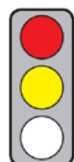


KEY ISSUES

Objective of the Directive: The Commission wants to bring about stricter compliance with the waste hierarchy by introducing quantitative targets for recycling and the avoidance of food waste.

Affected parties: Whole economy particularly the waste management industry.



Pro: The new early-warning system means that the Commission can react more quickly to deficits in the implementation of waste legislation in the Member States.

Contra: (1) Standard EU recycling targets ignore the varying conditions in the Member States and violate the principle of subsidiarity.

(2) The quantitative target for avoiding food waste violates EU law because it is disproportionate. It is not achievable for the Member States.

Content

Title

Proposal COM(2014) 397 of 2 July 2014 for a **Directive amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 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**

Brief Summary

Page numbers refer to the Proposal for a Directive COM(2014) 397.

► Context and objectives

- Waste management is to be "improved" in order (Recital 1)
 - to protect the environment and human health and
 - to reduce the wastage of natural resources.
- The Amendment Directive will, in particular, amend the following Directives on waste legislation:
 - Waste Framework Directive (2008/98/EC),
 - Packaging Directive (94/62/EC) and
 - Landfill Directive (1999/31/EC).
- "Waste hierarchy": With regard to waste prevention and management, Member States basically have to comply with the following order of priorities (Art. 4(1) Waste Framework Directive 2008/98/EC):
 1. waste prevention,
 2. preparing for re-use,
 3. reprocessing waste materials back into the economy ("recycling")
 4. other recovery of waste, particularly incineration for the purpose of energy recovery,
 5. landfill or incineration without energy recovery ("disposal").
- Currently not all Member States are complying with the waste hierarchy. Thus household waste and similar waste from businesses and public authorities ("municipal waste") is still going primarily to landfill in 18 Member States (p. 0).
- The Commission wants to bring about stricter compliance with the waste hierarchy and simplify reporting and permit requirements for small and medium-sized enterprises (SMEs). According to the Commission (p. 2) this will
 - create more than 180,000 extra jobs by 2030,
 - reduce the EU's dependence on imports of raw materials and
 - save 443 million tonnes in greenhouse gas emissions between 2014 and 2030.

► EU waste prevention and management targets

- Member States must guarantee to reduce food waste by 30% between the beginning of 2017 and the end of 2025 (new Art. 9 (3) Waste Framework Directive 2008/98/EC).
- In order to minimise the contamination of waste, Member States have to ensure separate collection of bio-waste by 2025 (new Art. 22 (2) Waste Framework Directive 2008/98/EC).
- The following targets apply to preparing waste for re-use and for recycling:
 - The proportion of municipal waste which must be prepared for re-use or recycled is specified as (amended Art. 11 (2) Waste Framework Directive 2008/98/EC)
 - at least 50% by weight by the start of 2020 and
 - at least 70% by weight by the start of 2030.

- The proportion of packaging waste which must be prepared for re-use or recycled is specified as (amended Art. 6 (1) (f) - (k) Packaging Directive 94/62/EC)
 - at least 60% by weight by the start of 2020,
 - at least 70% by weight by the start of 2025 and
 - at least 80% by weight by the start of 2030.

In calculating the quantities to be prepared for re-use and recycled, the weight of the waste which was submitted for these processes but finally needs to be disposed of or recovered in a different way due to contamination will be deducted ("output-based" rather than "input-based" measurement; amended Art. 11 (4) Waste Framework Directive 2008/98/EC; new Art. 6 (1a) Packaging Directive 94/62/EC).

- As from 2025, recyclable non-hazardous waste – particularly plastic, metal, glass, paper, cardboard and biodegradable waste – will no longer be permitted to go to landfill (new Art. 5 (2a) Landfill Directive 1999/31/EC).
- Member States must ensure that the total weight of all non-recyclable, non-hazardous waste which goes to landfill does not exceed the following limits (new Art. 5 (2b), (2c) Landfill Directive 1999/31/EC):
 - as from 2025, 25% of the previous year's total amount by weight of municipal waste and
 - as from 2030, 5% of the previous year's total amount by weight of municipal waste.

