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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (**first reading**)
- Adoption of the legislative act
- Statements

DECLARATION BY THE COMMISSION ON A POLICY FRAMEWORK FOR THE CIRCULAR ECONOMY

The Commission is committed to ensuring full implementation of the EU action plan for the Circular Economy¹. To keep track of progress towards the circular economy, the Commission has adopted a monitoring framework² building on the existing Resource Efficiency and Raw Materials Scoreboards. The Commission also draws attention to its ongoing work on a footprint indicator for products and organisations.

¹ COM(2015) 614 final

² COM(2018) 29 final

Actions undertaken under the EU action plan for the Circular Economy also contribute to fulfilling the Union's objectives on sustainable consumption and production, in the context of Sustainable Development Goal 12. This is the case, for example, of the strategy on plastics³ or the recently amended proposal on the legal guarantee for consumer goods⁴.

As regards consistency between the Union's regulatory frameworks, the Commission has also recently adopted a Communication setting out options to address the interface between chemical, product and waste legislation⁵. In 2018, the Commission will also examine options and actions for a more coherent policy framework of the different strands of work on EU product policy in their contribution to the circular economy. The interactions between legislation and industry cooperation on the use of by-products and the preparation for re-use and recycling of waste will also be considered in the framework of these initiatives and their follow-up.

As regards eco-design, the Commission, in line with the Eco-design Working Plan for the years 2016-2019⁶, confirms its strong commitment to ensuring that eco-design makes a more significant contribution to the circular economy, for example by more systematically tackling material efficiency issues such as durability and recyclability.

DECLARATION BY THE COMMISSION ON INITIATIVES ON THE COLLABORATIVE ECONOMY

In line with the Circular Economy Action Plan⁷, the Commission has launched a number of initiatives on the collaborative economy. As announced in its Communication on a European agenda for the collaborative economy⁸ in June 2016, the Commission will continue to monitor the economic and regulatory developments of the collaborative economy, in order to encourage the development of new and innovative business models, while ensuring adequate consumer and social protection.

³ COM (2018) 28 final
⁴ COM(2017) 637 final
⁵ COM (2018) 32 final
⁶ COM(2016) 773 final
⁷ COM(2015) 614 final
⁸ COM(2016) 356 final

DECLARATION BY THE COMMISSION ON MICRO-PLASTICS

In the context of the recently adopted European Strategy for Plastics in the Circular Economy⁹, the Commission has presented an integrated approach to address concerns about micro-plastics, including micro-bead ingredients. It focuses on preventive actions and aims at reducing the release of micro-plastics from all main sources – whether from products in which they are intentionally added (such as personal care products and paints) or originating from the production or use of other products (such as oxo-plastics, tyres, plastic pellets, and textiles).

DECLARATION BY THE COMMISSION ON THE REVIEW OF THE WASTE SHIPMENT REGULATION AND END-OF-WASTE MATERIALS

In the context of the planned review of Regulation (EU) No 1013/2006 on shipments of waste to be conducted by the end of 2020, the Commission will consider the feasibility of providing for further measures regarding shipments of end-of-waste materials where end-of-waste criteria have not been set at Union level according to Article 6, paragraph 2, of the Waste Framework Directive.

DECLARATION BY THE COMMISSION ON MEASURES TO ENSURE TREATMENT OF WASTE PRIOR TO LANDFILLING

In accordance with Article 6 (a) of Directive 1999/31/EC on the landfill of waste Member States shall take measures to ensure that only waste that has been subject to treatment is landfilled, while making sure that such measures do not compromise the achievement of the objectives of Directive 2008/98/EC on waste (Waste Framework Directive) as revised, notably with respect to the waste hierarchy, the separate collection of waste and the preparing for re-use and recycling targets as set out in that Directive.

Building on the exchange of views that took place during the Waste Framework Directive Experts' Group meeting held on 30 June 2017 and in the light of the ruling of the Court of Justice of the European Union in case C-323/13, in the coming months the Commission will step up its dialogue with Member States on the policy measures to be taken in this area.

⁹ COM (2018) 28 final

DECLARATION BY THE COMMISSION ON
THE PROCEDURE OF ADOPTION OF IMPLEMENTING ACTS

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5§4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission *may* adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established in Article 5§4 recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.

DECLARATION BY THE COMMISSION ON
THE AVAILABILITY OF DATA AND REPORTING OBLIGATIONS

In view of monitoring progress towards the new targets for municipal and packaging waste and in view of relevant review clauses, in particular to set targets for food waste prevention and for the recycling of waste oils, the Commission underlines the importance of the common understanding reached between the co-legislators that Member States will ensure that the reporting of data under Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste and 1999/31/EC on the landfill of waste as amended, will cover the year 2020.

