Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on 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 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 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 and transformed into sustainable material management, 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. In order to make the economy truly circular, it is necessary to take additional measures on sustainable production and consumption, by focusing on the whole life cycle of products in a way that preserves resources and closes the loop. 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) Improving the efficiency of resource use and ensuring that waste is valued as a resource can contribute to reducing the Union’s dependence on the import of raw materials and facilitate the transition to more sustainable material management and to a circular economy model. That transition should contribute to the smart, sustainable and inclusive growth goals set out in the Europe 2020 strategy and create important opportunities for local economies and stakeholders, while helping to increase synergies between the circular economy and energy, climate, agriculture, industry and research

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policies as well as bringing benefits to the environment in terms of greenhouse gas emission savings and to the economy.

(3) The targets laid down in Directive 2008/98/EC of the European Parliament and of the Council[4] for preparing for re-use and recycling of waste should be increased to make them better reflect the Union's ambition to move to a circular economy.

(4) The coherence between Directive 2008/98/EC and related Union legislative acts such as Directive 2009/28/EC of the European Parliament and of the Council[5] and Regulation (EC) No 1907/2006 of the European Parliament and of the Council[6] needs to be ensured.

(5) 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 guide measures and investments, notably by preventing the creation of structural overcapacities for the treatment of residual waste and lock-ins of recyclable materials at the lower levels of the waste hierarchy.

(6) Municipal waste constitutes approximately between 7 and 10 % of the total waste generated in the Union. That waste stream, however, is amongst the most complex ones to manage, and the way it is managed generally gives a good indication of the quality of the overall waste management system in a country. The challenges of municipal waste management result from its highly complex and mixed composition, direct proximity of the generated waste to citizens, a very high public visibility and its impact on the environment and human health. As a result, the management of municipal waste requires a highly complex system including an efficient collection scheme, an effective sorting system and a proper tracing of waste streams, the active engagement of citizens and businesses, an infrastructure adjusted to the specific waste composition, and an elaborate financing system. Countries which have developed efficient municipal waste management systems generally perform better in overall waste management, including the attainment of the recycling targets.

(7) Experience has shown that, irrespective of the allocation of responsibilities for waste management between public and private actors, waste management systems can help to achieve a circular economy and that the decision on the allocation of responsibilities frequently depends on geographical and structural conditions. The rules laid down in this Directive allow for waste management systems where the municipalities have the general responsibility for collecting municipal waste, for systems where such services are contracted out to private operators, or for any other type of allocation of responsibilities between public and private actors. The choice for any such systems, and whether or not to change them, remains the responsibility of Member States.

(8) Plant-based substances from the agri-food industry and food of non-animal origin no longer intended for human consumption which are destined for oral animal feeding should, in order to avoid duplication of rules, be excluded from the scope of Directive 2008/98/EC if in full compliance with Union feed legislation. Directive 2008/98/EC should therefore not apply to those products and substances when used for feed, and the scope of that Directive needs to be clarified accordingly. Without prejudice to other Union provisions applicable in the field of animal nutrition, animal by-products

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destined to be used as feed materials in accordance with Regulation (EC) No 767/2009 of the European Parliament and of the Council[(7)] are already excluded from the scope of Directive 2008/98/EC to the extent that they are covered by other Union legislation.

(9) Definitions of non-hazardous waste, municipal waste, construction and demolition waste, food waste, material recovery, backfilling and extended producer responsibility scheme need to be included in Directive 2008/98/EC so that the scope of these concepts is clarified.

(10) To ensure that preparing for re-use and recycling targets are based on reliable and comparable data and to enable a more effective monitoring of progress in attaining those targets, the definition of municipal waste in Directive 2008/98/EC should be in line with the definition used for statistical purposes by Eurostat and the Organisation for Economic Cooperation and Development (OECD), on the basis of which Member States have been reporting data for several years. Municipal waste is defined as waste from households and waste from other sources, such as retail, administration, education, health services, accommodation and food services, and other services and activities, which is similar in nature and composition to waste from households. Therefore, municipal waste includes, *inter alia*, waste from park and garden maintenance, such as leaves, grass and tree clippings, and waste from market and street cleaning services, such as the content of litter containers and sweepings except materials such as sand, rock, mud or dust. Member States are to ensure that waste from large commerce and industry which is not similar to waste from households is not included in the scope of municipal waste. Waste from production, agriculture, forestry, fishing, construction and demolition, septic tanks and sewage network and treatment, and end-of-life vehicles are excluded from the scope of municipal waste. Municipal waste is to be understood as corresponding to the types of waste included in Chapter 15 01 and Chapter 20, with the exception of codes 20 02 02, 20 03 04 and 20 03 06, of the list of waste established by Commission Decision 2014/955/EU[(8)] in the version in force on 4 July 2018. Waste falling under other chapters of that list is not to be considered as municipal waste except in cases where municipal waste undergoes treatment and is assigned codes listed in Chapter 19 of that list. Member States may use relevant categories in that list for statistical purposes. The definition of municipal waste in this Directive is introduced for the purposes of determining the scope of application of the preparing for re-use and recycling targets and their calculation rules. It is neutral with regard to the public or private status of the operator managing the waste and therefore includes waste from households and other sources that is managed by or on behalf of municipalities or directly by private operators.

