging waste[2], Directive 1999/31/EC on the landfill of waste[3], Directive 2000/53/EC on end-of-life vehicles[4], Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators[5] and Directive 2012/19/EU on waste electrical and electronic equipment[6] form part of a Circular Economy Package which also includes a Commission Communication "Closing the loop – An EU action plan for the Circular Economy".

1.2 Grounds for and objectives of the proposal

Recent trends suggest that further progress on resource efficiency is possible and that it can bring major economic, environmental and social benefits. Turning waste into a resource is an essential part of increasing resource efficiency and closing the loop in a circular economy.

The legally binding targets in EU waste legislation have been a key driver to improve waste management practices, stimulate innovation in recycling, limit the use of landfilling, and create incentives to change consumer behaviour. Taking waste policy further can bring

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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).

2 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).

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

4 Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles (OJ L 269, 21.10.2000, p. 34-43).

5 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.09.2006, p. 1-14).

6 Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (OJ L 197, 24.7.2012, p. 38-71).

significant benefits: sustainable growth and job creation, reduced greenhouse gas emissions, direct savings linked with better waste management practices, and a better environment.

The proposal to amend Directive 2008/98/EC responds to the legal obligation to review the waste management targets in that Directive. The proposals which form part of the Circular Economy Package and amend the six Directives mentioned above build in part on the proposal that the Commission tabled in July 2014 and subsequently withdrew in February 2015. They are in line with the objectives of the Resource Efficiency Roadmap[7] and the 7th Environment Action Programme[8], including full implementation of the waste hierarchy[9] in all Member States, decline in absolute and per capita waste generation, ensuring high quality recycling and the use of recycled waste as a major, reliable source of raw materials for the Union. They also contribute to the implementation of the EU Raw Materials Initiative[10] and address the need to prevent food waste. In addition, these proposals simplify the reporting requirements included in all six Directives.

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1 Studies

The proposals and the accompanying impact assessment assess technological, socio-economic and cost-benefit aspects related to the implementation and further development of EU waste legislation. A supplement to the Impact Assessment was produced to analyse the potential effects of additional variants of the main policy options defined in the Impact Assessment.

2.2 Internal consultation

Within the Commission an Impact Assessment Steering Group composed of various Commission services (SG, ECFIN, GROW, CLIMA, JRC, and ESTAT) followed the preparation of the legislative proposals.

2.3 External consultation

An indicative list of issues to be tackled was developed by the Commission and the first interviews with key stakeholders started in February 2013. An online public consultation in line with the minimum standards for consultation was launched in June 2013, closing in September 2013. 670 responses were submitted, reflecting high public concern about the waste management situation in the EU and high expectations for EU action in this area. A specific consultation of Member States was held between June and September 2015 as well as a broader consultation on the circular economy.

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7 COM(2011) 571.

8 Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

9 The waste hierarchy gives the preference to prevention first followed by reuse, recycling before energy recovery and disposal which includes landfilling and incineration without energy recovery.

10 COM(2008) 699 and COM(2014)297.

2.4 Impact assessment

An impact assessment report and an executive summary were published together with the proposal adopted in July 2014[11]. The impact assessment, which remains valid as the main analytical basis for the revised legislative proposals, evaluates the main environmental, social and economic impacts of various policy options to improve waste management in the EU. Various levels of ambition are assessed and compared to a "baseline scenario" in order to identify the most appropriate instruments and targets while minimizing costs and maximizing benefits.

The Commission's Impact Assessment Board delivered a positive opinion on the impact assessment on 8 April 2014, while making a number of recommendations to fine-tune the report. The Board requested to further clarify the problem definition and the need for new mid-term targets, strengthen the arguments in favour of a landfill ban from a subsidiarity and proportionality point of view and of uniform targets for all Member States, and explain in more detail how the varying performances of Member States are taken into account in the proposal.

The impact assessment led to the conclusion that a combination of Options will bring the following benefits:

– Administrative burden reduction in particular for small establishments or undertakings, simplification and better implementation including by keeping targets 'fit for purpose';

– Job creation – more than 170.000 direct jobs could be created by 2035, most of them impossible to delocalize outside the EU;

– GHG emission reduction – more than 600 millions of tons of green house gas could be avoided between 2015 and 2035;

– Positive effects on the competitiveness of the EU waste management and recycling sectors as well as on the EU manufacturing sector (better extended producer responsibility schemes, reduced risks associated with raw material access);

– Reinjection into the EU economy of secondary raw materials which in turn will reduce the dependency of the EU on raw materials imports.