STATEMENT BY POLAND

I. Częstotliwość składania sprawozdań przez państwa członkowskie.

Polska z rozczarowaniem przyjęła informację o zwiększeniu częstotliwości składania sprawozdań przez państwa członkowskie.

W projektach dyrektyw zwiększono częstotliwość składania sprawozdań przez państwa członkowskie – z dwuletnich za każdy rok na roczne, co nigdy nie było akceptowane w mandacie. Przedstawione rozwiązania stanowią znaczące obciążenie administracyjne państw członkowskich. Polska poparła mandat w maju 2017 r. pod warunkiem uwzględnienia postulatu Polski odnośnie do częstotliwości składowania sprawozdań.

II. Realność i wykonalność niektórych celów dot. recyklingu.

W zakresie recyklingu odpadów opakowaniowych z tworzyw sztucznych Polska zauważa, że ten cel określony na 55% w roku 2030 może być technicznie trudny do osiągnięcia, biorąc pod uwagę właściwości niektórych materiałów.

STATEMENT BY GREECE

Greece supports the overall compromise achieved during the negotiations for the “Waste Package”, acknowledging the painstaking efforts it took to reach an agreement, as well as the importance of the package within the Circular Economy Strategy.

However, a number of important provisions have been included in the course of the negotiations that are not legally coherent, or that have not been based on proper impact assessment, in particular:

Art. 9(1) indent nine & Art.9(1a) on the interface between REACH and waste, as well as the lack of reference to Art. 10(2) & 10(3) of WFD in:

Art. 11(1) on selective demolition,

Art. 18.3 on mixed hazardous waste,

Art. 20 on separate collection of household hazardous waste and

Art. 22(1) on biowaste.

In our view, the implementation of the said provisions is likely to prove so challenging in practice for businesses, the public administration and for citizens, that it will even be counterproductive as to the overall objective of promoting circular economy in a sustainable manner.

Furthermore, we are of the opinion that the full financial responsibility shall be borne by the EPR systems and we note that the 10% landfill target of municipal waste by 2035/2040 does not sufficiently take into account the different social conditions or population density and characteristics between MSs and leads inevitably to increased incineration, which is a sub-optimal outcome.

Moreover, we encourage the Commission to address in a systematic and coherent manner the specific characteristics of small remote islands as part of the implementing measures of the package and notably of the revised Landfill Directive as well as of Art. 10(1) to 10(3) and the aforementioned related provisions.

STATEMENT BY FINLAND

Finland supports the aims and objectives as well as the overall compromise on the “Waste Package”, which paves the way for increased recycling and an enhanced circular economy.

However, Finland wishes to reiterate its concern about the inconsistency of the overall recycling targets for packaging waste with respect to its material-specific targets (Article 6, paragraph 1, point (f) and (h) of the Directive on Packaging and Packaging Waste).

More precisely, Finland considers that the reduction in material-specific targets were not sufficiently reflected in the overall recycling targets. Compared to the Commission’s proposal, for example, the recycling target for wood packaging waste was reduced by 35 percentage points (from 60% to 25%) in 2025 and by 45 percentage points (from 75% to 30%) in 2030. Despite this, the overall target for 2025 remained the same (65%) as in the Commission’s proposal, and the target for 2030 was decreased by only 5 percentage points (from 75% to 70%).

Finland also considers that the overall recycling targets for packaging waste do not sufficiently take into account the fact that Member States’ ability to attain the targets depends significantly on the proportion of certain packaging materials that are used. In this regard, the final deal is particularly unfavourable to those Member States where the use of wood packaging is widespread and where the proportion of wood packaging waste of the total amount of packaging waste is significant.

For these Member States, the overall recycling targets can only be achieved in practice if the recycling rates for wood packaging waste can be increased to levels clearly above the material-specific targets. Even extremely efficient recycling of other packaging waste materials (i.e. much higher than their material-specific recycling targets) could not compensate for the dominant impact of the lower recycling rate for wood packaging. This is contradictory given that the recycling targets for wood packaging waste were deliberately set at a lower level due to the limited recycling potential.

Consequently, and yet again stressing the commitment and support for the aims and objectives of the waste package, Finland regrets that the binding overall recycling targets for packaging waste treat Member States unequally according to the proportion of certain packaging materials used in relation to the total amount of all packaging materials.

