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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/31/EC on the landfill of 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 1999/31/EC on the landfill of waste

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

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

Acting in accordance with the ordinary legislative procedure³,

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...*

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, **promoting a more circular economy, *increasing energy efficiency and reducing the Union's resource dependence.***
 - (2) The targets laid down in Council Directive 1999/31/EC⁴ setting landfill restrictions should be ***strengthened*** to make them better reflect the Union's ambition to move to a circular economy and make progress in the implementation of the Raw Materials Initiative⁵ by ***gradually reducing to a minimum*** landfilling of waste destined for landfills for non-hazardous waste. ***The Commission and Member States should ensure that such reduction fits into an integrated policy which ensures a sound application of the waste hierarchy, enhances a shift towards prevention, reuse and recycling, and prevents a shift from landfilling towards incineration.***
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- (4) In order to ensure greater coherence in waste legislation, the definitions in Directives 1999/31/EC should be aligned, ***where relevant***, to those ***in*** Directive 2008/98/EC of the European Parliament and of the Council⁶.

⁴ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

⁵ ***Communication of 4.11.2008 from the Commission to the European Parliament and the Council - The raw materials initiative: meeting our critical needs for growth and jobs in Europe COM(2008)0699 and COM(2014)0297.***

⁶ 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).

- (4a) *The existing definition of “isolated settlement” needs to be adapted as regards outermost regions, in order to take account of the specificities of such settlement, which raise materially different concerns from an environmental perspective as compared to other regions.*
- (4b) *The scope of Directive 1999/31/EC should be aligned with the more recent Directive 2006/21/EC of the European Parliament and of the Council⁷ and should continue to apply to deposit of waste from the extractive industries that are not covered by Directive 2006/21/EC.*
- (5) Clear environmental, economic and social benefits would be derived from further restricting landfilling, starting with waste streams that are subject to separate collection (e.g. plastics, metals, glass, paper, bio-waste). Technical, environmental or economical feasibility of recycling or other recovery of residual waste resulting from separately collected waste should be taken into account in the implementation of *those* landfill restrictions.
- (6) Biodegradable municipal waste accounts for a large proportion of municipal waste. Landfilling of untreated biodegradable waste poses significant negative environmental effects in terms of greenhouse gas emissions and pollution of surface water, groundwater, soil and air. While Directive 1999/31/EC already sets landfill diversion targets for biodegradable waste it is appropriate to put in place further restrictions on the landfilling of biodegradable waste by prohibiting the landfilling of biodegradable waste that has been separately collected *for recycling* in accordance with Article 22 of Directive 2008/98/EC.

⁷ *Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ L 102, 11.4.2006, p. 15).*

- (6a) *In order to ensure proper application of the waste hierarchy, appropriate measures should be taken to apply, as of 2030, restrictions on landfilling to all waste that is suitable for recycling and other material or energy recovery. Such restrictions should not apply where it can be demonstrated that waste is not suitable for recycling or recovery and that landfilling would result in the best overall environmental outcome in accordance with the waste hierarchy laid down in Article 4 of Directive 2008/98/EC.*
- (7) Many Member States have not yet completely developed the necessary waste management infrastructure. The setting of landfill reduction targets will ***require major changes in waste management in many Member States and will facilitate further progress and investment in*** separate collection, sorting and recycling of waste and avoid locking potentially recyclable materials at the ***lower level*** of the waste hierarchy.
- (8) A progressive reduction of landfilling is necessary to prevent detrimental impacts on human health and the environment and to ensure that economically valuable waste materials are gradually and effectively recovered through proper waste management and in line with the waste hierarchy ***as laid down in Directive 2008/98/EC***. This reduction should avoid the development of excessive capacity for the treatment of residual waste facilities, such as through energy recovery or low grade mechanical biological treatment of untreated municipal waste, as this could result in undermining the achievement of the Union's long-term preparation for reuse and recycling targets for municipal waste as laid down in Article 11 of Directive 2008/98/EC. Similarly, and to prevent detrimental impacts on human health and the environment, while Member States should take all necessary measures to ensure that only waste that has been subject to treatment is landfilled, compliance with such obligation should not lead to the creation of overcapacities for the treatment of residual municipal waste. In addition, in order to ensure consistency between the targets laid down in Article 11 of Directive 2008/98/EC and the landfill reduction target ***set out*** in Article 5 of Directive 1999/31/EC, ***as amended***, and to ensure a coordinated planning of the infrastructures and investments needed to meet those targets, ***Member States which landfilled more than 60% of their municipal waste in 2013 according to data reported under the Joint Questionnaire of the OECD and Eurostat should be allowed to decide to extend the time for complying with the landfill target established for 2035.***

