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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste

Delegations will find in the Annex to this note, the final compromise text on the above proposal as endorsed by the Permanent Representative Committee (Part 1) on 23 February 2018 as part of the overall compromise package reached with the European Parliament on the waste legislative package, and as annexed to the letter to the European Parliament.

DIRECTIVE (EU) 2018/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of ...

amending Directive 94/62/EC on packaging and packaging 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 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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

¹ OJ C 264, 20.7.2016, p. 98.

² OJ C 17, 18.1.2017, p. 46.

³ *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...*

- (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 *efficient* utilisation of natural resources and promoting *the principle of the* circular economy, *enhancing the diffusion renewable energy, increasing energy efficiency, reducing the dependence of the Union on imported resources providing new economic opportunities and long-term competitiveness. Using resources more efficiently would also bring substantial net savings for Union businesses, public authorities and consumers while reducing total annual greenhouse gas emissions.*
- (2) The targets laid down in European Parliament and Council Directive 94/62/EC⁴ for the recovery and recycling of packaging and packaging waste should be amended by increasing the 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, *where relevant*, to those of Directive 2008/98/EC of the European Parliament and of the Council⁵ applicable to waste in general.
- (3a) *Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is therefore important that Member States take appropriate measures to encourage the increase in the share of reusable packaging placed on the market and the re-use of packaging. Such measures may include the use of deposit return systems and other incentives, such as setting quantitative targets, taking re-use into account for the attainment of recycling targets, and differentiated financial contributions for reusable packaging under extended producer responsibility schemes for packaging. Member States should take measures to incentivise the take-up of re-usable packaging and to achieve a reduction in consumption of packaging that is not recyclable and of excessive packaging.*

⁴ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

⁵ 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).

- (3b) *As reuse entails avoiding placing new packaging on the market and increasing the volumes of packaging waste generated, reusable sales packaging placed on the market for the first time and wooden packaging that is repaired for reuse should be taken into account for the purposes of attaining the respective packaging recycling targets.*
- (3c) *Member States should put in place adequate incentives for the application of the waste hierarchy including economic instruments and other measures. Such measures should aim at minimising the environmental impacts of packaging and packaging waste from a life-cycle perspective, taking account of benefits from using bio-based materials and materials suitable for multiple recycling where appropriate. Measures to increase public awareness of the benefits deriving from packaging made from recycled materials can contribute to expanding the recycling sector for packaging waste. Where single use packaging is indispensable to guarantee food hygiene and the health and safety of consumers, Member States should take measures to ensure recycling of such packaging.*
- (3d) *Fostering a sustainable bio-economy can contribute to decreasing Europe's dependence on imported raw materials. Bio-based recyclable packaging and compostable biodegradable packaging could represent an opportunity to promote renewable sources for the production of packaging, where shown to be beneficial from life-cycle perspective.*
- (3e) *Litter, whether in cities, on land, in rivers and seas or elsewhere, has direct and indirect detrimental impacts on the environment, the well-being of citizens and the economy, and the costs to clean it up present an unnecessary economic burden for society. Many of the most commonly found items on beaches include packaging waste and have long-term impacts on the environment while affecting tourism and public benefit of these natural areas. Additionally, the presence of packaging waste in the marine environment entails subverting the priority order of the waste hierarchy, in particular by avoiding preparing for re-use, recycling and other recovery.*

- (4) *Clear environmental, economic and social benefits would be derived from further increasing the targets laid down in Directive 94/62/EC for recycling of packaging waste.*

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, *and* are returned into the European economy, thus making progress in the implementation of the Raw Materials Initiative⁶ and the creation of a circular economy.

- (6) Many Member States have not yet completely developed the necessary waste management infrastructure *in line with the waste hierarchy*. It is therefore essential to set clear policy objectives in order to avoid locking recyclable materials at the *lower levels* of the waste hierarchy.

- (7) 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.

- (8) With the combination of recycling targets and landfill restrictions laid down in Directives 2008/98/EC and Council Directive 1999/31/EC⁷, the *maximum* targets for energy recovery and the recycling *of* packaging waste laid down in Directive 94/62/EC are no longer necessary.

⁶ COM(2013)0442.