An analytical note supplementing the impact assessment was issued together with the legislative proposal. In this note, a number of additional options and variants were analysed with the aim to better take into account the different starting positions of each Member State.

3. LEGAL ELEMENTS OF THE PROPOSALS

3.1 Summary of the proposed action

The main elements of the proposals to amend EU waste legislation are:

– Alignment of definitions;

[11] COM(2014)397.

– Increase of the preparing for re-use and recycling target for municipal waste to 65% by 2030;

– Increase of the preparing for reuse and recycling targets for packaging waste and the simplification of the set of targets;

– Gradual limitation of the landfilling of municipal waste to 10% by 2030;

– Greater harmonisation and simplification of the legal framework on by-products and end-of-waste status;

– New measures to promote prevention, including for food waste, and re-use;

– Introduction of minimum operating conditions for Extended Producer Responsibility;

– Introduction of an Early Warning System for monitoring compliance with the recycling targets;

– Simplification and streamlining of reporting obligations;

– Alignment to Articles 290 and 291 TFEU on delegated and implementing acts.

3.2 Legal basis and right to act

The proposals amend six Directives addressing the management of different wastes. The proposals to amend Directive 2008/98/EC, Directive 1999/31/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU are based on Article 192(1) TFEU, whilst the proposal to amend Directive 94/62/EC is based on Article 114 TFEU.

Article 11(2) of Directive 2008/98/EC sets down a 50% target for preparing for re-use and recycling of household and similar waste and a 70% target for preparing for re-use, recycling and other material recovery of non-hazardous construction and demolition waste by 2020. Pursuant to Article 11(4), by 31 December 2014 at the latest, the Commission had to examine those targets with a view to, if necessary, reinforcing them and considering the setting of targets for other waste streams, taking into account the relevant environmental, economic and social impacts of setting the targets. According to Article 9(c), the Commission had to set, by the end of 2014, waste prevention and decoupling objectives for 2020, based on best available practices including, if necessary, a revision of the indicators referred to in Article 29(4). Finally, pursuant to Article 37(4), in the first report that intervenes by 12 December 2014, the Commission had to assess a number of measures including producer responsibility schemes for specific waste streams, targets, indicators and measures related to recycling, as well as material and energy recovery operations that may contribute to fulfilling the objectives set in Articles 1 and 4 more effectively.

Article 5(2) of Directive 1999/31/EC sets down three targets for the diversion of biodegradable municipal waste from landfills and bans the landfilling of certain waste streams. The last target for the diversion of biodegradable municipal waste from landfills has to be met by the Member States by 16 July 2016. Pursuant to Article 5(2), it shall be re-examined by 16 July 2014 with a view to confirming or amending it in order to ensure a high level of environmental protection and in light of the practical experience gained by Member States in the pursuance of the two previous targets.

Article 6(1) of Directive 94/62/EC sets down targets for the recovery and recycling of packaging waste which, pursuant to Article 6(5), shall be fixed every five years based on the practical experience gained in Member States and the findings of scientific research and evaluation techniques such as life-cycle assessments and cost-benefit analysis.

3.3 Subsidiarity and proportionality principle

The proposals are in conformity with the subsidiarity and proportionality principles set out in Article 5 of the Treaty on the European Union. They are limited to amending the abovementioned Directives by providing a framework establishing shared objectives, while leaving Member States free to decide about precise implementation methods.

3.4 Explanatory documents

The Commission considers that documents explaining Member States' measures transposing the Directives are necessary in order to improve the quality of information on the transposition of the Directives.

Waste legislation is often transposed in a highly decentralised manner in the Member States, including on the regional or local level and in multiple legal acts, depending on the administrative structure of a Member State. As a result, in transposing the amended Directives Member States may have to amend a wide variety of legislative acts at national, regional and local levels.

The proposals amend six different waste Directives and affects an important number of legally binding obligations, including a comprehensive amendment of the targets contained in Directive 2008/98/EC, Directive 1999/31/EC and Directive 94/62/EC and a simplification of Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU. This is a complex review of waste legislation that will potentially affect a number of pieces of national legislation.

