Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste (Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

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 efficient and rational utilisation of natural resources, promoting the principles of the circular economy, enhancing the use of renewable energy, increasing energy efficiency, reducing the dependence of the Union on imported resources, providing new economic opportunities and contributing to long-term competitiveness. The more efficient use of resources 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/EC[(4)] for the recovery and recycling of packaging and packaging waste should be amended by increasing the recycling of packaging waste to make them better reflect the Union's ambition to move to a circular economy.

(3) Furthermore, in order to ensure greater coherence in Union waste law, the definitions in Directive 94/62/EC should be aligned, where relevant, with those of Directive 2008/98/EC of the European Parliament and of the Council[(5)] which is applicable to waste in general.

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(4) Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is important therefore that Member States take appropriate measures to encourage the increase in the share of reusable packaging placed on the market and the reuse of packaging. Such measures can include the use of deposit-return schemes and other incentives, such as setting quantitative targets, taking reuse 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 reusable packaging and to achieve a reduction in consumption of packaging that is not recyclable and of excessive packaging.

(5) As reuse entails the avoidance of placing new packaging on the market and increasing the volumes of packaging waste generated, reusable sales packaging that is 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.

(6) 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 into account, where appropriate, the benefits of using bio-based materials and materials suitable for multiple recycling. 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.

(7) Fostering a sustainable bio-economy can contribute to decreasing the Union'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 a life-cycle perspective.

(8) 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 the 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 reuse, recycling and other recovery.

(9) 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 as laid down in Directive 2008/98/EC, and are channelled back into the European economy, thereby making progress in the implementation of the Commission

Communication of 4 November 2008 on 'The raw materials initiative: meeting our critical needs for growth and jobs in Europe' and the creation of a circular economy.

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

(11) This Directive sets long-term objectives for the Union's waste management and gives economic operators and Member States a clear direction for the investments needed to achieve those objectives. In developing their national waste management plans and planning investments in waste management infrastructure, Member States should make sound use of investments, including through Union Funds, by prioritising prevention including reuse, and recycling, in line with the waste hierarchy.

(12) As a result of the combination of recycling targets and landfill restrictions laid down in Directive 2008/98/EC and Council Directive 1999/31/EC[(6)], setting targets for recovery and maximum targets for recycling of packaging waste is no longer necessary.

(13) 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 savings in energy and reduction of carbon dioxide emissions. The existing recycling target for metal packaging should therefore be split into separate targets for those two types of waste.

(14) The 2030 recycling targets for packaging should be examined with a view to maintaining or, if appropriate, increasing them. During that 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.

(15) 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 counted as recycled should be at the point where packaging waste enters the recycling operation. Nevertheless, 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 which occur 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. Those 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 which they report 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 (such as household or commercial), 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 or chemical

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transformation processes inherent in 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.

(16) Where packaging waste materials cease to be waste as a result of a preparatory operation before being actually reprocessed, such materials can be counted as recycled provided that they are destined for subsequent reprocessing into products, materials or substances, whether for their original or other purposes. End-of-waste materials which are to be used as fuels or other means to generate energy, which are backfilled or disposed of, or which are to be used in any operation that has the same purpose as recovery of waste other than recycling, should not be counted towards the attainment of the recycling targets.

(17) Where the calculation of the recycling rate is applied to aerobic or anaerobic treatment of biodegradable packaging waste, the amount of waste that enters aerobic or anaerobic treatment can 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 treatment 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 amount 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, which are disposed of, or which are to be used in any operation that has the same purpose as recovery of waste other than recycling, should not be counted towards the attainment of the recycling targets.

(18) In the case of exports of packaging waste from the Union for recycling, Member States should make effective use of the inspection powers provided for in Article 50(4c) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council[7] to require documentary evidence to ascertain whether a shipment is destined for recovery operations which are in compliance with Article 49 of that Regulation and therefore 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 carrying out that task, Member States could cooperate with other relevant actors, such as the competent authorities in the country of destination, independent third-party verification bodies or organisations implementing extended producer responsibility obligations on behalf of producers of products established under extended producer responsibility schemes, which could 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 waste exported from the Union is treated in broadly equivalent conditions to those required under relevant Union environmental law.

(19) In order to ensure better, more timely and more uniform implementation of this Directive and anticipate any implementation weaknesses, a system of early warning

reports should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.

(20) As the amount and type of packaging used generally depends on choices made by the producer rather than the consumer, extended producer responsibility schemes should be established. 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. The rules on extended producer responsibility laid down in Directive 2008/98/EC should therefore apply to extended producer responsibility schemes for producers of packaging.

(21) 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, avoiding obstacles to trade and avoiding distortion and restriction of competition within the Union, the essential requirements of Directive 94/62/EC and Annex II thereto should be reviewed, and if necessary amended in order to strengthen the requirements with a view to enhancing the design for reuse and a high quality recycling of packaging.

(22) Data reported by Member States are essential for the Commission to assess compliance with Union waste law by 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.

(23) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance or ensuring good implementation, and are generating unnecessary administrative burdens. 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.

(24) Reliable reporting of data concerning waste management is paramount to efficient implementation and to ensuring comparability of data among Member States. Therefore, when reporting on the attainment of the targets set out in Directive 94/62/EC as amended by this Directive, Member States should use the most recent rules developed by the Commission and methodologies developed by the respective national competent authorities responsible for implementing this Directive.

(25) In order to supplement or amend Directive 94/62/EC, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles 11(3) and 19(2) and Article 20 of that Directive, as amended by this Directive. It is of particular importance that the Commission carry 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