⁷ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

- (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.
- (10a) *The 2030 recycling targets for packaging should be examined with a view to maintaining or, if appropriate, increasing them. During this review attention should also be paid to specific packaging waste streams such as household, commercial and industrial packaging waste as well as composite packaging waste.*

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- (12a) *The calculation of the recycling targets should be based on the weight of packaging waste which enters recycling. As a general rule, the actual measurement of the weight of packaging waste reported as recycled should be at the point where packaging waste enters the recycling operation. In order to limit administrative burdens, Member States should, under strict conditions and by way of derogation from the general rule, be allowed to establish the weight of packaging waste recycled on the basis of measuring the output of any sorting operation. Losses of materials occurring before the waste enters the recycling operation, for instance due to sorting or other preliminary operations, should not be included in the waste amounts reported as recycled. These losses can be established on the basis of electronic registries, technical specifications, detailed rules on the calculation of average loss rates for various waste streams or other equivalent measures. Member States should report on such measures in the quality check reports, accompanying the data reported to the Commission on waste recycling. The average loss rates should preferably be established at the level of individual sorting facilities and should be linked to the different main types of waste, different sources (household, commercial etc.), different collection schemes and different types of sorting processes. Average loss rates should only be used in cases where no other reliable data are available, in particular in the context of shipment and export of waste.*

Losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the **■** recycling *operation where packaging waste is actually reprocessed into products, materials or substances* should not be deducted from the weight of the waste reported as recycled.

- (12b) *Where packaging waste materials cease to be waste as a result of a preparatory operation before being actually reprocessed, such materials may be counted as recycled provided that they are destined for subsequent reprocessing into products, materials or substances, whether for the original or other purposes. End-of-waste materials which are to be used as fuels or other means to generate energy, backfilled, or in any operation that has the same purpose as recovery of waste other than preparing for re-use and recycling or disposal, cannot be counted towards the recycling targets.*
- (12c) *Where the calculation of the recycling rate is applied to aerobic or anaerobic treatment of biodegradable packaging waste, the waste amounts that enter aerobic or anaerobic treatment may be counted as recycled provided that such treatment generates output which is to be used as a recycled product, material or substance. While the output of such treatments is most commonly compost or digestate, other output could also be taken into account provided that it contains comparable quantities of recycled content in relation to the amounts of the treated biodegradable packaging waste. In other cases, in line with the definition of recycling, the reprocessing of biodegradable packaging waste into materials which are to be used as fuels or other means to generate energy, or in any operation that has the same purpose as recovery of waste other than preparing for re-use and recycling or as disposal, cannot be counted towards the recycling targets.*

- (12d) *In case of exports of waste from the Union for preparation for re-use or recycling, Member States should make effective use of the powers provided for in point c of Article 50(4) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council⁸ to require documentary evidence to ascertain whether a shipment is destined for recovery operations which are in accordance with Article 49 of that Regulation and thus managed in an environmentally sound manner at a facility operating in accordance with human health and environmental protection standards that are broadly equivalent to standards established in Union legislation. In this task Member States may cooperate with other relevant actors, such as the competent authorities in the country of destination, independent third party verification bodies or producer responsibility organisations established under extended producer responsibility schemes, which may carry out physical and other checks of facilities in third countries. In the quality check report accompanying the data on the attainment of the targets, Member States should report on the measures to implement the obligation to ensure that outside the Union waste is treated in broadly equivalent conditions to those required in relevant Union law.*
- (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.

⁸ *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).*

- (13a) *As the amount and type of packaging used generally depends on choices made by the producer rather than the consumer, producers of packaging should have extended producer responsibility. Effective extended producer responsibility schemes can have a positive environmental impact by reducing the generation of packaging waste and increasing its separate collection and recycling. While extended producer responsibility schemes for packaging already exist in most Member States, there are wide disparities in the way they are set up, in their efficiency and in the scope of responsibility of producers. Therefore, the rules in Articles 8 and 8a of Directive 2008/98/EC should apply to extended producer responsibility schemes for producers of packaging.*
- (13b) *In order to boost the prevention of packaging waste, reduce its impact on the environment and promote recycling materials of high quality while ensuring the functioning of the internal market and avoiding obstacles to trade and distortion and restriction of competition within the Union, the essential requirements of Directive 94/62/EC and its Annex II to should be reviewed, and if necessary revised in order to strengthen the requirements with a view to enhancing the design for re-use and a high quality recycling of packaging.*
- (14) 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 data 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. Instead compliance monitoring should be exclusively based on the data which Member States report every year to the Commission.