The revised targets for waste management contained in the amended Directives are inter-connected, and should be carefully transposed into national legislation and later on incorporated into national waste management systems.

The proposed provisions will affect a wide range of private and public stakeholders in the Member States and will have an important impact on future investments in waste management infrastructure. The complete and correct transposition of the new legislation is essential to guarantee that their objectives (i.e. protecting human health and the environment, increased resource efficiency, and ensuring the functioning of the internal market and avoiding obstacles to trade and restriction of competition within the EU) are achieved.

The requirement to provide explanatory documents may create an additional administrative burden on some Member States. However, explanatory documents are necessary to allow effective verification of complete and correct transposition, which is essential for the reasons mentioned above, and there are no less burdensome measures to allow efficient verification. Moreover, explanatory documents can contribute significantly to reducing the administrative burden of compliance monitoring by the Commission; without them, considerable resources and numerous contacts with national authorities would be required to track the methods of transposition in all Member States.

In view of the above it is appropriate to ask Member States to accompany the notification of their transposition measures with one or more documents explaining the relationship between the provisions of the Directives amending EU waste legislation and the corresponding parts of national transposition instruments.

3.5 Delegated and implementing powers of the Commission

The delegated and implementing powers of the Commission are identified and the corresponding procedures for adoption of these acts are established in paragraphs 4, 5, 6, 9, 11, 14, 15, 18, 19, 21, 22 of Article 1 of the proposal concerning Directive 2008/98/EC, paragraphs 4, 6, 7, 9, 10 of Article 1 of the proposal concerning Directive 94/62/EC, paragraphs 6 and 7 of Article 1 of the proposal concerning Directive 1999/31/EC and the amendments proposed in Articles 1 and 3 of the proposal concerning Directives 2000/53/EC and 2012/19/EU.

4. BUDGETARY IMPLICATION

The proposals will not have an impact on the European Union budget and is therefore not accompanied by the financial statement provided for under Article 31 of the Financial Regulation (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No1605/2002).

2015/0275 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2008/98/EC on waste

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[12],

Having regard to the opinion of the Committee of the Regions[13],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, ensuring prudent 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 Council[14] 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.

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12 OJ C , , p. .

13 OJ C , , p. .

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).

(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.

(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. The definition of municipal waste in this Directive is neutral with regard to the public or private status of the operator managing 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.

(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.

(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 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 to be used as feed are subject to Regulation (EC) No 767/2009[15] and are not regarded as waste for the purposes of that Regulation. 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.

(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. 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 solution[16]. 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.

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15 Regulation (EC) No 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).

16 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.

(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 waste materials are re-used and effectively recycled, and that valuable materials found in waste are channelled back into the European economy, thus advancing the Raw Materials Initiative[17] and the creation of a circular economy.

(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 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.

(17) In order to ensure the reliability of the data gathered on preparation for re-use it is essential to establish common rules for reporting. Similarly, it is important to lay down more precise rules on how Member States should report what is effectively recycled and can be counted towards the attainment of the recycling targets. To that effect, as a general rule, the reporting on the attainment of the recycling targets must be based on the input to the final 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 output of sorting facilities. 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.

(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 products and components that are prepared for re-use by recognised re-use operators and by deposit-refund schemes and 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 determination of recognised preparation for re-use operators and deposit-refund schemes, 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.

[17] COM(2008)699 and COM(2014)297.

(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 Initiative 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[18]. 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

[18] COM(2014) 297.

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.

(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.

(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. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(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 Council[19].

(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 documents[20], 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

[19] 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).

[20] OJ C 369, 17.12.2011, p. 14.

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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2008/98/EC is amended as follows:

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

'(e) feed materials as defined in Article 3(2)(g) of Regulation (EC) 767/2009 of the European Parliament and of the Council(*).

(*) 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).';

(2) Article 3 is amended as follows:

(a) the following point 1a is inserted:

'1a. "municipal waste" means

(a) mixed waste and separately collected waste from households including:

– paper and cardboard, glass metals, plastics, bio-waste, wood, textiles, waste electrical and electronic equipment, waste batteries and accumulators;

– bulky waste, including white goods, mattresses, furniture;

– garden waste, including leaves, grass clipping;

(b) mixed waste and separately collected waste from other sources that is comparable to household waste in nature, composition and quantity.