STATEMENTS BY GERMANY

Getrennte Sammlung

1. Art. 10 Abs. 2 der geltenden Abfallrahmenrichtlinie (AbfRRL) sieht vor, dass zur Einhaltung des Verwertungsgebots gem. Art. 10 Abs. 1 eine Getrenntsammlung von Abfällen erfolgt, „falls dies technisch, ökologisch und wirtschaftlich durchführbar ist“. Die im Trilog nunmehr beschlossene Änderung des Art. 10 Abs. 2 hebt diesen Vorbehalt auf und ersetzt ihn in Art. 10 Abs. 3 (neu) durch eine spezielle Abweichungsklausel nach der die Mitgliedstaaten von der Getrenntsammlungspflicht unter besonderen Bedingungen Ausnahmen gestatten können. Die Änderung des Art. 10 AbfRRL wirkt sich sowohl auf die unmittelbaren Erzeuger- und Besitzerpflichten als auch auf die mitgliedstaatliche Verpflichtung zur Getrenntsammlung bestimmter Abfälle bzw. zur Erfüllung von Recyclingquoten (Art. 11 AbfRRL) und zur Getrenntsammlung von Bioabfällen (Art. 22 AbfRRL) aus.

Deutschland unterstützt das von der AbfRRL verfolgte Ziel einer nachhaltigen Kreislaufwirtschaft auf EU- sowie auf nationaler Ebene. Die Kreislaufwirtschaft ist von allen Akteuren zu tragen und bedarf daher einer rechtssicheren Grundlage. Deutschland weist darauf hin, dass unabhängig von der Abweichungsklausel des Art. 10 Abs. 3 AbfRRL sowohl nach dem Vertrag über die Arbeitsweise der Europäischen Union als auch nach deutschem Verfassungsrecht Abfallerzeugern und -besitzern verbindliche Pflichten, wie insbesondere Getrenntsammlungspflichten, nur auferlegt werden dürfen, wenn diese ihrerseits verhältnismäßig, d.h. geeignet, erforderlich und mit Blick auf das Ziel eines stärkeren Recyclings angemessen sind.

2. Gleiches gilt für das neue Verbot der Verbrennung getrennt gesammelter Abfälle nach Art. 10 Abs. 3a (neu) AbfRRL sowie das Verbot ihrer Deponierung nach Art. 5 Abs. 3 Buchstabe f) (neu) DepRL. Diese Verbote dürfen dem Abfallerzeuger und -besitzer nur auferlegt werden, wenn sie verhältnismäßig sind. Zudem verlangt Art. 13 AbfRRL, dass eine Bewirtschaftung dieser Abfälle ohne Gefährdung von Mensch und Umwelt sichergestellt ist.

Zu der Mitteilungspflicht für Erzeugnisse an die ECHA (Artikel 9 Absatz 2 neunter Anstrich und Abs. 1a ARRL)

Die in Artikel 9 Absatz 1, neunter Anstrich und Abs. 1a in der Schlussphase der Trilogverhandlungen eingebrachte Regelung zur Erfassung von Erzeugnissen, die besonders besorgniserregende Stoffe im Sinne der REACH-Verordnung enthalten, in einer Datenbank bei der Europäischen Chemikalienagentur ECHA, stellt eine Vielzahl von Detailfragen, die geklärt werden müssen, damit die Mitgliedstaaten Regelungen erarbeiten können, die den Zielen der Vorschrift gerecht werden. So muss insbesondere geklärt werden, wie die betroffenen Erzeugnisse in einer Weise identifiziert werden können, die eine sinnvoll recherchierbare Einstellung der Angaben in eine zentrale Datenbank ermöglicht. Ferner sind insbesondere gemeinsame Regelungen zur Frage der in großer Zahl zu erwartenden Mehrfachmeldungen zum gleichen Erzeugnis durch die vorgesehene Erstreckung der Pflichten auf alle Lieferanten in der Lieferkette zu erarbeiten.

Deutschland bedauert, dass diese Regelung, die für alle Beteiligten einen erheblichen Aufwand verursachen wird, ohne eine der Komplexität der Materie angemessene inhaltliche Vorbereitung und Folgenabschätzung in den Entwurf aufgenommen wurde, und kann ihr nur im Hinblick auf den im Trilogverfahren erzielten Gesamtkompromiss zustimmen. Deutschland bittet die Kommission, unter Einschaltung der ECHA als der für die Führung der Datenbank vorgesehenen Stelle die inhaltlichen Präzisierungen zu erarbeiten, die für eine sachgerechte, den Aufwand auf das unbedingt erforderliche Maß begrenzende Implementierung der Regelung durch ECHA und die Mitgliedstaaten erforderlich sind. Sollte dies aus Sicht der Kommission Ergänzungen des Unionsrechts erfordern, wird die Kommission gebeten, entsprechende Regelungsentwürfe vorzulegen.