- (16) Reliable reporting of 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 rules developed by the Commission and the national *competent authorities* of the Member States, *responsible for implementing this Directive*.
- (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 11(3), 19(2) and 20. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, *and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts*.
- (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 5(1c), 6a(6), 11(3), 12(3d) and 19. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁰.
- (19) Directive 94/62/EC should therefore be amended accordingly.

⁹ OJ L 123, 12.5.2016, p. 1.

¹⁰ 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).

- (19a) *The Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹¹, refers to the recasting technique as an appropriate means of ensuring the readability of Community legislation on a permanent and universal basis by preventing the proliferation of isolated amending acts which often make regulations difficult to understand. Moreover, in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the three institutions confirmed their commitment to using the legislative technique of recasting for the modification of existing legislation more frequently. Therefore, in view of the fact that Directive 94/62/EC has already been amended six times, it would be appropriate to recast Directive 94/62/EC in the near future.*
- (20) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹², 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.

¹¹ OJ C 77, 28.3.2002, p. 1.

¹² OJ C 369, 17.12.2011, p. 14.

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 94/62/EC is amended as follows:

-1) Article 1, paragraph 2 is replaced by the following:

“2. To this end this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, hence, at reducing the final disposal of such waste in order to contribute to the transition towards a circular economy.”;

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 in Directive 2008/98/EC, excluding production residues;”;

ba) the following points are added:

“2a. ‘reusable packaging’ shall mean packaging which has been conceived, designed and placed on the market to accomplish within its lifecycle multiple trips or rotations by being refilled or reused for the same purpose for which it was conceived;”

2b. ‘composite packaging’ means packaging made of two or more layers of different materials which cannot be separated by hand and form a single integral unit, consisting of an inner receptacle and an outer enclosure, that it is filled, stored, transported and emptied as such;

2c. the definitions of ‘waste’, ■, ‘waste management’, ‘municipal waste’, ‘collection’, ‘separate collection’, ‘prevention’, ‘re-use’, ‘treatment’, ‘recovery’, ‘preparing for re-use’, ‘recycling’, ■ ‘disposal’, and ‘extended producer responsibility scheme’ laid down in Article 3 of Directive 2008/98/EC shall apply.”;

bb) points 3 to 10 are deleted;

2) Article 4 is amended as follows:

a) paragraph 1 is replaced by the following:

“1. Member States shall ensure that, in addition to the measures taken in accordance with Article 9, other preventive measures are implemented in order to prevent the formation of packaging waste and minimise the environmental impact of packaging.

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 consumer and environmental organisations**, and designed to bring together and take advantage of the many initiatives taken within Member States as regards prevention.

Member States shall make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy such as those indicated in Annex IVa to Directive 2008/98/EC or other appropriate instruments and measures.”;

b) paragraph 3 is deleted;

2b) Article 5 is replaced by the following:

“Article 5

Re-use

1. In line with the waste hierarchy laid down in Article 4 of Directive 2008/98/EC, Member States shall take measures to encourage the increase in the share of reusable packaging placed on the market and of systems to reuse packaging in an environmentally sound manner and in conformity with the Treaty, without compromising food hygiene or the safety of consumers. Such measures may include, inter alia:

- (a) use of deposit return schemes;***
- (b) setting of qualitative and/or quantitative targets;***
- (c) use of economic incentives;***
- (d) the setting up of a minimum percentage of re-useable packaging placed on the market every year per packaging stream.***

2. *A Member State may decide to attain an adjusted level of the targets referred to in points (f) to (i) of Article 6(1) for a given year by taking into account the average share of reusable sales packaging placed on the market for the first time and reused as part of a system to reuse packaging in the preceding three years.*

The adjusted level shall be calculated by subtracting:

- a) from the targets laid down in points (f) and (h) of Article 6(1), the share of the reusable sales packaging referred to in the first subparagraph of this paragraph in all sales packaging placed on the market, and*
- b) from the targets laid down in points (g) and (i) of Article 6(1), the share of the reusable sales packaging referred to in the first subparagraph of this paragraph, composed of the respective packaging material, in all sales packaging composed of that material placed on the market.*

No more than 5 percentage points of such share shall be taken into account for the calculation of the respective adjusted target level.