- (8a) In order to ensure the reliability of data, it is important to lay down more precisely the rules according to which Member States should report municipal waste landfilled. Reporting should be based on the amount of municipal waste landfilled after treatment operations to prepare such waste for subsequent landfilling, such as the stabilisation of biodegradable municipal waste, and on the input into disposal incineration operations. As for municipal waste entering treatment operations prior to recycling and recovery of waste, such as sorting and mechanical treatment, the waste resulting from such operations that is ultimately landfilled should also be considered for the purposes of calculating the landfill target.**
- (8b) When implementing the obligation laid down in Directive 1999/31/EC to ensure treatment of waste before its landfilling, Member States should apply the most appropriate treatment, including the stabilisation of the organic fraction of waste, in order to reduce as far as possible the adverse effects of landfilling such waste on the environment and human health. When assessing the appropriateness of a treatment, Member States should take into account measures already implemented to reduce those adverse effects, notably the separation of bio-waste and the separate collection of papers and cardboard.**
- (9) 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.
- (9a) In order to help achieve the objectives of this Directive, and to boost the transition to a circular economy, the Commission should promote the coordination and exchange of information and best practices among Member States and different sectors of the economy.**

- (10) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring correct 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 data which Member States report every year to the Commission.
- (11) 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. Reliable reporting of data concerning waste management is paramount to efficient implementation, to sound planning of waste treatment infrastructure, and to ensuring comparability of data among Member States. Therefore, when preparing the reports on compliance with the targets set out in Directive 1999/31/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.**
- █**
- (13) In order to ensure uniform conditions for the implementation of Directive 1999/31/EC, implementing powers should be conferred on the Commission in respect of Articles **5a(4), 15(5), 15b and 15c of that Directive.** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁸.

⁸ 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).

- █
- (15) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁹, 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.
- (16) Since the objectives of this Directive, namely to improve the management of waste in the Union, and thereby *to* contribute to the protection, preservation and improvement of the quality of the environment and to the prudent and rational utilisation of natural resources, 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,

(16a) Directive 1999/31/EC should therefore be amended accordingly.

HAVE ADOPTED THIS DIRECTIVE:

⁹ OJ C 369, 17.12.2011, p. 14.

Article 1

Amendments

Directive 1999/31/EC is amended as follows:

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

“1. With a view to supporting the Union's transition towards a circular economy and meeting the requirements of Directive 2008/98/EC, and in particular Articles 4 and 12 thereof, the aim of this Directive is to ensure a progressive reduction of landfilling of waste, in particular of waste that is suitable for recycling or other recovery, and, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill.”

1) Article 2 is amended as follows:

(a) point (a) is replaced by the following:

“(a) the definitions of ‘waste’, ‘municipal waste’, ‘hazardous waste’, ‘**non-hazardous waste**’, ‘waste producer’, ‘waste holder’, ‘waste management’, ‘separate collection’, ‘**preparing for re-use**’, ‘recovery’, ‘recycling’ and ‘disposal’ laid down in Article 3 of Directive 2008/98/EC of the European Parliament and of the Council* shall apply;

* 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).”;

(b) points (b), (c), (d) and (n) are deleted;

1a) In Article 2, the following subparagraph is added to point (r):

“In outermost regions within the meaning of Article 349 TFEU, Member States may decide to apply the following definition:

‘isolated settlement’ means a settlement:

