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NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

No. Cion doc.: 14973/15 ENV 769 ENT 258 MI 780 CODEC 1660 - COM(2015) 593 final
14974/15 ENV 770 CODEC 1661 - COM(2015) 594 final
14975/15 ENV 771 COMPET 559 MI 782 AGRI 646 IND 203 CONSOM
214 ENT 260 CODEC 1662 + ADD 1 - COM(2015) 595 final + Annex 1
14976/15 ENV 772 IND 202 CODEC 1663 + ADD 1 - COM(2015) 596 final
+ Annex 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

= Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 19 May 2017, the Committee of the Permanent Representative (the 'Committee') gave the Presidency a mandate^{1 2} to enter into negotiations with the European Parliament (EP) on the four legislative proposals included in the waste package.
2. In total, six trilogue meetings have been held: 30 May, 21 June, 26 September, 25 October, 27 November and 17-18 December 2017. Given the nature of the legislative proposals and with a view to facilitate discussions at the trilogue meetings, extensive and detailed examination of the waste package took place at the technical level. Discussions at the technical level covered all four legislative proposals in detail.
3. At the sixth trilogue meeting, a provisional agreement on a possible final compromise on the four legislative proposals included in the waste package was reached amongst the three institutions. This possible final compromise is set out in the Annexes to documents 5912/18, 5913/18, 5914/1/18 REV 1, and 5915/18 + COR 1.
4. Changes to the original Commission proposals³ are indicated in ***bold italics***. All deletions compared to the original Commission proposal are indicated in '■'.

¹ 9556/17, 9557/17, 9559/17 and 9560/17.

² 10293/17.

³ 14973/17, 14974/17, 14975/17 + ADD 1 and 14976/17 + ADD 1.

II. ANALYSIS OF THE FINAL COMPROMISE TEXT WITH A VIEW TO AGREEMENT

5. The Committee was informed on the outcome of the last trilogue meeting on 20 December 2017. The possible final compromise reflects a number of key elements of the mandate given to the Presidency by the Committee on 13 December 2017⁴. However, the Council had to make further steps towards the European Parliament on a number of issues in order to reach the provisional agreement.

6. The following is a list of the key elements of the final compromise package in the light of the mandate given by the Committee:

a) **Targets, time derogations and related definitions**

- The Council's proposed targets for 2025 and 2030 have been maintained. However, a new legally binding target of 65% for preparing for reuse and recycling of municipal waste generated by 2035 was also provisionally agreed. This new target is subject to review in 2028 by the Commission.
- The Council's position on the definition of 'municipal waste' has been secured, subject to an obligation upon the Commission to develop guidelines on this definition.
- The deadline for the legally binding target of 10% or less of landfilling of municipal waste is 2035.
- The possibility to extend the period of attaining the above mentioned targets is maintained. However, the provisional agreement requires that any Member State who wishes to make use of this time extension will also need to submit a detailed implementation plan to the Commission 24 months in advance. The Commission can request the concerned Member State to revise the plan if it considers that the plan does not comply with the stipulated requirements. The Commission will have no role in granting the time extension or otherwise, in line with the mandate.

⁴ 15712/17, 15713/17, 15714/17 and 15715/17.

- In addition to the above, not all Member States will be eligible to extend the period for attaining the landfill target, but only those who have landfilled more than 60% of municipal waste generated in 2013.
- With regard to the proposal amending the Packaging and Packaging Waste Directive, the Council's position on a 5% reward for reuse has been maintained. However the provisional agreement includes higher recycling targets for packaging waste than those in the mandate, with the exception of wood and ferrous metals packaging. In addition, preparation for reuse will not be counted towards the attainment of the packaging waste targets, with the exception of wooden packaging that is repaired for reuse.
- In view of the higher targets and the exclusion of preparation for reuse, a new flexibility mechanism of up to 15% points across one or two targets and for up to 5 years has been provisionally agreed for the specific packaging waste targets. This is subject to strict conditions and to the submission of an implementation plan, in line with the procedure applicable to the above targets on municipal waste.

b) Calculation rules

- The Council's approach on the calculation rules has been secured.
- On average loss rates, the provisional agreement includes stronger text with respect to their application and an obligation on Member States to report information in this regard. The rules for calculation, verification and reporting based on average loss rates will be established by a delegated act.
- The application of the second measuring point for the preparation for reuse and recycling of municipal waste has been maintained. However the agreed text is more restrictive. In addition, while the second measuring point will not be subject to review, the Parliament insisted that the Commission makes an oral statement at Plenary on this matter.
- As from 1 January 2027, municipal bio-waste can only be counted as recycled if separately collected or separated at source.

c) Extended Producer Responsibility

- The possible final compromise reflects the Council's approach on extended producer responsibility. The possibility to depart from the financial responsibilities has also been maintained, however subject to stricter conditions and to a higher minimum share of at least 80% of the costs for all (new and existing) schemes implementing targets established under Union law and for new schemes implementing national targets. The minimum share for existing schemes implementing national targets is of at least 50%.
- It was also provisionally agreed to establish mandatory extended producer responsibility schemes for all packaging by 31 December 2024.

d) Food waste

- As part of the possible compromise, indicative Union-wide food waste reduction targets of 30% by 2025 and 50% by 2030 are included in the recitals.
- The deadline for the review by the Commission to consider the feasibility of proposing legally binding targets has been brought forward to 31 December 2023.
- The methodology to measure the levels of food waste will be adopted through a delegated act and on the basis of the outcome of the work of the EU platform on Food Losses and Food Waste.

e) By-products and end of waste

- The provisional agreement on these issues fully reflects the Council's position.
- Detailed criteria for the application of the rules on by-products and end-of-waste will be adopted by implementing acts, however subject to stringent environmental criteria.

f) Other key changes

- The deadline for the review related to waste oils has been provisionally agreed to 31 December 2022.
- Separate collection of bio-waste by 31 December 2023 and of hazardous waste from households and of textiles by 1 January 2025.
- The legal basis of the proposal amending the Packaging and Packaging Waste Directive is back to Art 114.
- In addition to the abovementioned delegated acts in relation to average loss rates and food waste, delegated acts were also provisionally agreed in:
 - Articles 7(1), 27(1) and 27 (4) of the proposal amending the Waste Framework Directive;
 - Article 11(3) of the proposal amending the Packaging and Packaging Waste Directive; and
 - Article 5(5) and 8(2) of the proposal amending the End of Life Directive.
- The reporting frequency changed to yearly basis across the package. However, Member States still have 18 months to submit the report.

7. In addition the final compromise package includes some statements from the Commission which will be distributed as soon as the Commission transmits them to the Council.

III. CONCLUSION

8. The Committee of Permanent Representatives is invited to:
- analyse the consolidated texts as set out in the Annexes to documents 5912/18, 5913/18, 5914/1/18 REV 1 and 5915/18 + COR 1 and confirm, on this basis, final agreement on an overall compromise on the above four legislative proposals included in the waste package;

- authorise the Presidency to send a letter to the European Parliament stating that if the Parliament were to adopt the amended texts of the above four legislative proposals exactly in the same form as set out in the Annexes to documents 5912/18, 5913/18, 5914/1/18 REV 1 and 5915/18 + COR 1, the Council would adopt the four legislative proposals in the form of the position of the Council as thus amended by the Parliament, subject to the previous revision of the texts by the lawyer-linguists.
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