► **Early-warning system**

- Three years before the expiry of each stipulated time limit, the Commission publishes a report on the achievement of the waste avoidance and recycling targets and the landfill bans (new Art. 11a (1) and (2) Waste Framework Directive 2008/98/EC; new Art. 6a (1) and (2) Packaging Directive 94/62/EC; new Art. 5a (1) and (2) Landfill Directive 1999/31/EC). This report contains
 - a list of Member States at risk of failing to meet the requirements on time and
 - recommendations to Member States on how to achieve the targets on time.
- The Member States at risk of not meeting the targets within the time limit must submit a "compliance plan", within 6 months detailing the measures for achieving the targets (new Art. 11a (3) Waste Framework Directive 2008/98/EC; new Art. 6a (3) Packaging Directive 94/62/EC; new Art. 5a (3) Landfill Directive 1999/31/EC).

► **Extended producer responsibility**

- Member States can take measures so that producers and importers bear an "extended producer responsibility" with respect to the production and packaging of goods. Such measures may include acceptance of returned products and subsequent management of the waste (unchanged Art. 8 (1) Waste Framework Directive 2008/98/EC).
- Where Member States take measures relating to extended producer responsibility, they will in future have to meet detailed minimum requirements (amended Art. 8 (3) in conjunction with the new Annex VII Waste Framework Directive 2008/98/EC):
 - The Member States must guarantee that producers and importers (new Annex VII No.6 Waste Framework Directive 2008/98/EC)
 - bear the entire cost of the Member States' waste management measures as part of extended producer responsibility,
 - "support" Member States' measures to prevent "littering" as well as "environmental clean-up campaigns".
 - Member States must establish a procedure for approving, monitoring and implementing "programmes" for extended producer responsibility (new Annex VII No.7 and 9 Waste Framework Directive 2008/98/EC).
- Member States must "encourage" the use of durable and re-usable packaging in order to reduce the generation of waste (new Art. 6 (12) Packaging Directive 94/62/EC).

► **Record-keeping and permit requirements**

- All businesses which produce or "treat" – i.e. collect, transport, deal in or remove – hazardous or non-hazardous waste must keep records at least of the quantity, nature and origin of the waste. The records will be transferred to the competent authorities (amended Art. 35 (1) Waste Framework Directive 2008/98/EC)
- annually in the case of hazardous waste,
 - at the request of the competent authority in the case of non-hazardous waste.

Main Changes to the Status Quo

- New is that there will be a food waste prevention target for 2025.
- Until now, recycling targets for various packaging waste were only for 2008. Now there will be new recycling targets for 2020, 2025 and 2030.
- Until now, the amount of recycling was determined according to the weight of materials flowing into the recycling process (input-based measurement). In future, it will be determined by the weight of materials coming out of the recycling process (output-based measurement).
- Until now, only liquid waste, some hazardous waste and used tyres have been generally banned from going to landfill. As from 2025, no recyclable materials will be permitted in landfill.

- ▶ New is the fact that the Commission will check whether the targets are going to be met by the Member States before expiry of the time limit ("Early Warning System").
- ▶ New is the fact that minimum standards will apply to "extended producer responsibility".
- ▶ Until now, only companies producing hazardous waste have had to keep records on the quantity, nature and origin of the waste. This obligation will now apply to all waste.

Statement on Subsidiarity by the Commission

The Commission does not consider that its proposals breach the principle of subsidiarity since, by establishing shared objectives, they only provide a framework for an improved waste policy and leave the Member States to decide for themselves on the necessary measures. (p. 4)

Policy Context

The proposed Directive is part of a "circular economy package" which includes the Communication "Towards a circular economy: A zero waste programme for Europe" [COM(2014) 398]. According to this Communication, an improved circular economy would double resource productivity in the EU - calculated as GDP divided by allocation of resources.

In its Communication "Roadmap to a Resource Efficient Europe" [COM(2011) 571, see [cepPolicyBrief](#)], the Commission already set out "milestones" on recycling for 2020 and called on the Member States to increase incentives for using recycled materials. The "7th Environment Action Programme" (Decision 1386/2013/EU, see [cepPolicyBrief](#)) obliges the Member States to make waste management safer and more efficient by the effective application of the applicable law and the use of market-based instruments.