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

Municipal waste does not include waste from sewage network and treatment, including sewage sludge and construction and demolition waste;';

(b) the following point 2a is inserted:

'2a. "non-hazardous waste" means waste which displays none of the hazardous properties listed in Annex III;';

(c) point 4 is replaced by the following:

'4. "bio-waste" means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises, comparable waste from food processing plants and other waste with similar biodegradability properties that is comparable in nature, composition and quantity;';

(d) the following point 4a is inserted:

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

(e) point 16 is replaced by the following:

'16. "preparing for re-use" means checking, cleaning or repairing recovery operations, by which waste, products or components of products that have been collected by a recognised preparation for re-use operator or deposit-refund scheme are prepared so that they can be re-used without any other pre-processing;';

(f) the following points 17a and 17b are inserted:

'17a. "final recycling process" means the recycling process which begins when no further mechanical sorting operation is needed and waste materials enter a production process and are effectively reprocessed into products, materials or substances;

17b. "backfilling" means any recovery operation where suitable waste is used for reclamation purposes in excavated areas or for engineering purposes in landscaping or construction instead of other non-waste materials which would otherwise have been used for that purpose;';

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

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

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

(4) Article 5 is amended as follows:

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

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

(c) the following paragraph 3 is added:

'3. Member States shall notify the Commission of technical regulations adopted under paragraph 1 in accordance with Directive 2015/1535/EC of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (*) where so required by that Directive.

(*) OJ L 241, 17.9.2015, p.1.';

(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 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 can be used for specific purposes;';

(ii) the second subparagraph is deleted;

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

'2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a in order to establish detailed criteria on the application of the conditions laid down in paragraph 1 to certain waste. Those detailed criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental effects of the substance or object.

3. Waste which is considered to have ceased to be waste in accordance with paragraph 1 may be considered to be prepared for reuse, recycled or recovered for the purpose of the calculation of the achievement of the targets set out in this Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU of the European Parliament and of the Council(*) respectively if it has been subject to a preparing for reuse, recycling or recovery in accordance with those Directives.

4. Member States shall notify the Commission of technical regulations adopted under paragraph 1 in accordance with Directive 2015/1535/EC of the European Parliament and of the Council where so required by that Directive.

(*) Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).';

(6) Article 7 is amended as follows:

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

'1. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a to establish the list of waste.';

(b) paragraph 5 is deleted;

(7) Article 8 is amended as follows:

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

'Such measures may also include the establishment of extended producer responsibility schemes defining specific operational and financial obligations for producers of products.';

(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 that are, after having become waste, suitable for preparation for re-use and recycling in order to facilitate proper implementation of the waste hierarchy. The measures should 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 and on best practices to ensure adequate governance and cross-border cooperation of extended producer responsibility schemes. This includes, inter alia, exchange of information on the organisational features and the monitoring of producer responsibility organisations, the selection of waste management operators and the prevention of littering. The Commission shall publish the results of the exchange of information.';

(8) The following Article 8a is inserted:

'Article 8a

General requirements for extended producer responsibility schemes

1. Member States shall ensure that extended producer responsibility schemes established in accordance with Article 8, paragraph 1:

– define in a clear way the roles and responsibilities of producers of products placing goods on the market of the Union, organisations implementing extended producer responsibility on their behalf, private or public waste operators, local authorities and, where appropriate, recognised preparation for re-use operators;

– define measurable 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;

– establish a reporting system to gather data on the products placed on the Union market by the producers subject to extended producer responsibility. Once these products become waste, the reporting system shall ensure that data is gathered on the collection and treatment of that waste specifying, where appropriate, the waste material flows;

– ensure equal treatment and non-discrimination between producers of products and with regards to small and medium enterprises.

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 the available waste 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 set up to implement extended producer responsibility obligations on behalf of a producer of products:

(a) has a clearly defined geographical, product and material coverage;

(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 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.

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 cost of waste management for the products it puts on the Union market, including all the following:

– costs of separate collection, sorting and treatment operations required to meet the waste management targets referred to in paragraph 1, second indent, taking into account the revenues from re-use 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) are modulated on the basis of the real end-of-life cost of individual products or groups of similar products, notably by taking into account their re-usability and recyclability;

(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.