3. *A Member State may take into account the amounts of wooden packaging that is repaired for reuse in the calculation of the targets laid down in points (f), (g)(ii), (h) and (i)(i) of Article 6(1).*
4. *In order to ensure harmonised conditions for the application of paragraphs 2 and 3, the Commission shall adopt implementing acts establishing rules for the calculation, verification and reporting of data, and for the calculation of the targets pursuant to paragraph 3. Those implementing acts shall be adopted by 31 March 2019 in accordance with the examination procedure referred to in Article 21(2).*

5. *By 31 December 2024, the Commission shall examine data on reusable packaging provided by Member States in accordance with Article 12 and Annex III with a view to considering the feasibility of setting quantitative targets on reuse of packaging, including the calculation rules, and any further measures to promote re-use of packaging. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.”;*

3) Article 6 is amended as follows:

- (a) the title is replaced by 'Recovery ■ and recycling';
- (b) in paragraph 1, the following points are added:
 - “(f) no later than 31 December 2025 a minimum of 65 % by weight of all packaging waste will be ■ recycled;
 - (g) no later than 31 December 2025 the following minimum targets by weight for ■ recycling will be met regarding the following specific materials contained in packaging waste:
 - (i) **50** % of plastic;
 - (ii) **25** % of wood;
 - (iii) **70** % of ferrous metals;
 - (iv) **50** % of aluminium;
 - (v) **70** % of glass;
 - (vi) **75** % of paper and cardboard;

- (h) no later than 31 December 2030 a minimum of **70 %** by weight of all packaging waste will be **■** recycled;
- (i) no later than 31 December 2030 the following minimum targets by weight for **■** recycling will be met regarding the following specific materials contained in packaging waste:

(-i) 55 % of plastic;

(i) **30 %** of wood;

(ii) **80 %** of ferrous metals;

(iii) **60 %** of aluminium;

(iv) **75 %** of glass;

(v) **85 %** of paper and cardboard.”;

(ba) the following paragraphs are inserted:

“1a. Without prejudice to points (f) and (h) of paragraph 1, a Member State may postpone the respective deadlines for attaining the targets referred to in points (i) to (vi) of Article 6(1)(g) and points (-i) to (v) of Article 6(1)(i) by up to five years, under the following conditions:

(a) the derogation is limited to a maximum of 15 percentage points from a single target or divided between two targets,

- (b) as a result of the derogation, the recycling rate for a single target is not reduced below 30 %,*
 - (c) as a result of the derogation, the recycling rate for a single target referred to in points (v) and (vi) of Article 6(1)(g) and points (iv) and (v) of Article 6(1)(i) is not reduced below 60 %,*
 - (d) at the latest 24 months before the deadline laid down in points (g) and (i) of paragraph 1 of this Article, the Member State notifies the Commission of its intention to postpone the target deadline and submits an implementation plan in accordance with Annex IV to this Directive. This plan may be consolidated with a plan submitted pursuant to Article 11(3) of Directive 2008/98/EC.*
 - (e) The Commission may request a Member State to revise the implementation plan submitted pursuant to point (d) if the Commission considers that the plan does not comply with the requirements of Annex IV within three months of its receipt. The Member State shall submit a revised plan within three months of receipt of the request by the Commission.*
- 1b. By 31 December 2024, the Commission shall review the targets laid down in paragraph 1 points (h) and (i) with a view to maintaining or, if appropriate, increasing them. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.”*

- (c) paragraphs 2 and 3 are *deleted*;
- (d) paragraphs 5, 8 and 9 are deleted;

4) the following Article 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 points (f) to (i) of Article 6(1) have been attained:

(-a) Member States shall calculate the weight of packaging waste generated and recycled in a given calendar year. Packaging waste generated in a Member State may be deemed to be equal to the amount of packaging placed on the market in the same year within that Member State;

(a) the weight of the packaging waste recycled shall be understood as the weight of **■** *packaging that has become waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances;*

■

■

3. **■** *For the purposes of point (a) of paragraph 1, the weight of the **packaging waste recycled shall be measured when it enters the recycling operation.***

By way of derogation from the first subparagraph, the weight of the packaging waste measured at the output of any sorting operation may be reported as the weight of the packaging waste recycled provided that:

- (a) such output waste is *subsequently recycled*;
- (b) the weight of materials or substances that are *removed by further operations preceding the recycling operation and are not subsequently recycled is not included in the ■ weight of waste* reported as recycled.