Legislative Procedure

2 July 2014	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Environment (leading)
Committees of the European Parliament:	Environment, Public Health and Food Safety (leading), Rapporteur: Simona Bonafé (S&D Group, I)
Federal Ministries:	Environment (leading)
Committees of the German Bundestag:	Environment, Conservation, Construction and Reactor Safety (leading); Economy and Energy, European Union Affairs.
Decision-making mode in the Council:	Qualified majority (acceptance by a majority of 55% of the Member States representing at least 65% of the population).

Formalities

Legislative competence:	Art. 192 TEU (Environment)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The waste policies of the Member States differ markedly from one another. This is due not only to the varying levels of commitment when it comes to implementing existing EU waste legislation but also to the varying conditions such as population density, climate, economic strength and existing recycling schemes and preferences in the EU. In view of these differences, the waste management procedures in the Member States should continue to vary from one another.

Standard EU requirements for re-using and recycling municipal waste in general, and packaging waste in particular, **as well as the blanket ban on sending recyclable waste to landfill, and the restrictions on the amount of non-recyclable waste which can be sent to landfill, fail to take account of the differing conditions in the Member States.** Furthermore, they are barely achievable for Member States who still currently send a large proportion of their waste to landfill. Rather than standard EU legislation, the EU should specify binding national targets which take account of the varying conditions in the Member States when it comes to implementing the waste hierarchy.

The Commission must monitor compliance with these targets more strictly than before. **The new early-warning system means that the Commission can at least react more quickly to deficits in the implementation of waste legislation in the Member States** and where necessary take countermeasures.

Impact on Efficiency and Individual Freedom of Choice

The target of reducing food waste by 30% by 2025, is not achievable for the Member States. In private households in particular, the avoidance of food waste **would entail a drastic change in consumer behaviour which is impossible for the Member States to bring about by regulation and monitoring.**

The shift from input-based to output-based measurement in determining the amounts of waste to be prepared for re-use and recycled makes it more difficult for Member States to achieve the targets because the waste going into the recycling process often contains elements which, due to contamination, cannot be recycled. The targets can only be achieved if more waste is channelled into the recycling process. Increasing the amount of recycled waste may however result in a reduction in the quality of recycled materials thereby reducing their possible application in future production processes.

The existing rule that the Member States can take measures to "extend producer responsibility" so that companies take account of future waste generation when choosing production methods and packaging for their products, is appropriate because the state cannot directly affect the waste disposal practices of individuals. Which measures are most suitable depends however on the local conditions and can therefore only be decided individually by the Member States. **Member States should not therefore be restricted by minimum requirements with regard to extended producer responsibility.**

The fact that companies producing or dealing in non-hazardous waste now also have to keep records on quantity, nature and origin of the waste, may actually result in significantly increasing their administrative costs.

Impact on Growth and Employment

The Commission's belief that the proposed measures could create 180,000 new jobs by 2030 ignores the fact that many companies will see their costs pushed to a higher level which could result in the loss of jobs in many sectors.

Impact on Europe as a Business Location

Negligible.

Legal Assessment

Legislative Competency

The EU is empowered to issue environmental measures on waste management (Art. 192 TFEU).

Subsidiarity

Standard EU requirements on re-using and recycling municipal waste and packaging waste **violate the principle of subsidiarity** (Art. 5 (3) TFEU) because the varying conditions with regard to waste management in the Member States require a varied approach by the Member States.

Proportionality with Respect to Member States

The quantitative target for avoiding food waste cannot be met by the Member States and **is therefore disproportionate; it thus violates EU law** (Art. 5 (4) TEU).

Conclusion

Standard EU requirements for re-using and recycling waste ignore the varying conditions in the Member States and therefore violate the principle of subsidiarity. The early-warning system means that the Commission can react more quickly to deficits in the implementation of waste legislation in the Member States. The target of reducing food waste by 30% by 2025 is disproportionate and therefore violates EU law because it entails a drastic change in consumer behaviour which is impossible for the Member States to bring about by regulation and monitoring. Member States should not be restricted by minimum requirements with regard to extended producer responsibility. The fact that companies producing or dealing in non-hazardous waste now also have to keep records on quantity, nature and origin of the waste, may significantly increase their administrative costs.