5. Member States shall establish an adequate monitoring and enforcement framework with the view to ensure that the producers of products are implementing their extended producer responsibility obligations, the financial means are properly used, and all actors involved in the implementation of the scheme report reliable data.

Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of the producers, Member State shall establish an independent authority to oversee the implementation of extended producer responsibility obligations.

6. Member States shall establish a platform to ensure a regular dialogue between the stakeholders involved in the implementation of extended producer responsibility, including private or public waste operators, local authorities and, where applicable, recognised preparation for re-use operators.'

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 twenty-four 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 use of products that are resource efficient, durable, reparable and recyclable;

– identify and target products that are the main sources of raw materials of a high importance to the economy of the Union and whose supply is associated with a high risk to prevent that those materials become waste;

– encourage the setting up of systems promoting reuse activities, including in particular for electrical and electronic equipment, textiles and furniture;

– reduce waste generation in processes related to industrial production, extraction of minerals and 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.

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 per capita quantity of municipal waste that is 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 procedure referred to in Article 39(2).

5. Every 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.';

(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 preparing for re-use activities, notably by encouraging the establishment of and support for re-use

and repair networks and by facilitating the 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 and to attain the targets set out in paragraph 2.';

(b) in paragraph 1, the following sub-paragraph is inserted:

'Member States shall take measures to promote sorting systems for construction and demolition waste and for at least the following: wood, aggregates, metal, glass and plaster.';

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

'(b) by 2020, the preparing for re-use, recycling and 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;';

(d) 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 60% by weight;

(d) by 2030, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 65% by weight.';

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

'3. Estonia, Greece, Croatia, Latvia, Malta, Romania and Slovakia may obtain five additional years for the attainment of the targets referred to in paragraph 2(c) and (d). 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 60% 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 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.';

(f) paragraph 5 is deleted.

(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) the weight of the municipal waste recycled shall be understood as the weight of the input waste entering the final recycling process;

(b) the weight of the municipal waste prepared for reuse shall be understood as the weight of municipal waste that has been recovered or collected by a recognised 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 products and components prepared for re-use by recognised preparation for re-use operators or deposit-refund schemes. For the calculation of the adjusted rate of municipal waste prepared for re-use and recycled taking into account the weight of the products and components prepared for re-use, Member States shall use verified data from the operators and apply the formula set out in Annex VI.

2. In order to ensure harmonised conditions for the application of paragraph 1(b) and (c) and of Annex VI, the Commission shall adopt delegated acts in accordance with Article 38a establishing minimum quality and operational requirements for the determination of recognised preparation for re-use operators and deposit-refund schemes, including specific rules on data collection, verification and reporting.

3. By way of derogation from paragraph 1, the weight 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 sent into a final recycling process;

(b) the weight of materials or substances that are not subject to a final recycling process and that are disposed or subject to energy recovery remains below 10% of the total weight to be 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 paragraph 3(a) and (b) are met. The system may consist of either electronic registries set up pursuant to Article 35(4), technical specifications for the quality requirements of sorted waste or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.

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 that takes place in conjunction with 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, the Commission shall adopt delegated acts in accordance with Article 38a 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.

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) by the Member State in which it was collected if the requirements of paragraph 4 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.';

(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 and to attain the targets set out in Article 11(2)(a), (c) and (d) and 11(3).

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.';

(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.';

(15) Article 27 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a 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.';

(b) paragraph 4 is replaced by the following:

'4. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a 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.';

(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;

(18) Article 33, paragraph 2 is replaced by the following:

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

(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 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).

(*) 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).';

(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 shall 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(4) 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 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 in accordance with paragraphs 1 and 2 and for the reporting on backfilling operations. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 39(2).';

(22) Article 38 is replaced by the following:

'1. The Commission may develop guidelines for the interpretation of the definitions of recovery and disposal.

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.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a to amend Annexes I to V in the light of scientific and technical progress.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 38a necessary to amend Annexes VI.';

(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), 38(1), 38(2) and 38(3) shall be conferred on the Commission for an indeterminate period of time 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), 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.

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), 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.';

(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 Council (*).

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

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).';

(25) Annex VI is added in accordance with the Annex to this Directive.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert date eighteen 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.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*