4. Member States shall establish an effective system of quality control and traceability of the packaging waste to ensure that conditions laid down in paragraphs *1(a) and 3(a) and (b)* are met. *To ensure the reliability and accuracy of the data gathered on recycled waste*, 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, *average loss rates for sorted waste for various waste types and waste management practices respectively. Average loss rates shall only be used in cases where reliable data cannot be obtained otherwise and shall be calculated on the basis of the calculation rules established in the delegated act adopted pursuant to Article 11a (8a) of Directive 2008/98/EC.*

- 4a. *For the purpose of calculating the targets laid down in points (f) to (i) of Article 6(1), the amount of biodegradable packaging waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost, digestate, or other output with similar quantity of recycled content in relation to the input, which is to be used as a recycled product, material or substance. Where the output is used on land, it may only be considered as recycled if resulting in benefit to agriculture or ecological improvement.*
- 4b. *The amount of packaging waste materials that have ceased to be waste as a result of a preparatory operation before being reprocessed may be counted as recycled provided that such materials are destined for subsequent reprocessing into products, materials or substances to be used for the original or other purposes. However, end-of-waste materials to be used as fuels or other means to generate energy, be incinerated, backfilled or landfilled, cannot be counted towards the recycling targets.*
5. For the purposes of calculating whether the targets laid down in Article 6(1)(f) to (i) have been achieved Member States may take into account the recycling of metals *separated after incineration of waste* in proportion to the share of the packaging waste incinerated provided that the recycled metals meet certain quality *criteria laid down in the implementing act referred to in Article 11a(8)* of Directive 2008/98/EC.
- 5a. *Packaging waste sent to another Member State for the purposes of recycling or recovery in that other Member State may only be counted towards the attainment of the targets laid down in points (f) to (i) of Article 5 (1) by the Member State in which the packaging waste was collected.*

- 5b. *Packaging waste exported from the Union shall only be counted towards the attainment of the targets laid down in Article 6(1) of this Directive by the Member State in which the packaging waste was collected if the requirements of paragraph 4 of this Article 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 broadly equivalent to the requirements of the relevant Union environmental legislation.*
6. *In order to ensure harmonised conditions for the application of paragraphs 1 to 4b of this Article, the Commission shall adopt implementing acts establishing rules for the calculation, verification and reporting of data, in particular as regards the weight of packaging waste generated **■**. Those implementing acts shall be adopted by 31 March 2019 in accordance with the examination procedure referred to in Article 21(2).*

* *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).”;*

- 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;
- (ba) *examples of best practices that are used throughout the Union and that could provide guidance for progressing towards achieving the targets.”;*

5a) *Article 7 is replaced by the following:*

“Article 7

Return, collection and recovery systems

1. In order to meet the objectives laid down in this Directive, Member States shall take the necessary measures to ensure that systems are set up to provide for:

- (a) *the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;*
- (b) *the reuse or recovery including recycling of the packaging and/or packaging waste collected.*


These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.

2. *Member States shall ensure that, by 31 December of 2024, extended producer responsibility schemes are established for all packaging in accordance with Article 8 and 8a of Directive 2008/98/EC on waste.*
3. *The measures referred to in paragraphs 1 and 2 shall form part of a policy covering all packaging and packaging waste and shall take into account, in particular, requirements regarding the protection of environmental and consumer health, safety and hygiene, the protection of the quality, the authenticity and the technical characteristics of the packed goods and materials used and the protection of industrial and commercial property rights.*
4. *Member States shall take measures to promote high quality recycling of packaging waste and meet the necessary quality standards for the relevant recycling sectors. To this end, the first paragraph of Article 11 of Directive 2008/98/EC applies to packaging waste, including from composite packaging.”;*

5b) *In Article 9, the following paragraph is added:*

- “4a. By 31 December 2020, the Commission shall examine the feasibility of reinforcing the essential requirements with a view to, inter alia, improving design for re-use and promoting high quality recycling, as well as strengthening their enforcement. To this end, the Commission shall submit a report to the European Parliament and the Council, accompanied, if appropriate, by a legislative proposal.”;*

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

“3. The Commission shall  adopt delegated acts *in accordance with Article 21a in order to supplement this Directive by determining* the conditions under which the concentration levels referred to in paragraph 1 *of this Article* 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 *of this Article.*”;

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 *based on* 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 are inserted:

