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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 94/62/EC on packaging and packaging 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 waste¹, Directive 94/62/EC on packaging and packaging waste², Directive 1999/31/EC on the landfill of waste³, Directive 2000/53/EC on end-of-life vehicles⁴, Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators⁵ and Directive 2012/19/EU on waste electrical and electronic equipment⁶ 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 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

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).

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 Roadmap⁷ and the 7th Environment Action Programme⁸, including full implementation of the waste hierarchy⁹ 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 Initiative¹⁰ 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.

2.4 Impact assessment

An impact assessment report and an executive summary were published together with the proposal adopted in July 2014¹¹. 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

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.

¹¹ COM(2014)397.

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;
- 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 interconnected, 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).

Proposal for a

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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 114 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 Committee¹²,

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 94/62/EC of the European Parliament and of the Council¹³ for the recovery and recycling of packaging and packaging waste should be amended by increasing the preparing for re-use and recycling of packaging waste in order to better reflect the Union's ambition to move towards a circular economy.
- (3) Furthermore, in order to ensure greater coherence in waste legislation, the definitions in Directive 94/62/EC should be aligned to those of Directive 2008/98/EC of the European Parliament and of the Council¹⁴ applicable to waste in general.
- (4) Clear environmental, economic and social benefits would be derived from further increasing the targets laid down in Directive 94/62/EC for preparation for re-use and recycling of packaging waste.
- (5) Through a progressive increase of the existing targets on preparing for re-use and recycling of packaging waste, it should be ensured that economically valuable waste materials are progressively and effectively recovered through proper waste management and in line with the waste hierarchy. That way it should be ensured that valuable materials found in waste are returned into the European economy, thus

¹² OJ C , , p. .

¹³ 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).

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).

making progress in the implementation of the Raw Materials Initiative¹⁵ and the creation of a circular economy.

- (6) Many Member States have not yet completely developed the necessary waste management infrastructure. It is therefore essential to set clear policy objectives in order to avoid locking recyclable materials at the bottom of the waste hierarchy.
- (7) With the combination of recycling targets and landfill restrictions laid down in Directives 2008/98/EC and 1999/31/EC, the Union targets for energy recovery and the recycling targets for packaging waste laid down in Directive 94/62/EC are no longer necessary.
- (8) This Directive sets long-term objectives for the Union's waste management and gives the economic operators and the Member States a clear direction for the necessary investments to attain the objectives of this Directive. In developing their national waste management strategies and planning investments in waste management infrastructure, Member States should make a sound use of the European Structural and Investment Funds in line with the waste hierarchy by promoting prevention, re-use and recycling.
- (9) Targets for the recycling of plastic packaging waste for 2025 have been set taking into account what was technically feasible at the time of the revision of the Directive; the Commission may propose revised levels of the targets for plastics for 2030 based on a review of progress made by Member States towards reaching those targets, taking into account the evolution of the types of plastics placed on the market and the development of new recycling technologies and the demand for recycled plastics.
- (10) Separate recycling targets should be set for ferrous metals and aluminium in order to achieve significant economic and environmental benefits because more aluminium would be recycled leading to significant energy and carbon dioxide savings. The existing preparing for re-use and recycling target for metal packaging should therefore be split into separate targets for those two types of waste.
- (11) 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 preparation for re-use operators and deposit-refund schemes. To ensure harmonised conditions for those calculations, the Commission will adopt detailed rules on the determination of recognised preparation for re-use operators and deposit-refund schemes and on the collection, verification and reporting of data.
- (12) 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 precisely the rules according to which Member States should report what is effectively recycled and can be counted towards the attainment of the recycling targets. To that effect, as a general rule, the reporting on the attainment of the recycling targets must be based on the input to the final recycling process. In order to limit administrative burdens, Member States should be allowed, under strict conditions, to report recycling rates on the basis of the 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.

¹⁵ COM(2013) 442.

- (13) In order to ensure better, timelier and more uniform implementation of this Directive and anticipate implementation weaknesses, an early warning system should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.
- (14) Statistical data reported by Member States are essential for the Commission to assess compliance with waste legislation across the Member States. The quality, reliability and comparability of statistics should be improved by introducing a single entry point for all waste data, deleting obsolete reporting requirements, benchmarking national reporting methodologies and introducing a data quality check report.
- (15) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring good implementation, and are generating unnecessary administrative burden. It is therefore appropriate to repeal provisions obliging Member States to produce such reports and for compliance monitoring purposes use exclusively the statistical data which Member States report every year to the Commission.
- (16) Reliable reporting of statistical data concerning waste management is paramount to efficient implementation and to ensuring comparability of data among Member States. Therefore, when preparing the reports on compliance with the targets set out in Directive 94/62/EC, Member States should be required to use the most recent methodology developed by the Commission and the national statistical offices of the Member States.
- (17) In order to supplement or amend Directive 94/62/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Articles 6a(2), 6a(5), 11(3), 19(2) and 20. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. 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.
- (18) In order to ensure uniform conditions for the implementation of Directive 94/62/EC, implementing powers should be conferred on the Commission in respect of Articles 12(3d) and 19. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁶.
- (19) Directive 94/62/EC should therefore be amended accordingly.
- (20) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁷, 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.
- (21) Since the objectives of this Directive, namely on the one hand, to prevent any impact from packaging and packaging waste on the environment or to reduce such impact,

¹⁶ 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).