- ***with no more than 2000 inhabitants per settlement and no more than five inhabitants per square kilometre; or with more than 2000 but less than 5000 inhabitants per settlement and no more than five inhabitants per square kilometre and whose production of waste does not exceed 3000 tons per year; and***
- ***where the distance to the nearest urban agglomeration with at least 250 inhabitants per square kilometre is not less than 100km and with no access by road.”;***

1b) In Article 3, paragraph 2, the last indent is deleted;

1c) In Article 3, paragraph 3 is replaced by the following:

“3. The management of waste from land-based extractive industries, that is to say, the waste arising from the prospecting, extraction, including the pre-production development stage, treatment and storage of mineral resources and from the working of quarries shall be excluded from the scope of this Directive where it falls within the scope of other Union legislation.”;

2) Article 5 is amended as follows:

(a) in paragraph 2 the following *subparagraph* is deleted:

“Two years before the date referred to in paragraph c) the Council shall reexamine the above target, on the basis of a report from the Commission on the practical experience gained by Member States in the pursuance of the targets laid down in paragraph a) and b) accompanied, if appropriate, by a proposal with a view to confirming or amending this target in order to ensure a high level of environmental protection.”;

(b) in paragraph 3 the following point **■** is added:

“(f) waste that has been separately collected *for preparing for re-use and recycling* pursuant to Article 11(1) and *Article 22* of Directive 2008/98/EC, *with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which landfilling delivers the best environmental outcome in accordance with Article 4 of Directive 2008/98/EC.*”;

(ba) *the following paragraph is inserted:*

“3a. Member States shall endeavour to ensure that as of 2030, all waste suitable for recycling or other recovery, in particular in municipal waste, shall not be accepted in a landfill with the exception of waste for which landfilling delivers the best environmental outcome in accordance with Article 4 of Directive 2008/98/EC.

Member States shall include information on the measures taken pursuant to this paragraph in the waste management plans referred to in Article 28 of Directive 2008/98/EC, or in other strategic documents covering the entire territory of the Member State concerned.”

(c) The following paragraphs are added:

“5. Member States shall take the necessary measures to ensure that by 2035 the amount of municipal waste landfilled is reduced to 10% **or less** of the total amount of municipal waste generated.

6. A Member State may postpone the deadline for attaining the targets referred to in paragraph 5 of this Article by up to five years provided that the Member State:

(a) landfilled more than 60% of municipal waste generated in 2013 as reported under the Joint Questionnaire of the OECD and Eurostat;

(b) at the latest 24 months before the deadline laid down in paragraph 5 of this Article, notifies the Commission of its intention to postpone the target deadline and submits an implementation plan in accordance with Annex IV of this Directive. That plan may be consolidated with a plan submitted according to Article 11 (3) of Directive 2008/98/EC.

- 6a. *The Commission may request a Member State to revise the implementation plan submitted pursuant to point (b) of paragraph 6 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.*
- 6b. *In the event of postponing the target deadline in accordance with paragraph 6, the Member State shall take the necessary measures to reduce by 2035 the amount of municipal waste landfilled to 25% or less of the total amount of municipal waste generated.*
7. By 31 December 2024 **█**, the Commission shall *review* the target laid down in paragraph 5 with a view to *maintaining or, if appropriate*, reducing it, *to considering quantitative target per capita on landfilling* and *to* introducing restrictions to the landfilling of non-hazardous waste other than municipal waste. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.”;

2a) *The following Article is added:*

“Article -5a

Rules on the calculation of the attainment of the targets laid down in Article 5

1. *For the purpose of calculating whether the targets laid down in Article 5(5) and (6) have been attained:*
- (a) *the weight of the municipal waste generated and directed to landfilling shall be calculated in a given calendar year;*