- “3a. Member States shall report the data concerning the attainment of the targets laid down in Article 6(1)(a) to (i) ***and data on reusable packaging***, for each calendar year to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected. The data shall be reported in the format established by the Commission ***on the basis of Annex III*** in accordance with paragraph 3d. The first reporting, ***on the targets set out in Article 6(1)(f) to (i) and data on reusable packaging, shall start in the first full calendar year after the adoption of the implementing act that establishes the format, in accordance with paragraph 3d of this Article and shall cover the data for that reporting period.***
- 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) and (5b), ***including detailed information about the average loss rates where applicable.***
- 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 ***after the first reporting of the data by the Member States and every four years thereafter.***

3d. The Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 3a *of this Article by 31 March 2019. For the purposes of reporting on the implementation of Article 6(1)(a) to (e) Member States shall use the format established in Commission Decision 2005/270/EC.* Those implementing acts shall be adopted in accordance with the *examination* 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:

“Article 19

Adaptation to scientific and technical progress

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 *examination* 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 is 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 **5(4)**, **6a(6)**, 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.
3. *Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (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).”;*

- 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 11(3), Article 19(2) and Article 20 shall be conferred on the Commission for ■ a period of **5 years** from ... [date of entry into force of this Directive]. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5 year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***
3. The delegation of power referred to in **Article 11(3)**, Article 19(2) and Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 3a. *Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.***
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 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.”;

12a) Annex II to Directive 94/62/EC on packaging and packaging waste is amended as set out in the Annex to this Directive;

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 [*twenty four months after the entry into force of this Directive*].

They shall **immediately inform** the Commission **thereof**.

When Member States adopt those *measures*, they shall contain a reference to this Directive or *shall* be accompanied by such a reference on the occasion of their official publication. *The methods of making such reference shall be laid down by* Member States **.**

2. Member States shall communicate to the Commission the text of the main *measures* 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 ...,

For the European Parliament

For the Council

The President

The President

ANNEX

1) *Annex II to Directive 94/62/EC is amended as follows:*

(a) in point 1, the second indent is replaced by the following:

“- Packaging shall be designed, produced and commercialised in such a way as to permit its reuse or recovery, including recycling, in line with the waste hierarchy, and to minimise its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.”

(b) in point 3, points (c) and (d) are replaced by the following:

“(c) Packaging recoverable in the form of composting

Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it does not hinder the separate collection and the composting process or activity into which it is introduced.

(d) Biodegradable packaging

Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water. Oxo-degradable plastic packaging shall not be considered as biodegradable.”

2) *Annex III to Directive 94/62/EC is amended as follows:*

(1) In Tables 1 and 2, the rows titled "Metal" are replaced by two rows titled "Ferrous metal" and "Aluminium";

(1a) In Table 2, the title of the second column “Packaging consumed” shall be replaced by “Packaging placed on the market for the first time”, the title of the third column “Packaging reused” shall be replaced by two columns “Reusable packaging” and “Reusable sales packaging”;

(2) In Tables 3 and 4, the rows titled “Metal packaging” are replaced by two rows titled “Ferrous metal packaging” and “Aluminium packaging”.

3) The following Annex is inserted in Directive 94/62/EC:

“Annex IV

Implementation plan to be submitted pursuant to Article 6(1a)(d)

The implementation plan to be submitted pursuant to Article 6(1a)(d) shall contain the following:

- 1) Assessment of the past, current and projected rates of recycling, landfilling and other treatment of municipal waste and the streams it is composed of;*
- 2) Assessment of the implementation of waste management plans and waste prevention programmes in place pursuant to articles 28 and 29 of Directive 2008/98/EC;*
- 3) Reasons why the Member State considers that it may not be able to attain the relevant target laid down in points (g) and (i) of Article 6(1) within the deadline set therein and assessment of the additional time of up to five years necessary to meet this target;*
- 4) Measures necessary to attain the targets set out in points (g) and (i) of Article 6(1) applicable to the Member State during the additional time of up to five years, including appropriate economic instruments and other measures to provide incentives for the application of the waste hierarchy as referred to in Article 4(1) and Annex IVa to Directive 2008/98/EC;*

- 5) *A timetable for the implementation of the measures identified in point 4 of this annex, the body responsible for their implementation, and assessment of their individual contribution to achieving the targets applicable in case of a time extension;*
 - 6) *Information on funding for waste management in line with the polluter pays principle;*
 - 7) *Measures to improve data quality as appropriate with a view to better planning and monitoring performance in waste management.”*
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