¹⁷ OJ C 369, 17.12.2011, p. 14.

thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 94/62/EC is amended as follows:

(1) Article 3 is amended as follows:

(a) in point 1, the following text is deleted:

'The Commission shall, as appropriate, examine and, where necessary, review the illustrative examples for the definition of packaging given in Annex I. As a priority, the following items shall be addressed: CD and video cases, flower pots, tubes and cylinders around which flexible material is wound, release paper of self-adhesive labels and wrapping paper. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 21(3).';

(b) point 2 is replaced by the following:

'2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council(*);

(*): 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).';

(c) points 3 to 10 are deleted;

(d) the following second paragraph is added:

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

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

'Such other measures may consist of national programmes, incentives through extended producer responsibility schemes to minimise the environmental impact of packaging or similar actions adopted, if appropriate, in consultation with economic operators, and designed to bring together and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1(1).';

(3) Article 6 is amended as follows:

(a) the title is replaced by 'Recovery, re-use and recycling';

(b) in paragraph 1, the following points (f) to (i) are added:

(f) no later than 31 December 2025 a minimum of 65% by weight of all packaging waste will be prepared for reuse and recycled;

(g) no later than 31 December 2025 the following minimum targets by weight for preparing for reuse and recycling will be met regarding the following specific materials contained in packaging waste:

(i) 55 % of plastic;

(ii) 60% of wood;

(iii) 75% of ferrous metal;

(iv) 75% of aluminium;

(v) 75% % of glass;

(vi) 75% of paper and cardboard;

(h) no later than 31 December 2030 a minimum of 75% by weight of all packaging waste will be prepared for reuse and recycled;

(i) no later than 31 December 2030 the following minimum targets by weight for preparing for reuse and recycling will be met regarding the following specific materials contained in packaging waste:

(i) 75% of wood;

(ii) 85% of ferrous metal;

(iii) 85% of aluminium;

(iv) 85% of glass;

(v) 85% of paper and cardboard.';

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

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

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

(*) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).';

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

(4) the following Article 6a is inserted:

Article 6a

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

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

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

(b) the weight of the packaging waste prepared for reuse shall be understood as the weight of packaging 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 packaging 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 IV.

2. In order to ensure harmonised conditions for the application of paragraph 1(b) and (c) and of Annex IV, the Commission shall adopt delegated acts in accordance with Article 21a 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 packaging 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 packaging 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) of Directive 2008/98/EC, 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 6(1)(f) to (i) 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 packaging waste incinerated provided that the recycled metals meet certain quality requirements. Member States shall use the common methodology established in accordance with Article 11a(6) of Directive 2008/98/EC.';

(5) the following Article 6b is inserted:

'Article 6b

Early warning report

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

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

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

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

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

(7) Article 12 is amended as follows:

(a) the title is replaced by 'Information systems and reporting';

(b) paragraph 2 is replaced by the following:

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

(c) paragraph 3 is deleted;

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

'3a. Member States shall report the data concerning the attainment of the targets laid down in Article 6(1)(a) to (i) 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 3d. The first reporting shall cover data for the period from 1 January [*enter year of entry into force of this Directive + 1 year*] to 31 December [*enter year of entry into force of this Directive + 1 year*].

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

3c. The Commission shall review the data reported in accordance with this Article and publish a report on the results of its review. The report shall cover an assessment of the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and

consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up every three years.

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

(e) paragraph 5 is deleted;

(8) Article 17 is deleted;

(9) Article 19 is replaced by the following:

1. The Commission shall adopt implementing acts necessary for adapting the identification system referred to in Article 8(2) and Article 10, second paragraph, sixth indent, to scientific and technical progress. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 21(2).

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

(10) Article 20 is replaced by the following:

'Article 20

Specific measures

The Commission shall be empowered to adopt delegated acts in accordance with Article 21a necessary to deal with any difficulties encountered in applying the provisions of this Directive, in particular, to inert packaging materials placed on the market in very small quantities (i.e. approximately 0.1 % by weight) in the Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.');

(11) Article 21 is replaced by the following:

'Article 21

Committee procedure

1. For the purposes of Articles 12(3d) and 19(1), the Commission shall be assisted by the Committee, established by Article 39 of Directive 2008/98/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*).

2. When 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, 28.02.2011, p. 13).';

(12) the following Article 21a is inserted:

'Article 21a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6a(2), Article 11(3), Article 19(2) and Article 20 shall be conferred on the Commission for an indeterminate period of time from [*enter date of entry into force of this Directive*].

3. The delegation of power referred to in Article 6a(2), Article 11(3), Article 19(2) and Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

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

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

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

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

The President

For the Council

The President