- (b) *the weight of waste resulting from treatment operations prior to recycling or other recovery of municipal waste, such as sorting or mechanical biological treatment, which is subsequently landfilled shall be included in the weight of municipal waste reported as landfilled;*
- (c) *the weight of municipal waste that enters incineration disposal operations and the weight of waste produced in the stabilisation operations of the biodegradable fraction of municipal waste in order to be subsequently landfilled shall be reported as landfilled;*
- (d) *the weight of waste produced during recycling or other recovery operations of municipal waste which is landfilled shall not be included in the weight of municipal waste reported as landfilled.*
2. *Member States shall establish an effective system of quality control and traceability of the municipal waste landfilled to ensure that conditions laid down in paragraph 1 of this Article are met. They may use the system established in accordance with Article 11a(4) of Directive 2008/98/EC for this purpose.*
3. *Where municipal waste is sent in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council* to another Member State or exported from the Union for the purposes of landfilling it shall be counted towards the amount of waste landfilled, in accordance with paragraph 1 of this Article, by the Member State in which that waste was collected.*

4. *In order to ensure harmonised conditions for the application of this Article, the Commission shall adopt implementing acts establishing rules for the calculation, verification and reporting of data. Those implementing acts shall be adopted by 31 March 2019 in accordance with the examination procedure referred to in Article 17(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).*

- 3) The following Article is inserted:

“Article 5b

Early warning report

1. The Commission shall, in cooperation with the European Environment Agency, draw up a report on the progress towards the achievement of the targets laid down in Article 5(5) and (6) 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 can provide guidance for progressing towards achieving the targets laid down in Article 5.”;*

3c) *The following Article is inserted:*

“Article 5c

Exchange of best practices and information

The Commission shall organize a regular exchange of information and share of best practices between Member States, including, where appropriate, with regional and local authorities, on the practical implementation of the requirements of this Directive.”;

4) In point a) of Article 6, the following sentence is added:

“Member States shall ensure that measures taken in accordance with this point do not compromise the achievement of the objectives of Directive 2008/98/EC, notably on the *waste hierarchy and on the* increase of preparing for re-use and recycling as set out in Article 11 of that Directive.”;

5) In Article 11(2), the second subparagraph is deleted;

6) Article 15 is replaced by the following:

“Article 15

Reporting

1. Member States shall report the data concerning the implementation of Articles 5(2), (5) *and (6)* 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 5 *of this Article*. The first reporting *on the implementation of Articles 5(5) and 5(6) shall start in the first full calendar year after the adoption of the implementing act that establishes the format for reporting in accordance with paragraph 5 of this Article and* shall cover the data for *that reporting period*.

2. Member States shall report the data concerning the implementation of the targets laid down in Article 5(2) until 1 January 2025.
3. The data reported by Member States in accordance with this Article shall be accompanied by a quality check report.
4. 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 *four* years.
5. The Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 1 *of this Article by 31 March 2019*. Those implementing acts shall be adopted in accordance with the *examination* procedure referred to in Article 17(2) **■** .”;

6b) The following Articles are inserted:

“Article 15a

Instruments to promote a shift to a more circular economy

In order to contribute to the objectives laid down in this Directive, Member States shall make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy. Such instruments and measures may include those indicated in Annex IVa to Directive 2008/98/EC or other appropriate instruments and measures.

Article 15b

Determination of the permeability coefficient for landfills

The Commission shall adopt implementing acts to lay down the method to be used for the determination of the permeability coefficient for landfills, in the field and for the whole extension of the site. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Article 15c

Union standard for sampling of waste

The Commission shall adopt implementing acts to develop a standard for sampling of waste. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2). Until those implementing acts have been adopted, the Member States may apply national standards and procedures.”;

- 7) Article 16 is replaced by the following:

“Article 16

Review of the Annexes

The Commission shall **█** *keep the Annexes under review, and, where necessary, it shall make appropriate legislative proposals.”;*

8) Article 17 is replaced by the following:

“Article 17

Committee procedure

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.

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.”;

■

9a) In Annex I, point 3.5 is deleted;

9b) In Annex II, point 5 is deleted;

10) In Annex III, point 2, the first sub-paragraph is deleted;

10a) Annex IV is added to Directive 1999/31/EC 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 *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. ***The Commission shall inform the other Member States thereof***.

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

The following Annex is added to Directive [1999/31/EC](#):

“Annex IV

Implementation plan to be submitted pursuant to Article 5(6)

The Implementation plan to be submitted pursuant to Article 5(6) 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 Article 5(5) 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 Article 5(6b) 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.*