(11) While the definition of construction and demolition waste refers to waste that results from construction and demolition activities in a general way, it also includes waste arising from minor do-it-yourself construction and demolition activities within private households. Construction and demolition waste should be understood as corresponding to the types of waste included in Chapter 17 of the list of waste established by Decision 2014/955/EU in the version in force on 4 July 2018.

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(12) A definition of material recovery should be introduced to cover forms of recovery other than energy recovery and other than the reprocessing of waste into materials used as fuels or other means to generate energy. It includes preparing for re-use, recycling and backfilling and other forms of material recovery such as the reprocessing of waste into secondary raw materials for engineering purposes in construction of roads or other infrastructure. Depending on the specific factual circumstances, such reprocessing can fulfil the definition of recycling if the use of materials is based on proper quality control and meets all relevant standards, norms, specifications and environmental and health protection requirements for the specific use.

(13) A definition of backfilling should be introduced to clarify that it means any recovery operation of suitable non-hazardous waste for the purposes of reclamation in excavated areas or for engineering purposes in landscaping. The waste used for backfilling should be limited to the amount strictly necessary to achieve those purposes.

(14) A definition of extended producer responsibility scheme should be introduced to clarify that it means a set of measures taken by Member States requiring producers of products to bear financial or financial and organisational responsibility for the management of the waste stage of a product's life cycle including separate collection, sorting and treatment operations. That obligation can also include organisational responsibility and a responsibility to contribute to waste prevention and to the reusability and recyclability of products. Producers of products can fulfil the obligations of the extended producer responsibility scheme individually or collectively.

(15) In order to contribute to achieving the objectives laid down in Directive 2008/98/EC, Member States should 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, which includes, *inter alia*, landfill and incineration charges, pay-as-you-throw schemes, extended producer responsibility schemes, facilitation of food donation, and incentives for local authorities, or other appropriate instruments and measures.

(16) In order to promote sustainable use of resources and industrial symbiosis, Member States should take appropriate measures to facilitate the recognition as a by-product of a substance or an object resulting from a production process the primary aim of which is not the production of that substance or object if the harmonised conditions established at Union level are respected. The Commission should be empowered to adopt implementing acts in order to establish detailed criteria on the application of the by-product status, prioritising replicable practices of industrial symbiosis.

(17) In order to provide operators in markets for secondary raw materials with more certainty as to the waste or non-waste status of substances or objects and to promote a level playing field, it is important that Member States take appropriate measures to ensure that waste that has undergone a recovery operation is considered to have ceased to be waste if it complies with all the conditions laid down in Article 6(1) of Directive 2008/98/EC as amended by this Directive. Such measures may include the adoption of legislation transposing those conditions supported by procedures for their implementation, such as the establishment of material and application-specific end-of-waste criteria, guidance documents, case-by-case decisions and other procedures for the ad hoc application of

the harmonised conditions established at Union level. Such measures should include enforcement provisions to verify that waste that is considered to have ceased to be waste as a result of a recovery operation complies with the law of the Union on waste, chemicals and products, in particular prioritising waste streams that pose a higher risk to human health and the environment due to the nature and volume of those waste streams, waste that is subject to innovative recovery processes or waste that is recovered for subsequent further use in other Member States. Measures may also include the setting of a requirement on the operators recovering waste or holders of recovered waste materials to demonstrate compliance with the conditions laid down in Article 6(1) of Directive 2008/98/EC as amended by this Directive. In order to prevent illegal shipments of waste and to raise awareness among Member States and economic operators, there should be greater transparency about Member State approaches to end-of-waste status, in particular with regard to their case-by-case decisions and the result of verification by competent authorities, as well as the specific concerns of Member States and competent authorities about certain waste streams. The final determination whether the conditions laid down in Article 5 or in Article 6 of Directive 2008/98/EC as amended by this Directive are fulfilled remains the exclusive responsibility of the Member State based on all relevant information provided by the holder of the material or waste.

(18) Implementing powers should be conferred on the Commission in order to establish detailed criteria on the application of the end-of-waste status. In that context, specific end-of-waste criteria should be considered at least for aggregates, paper, tyres and textiles.

(19) The application of rules on by-products and end-of-waste should be without prejudice to other provisions of Union law, particularly Article 28 and Article 50(4a) and (4b) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council[(9)] on shipments of waste, legislation on chemicals and legislation concerning the placing on the market of certain products. End-of-waste status can only be achieved if substances or objects comply with relevant requirements applicable to products. End-of-waste rules can be established in product-specific legislation.

(20) Member States should take appropriate measures to encourage the development, production, marketing and use of products and components of products that are suitable for multiple use, that contain recycled materials, that are technically durable and easily reparable and that are, after having become waste, suitable for preparing for re-use and recycling in order to facilitate proper implementation of the waste hierarchy and without compromising the free movement of goods in the internal market. Those measures should take into account the impact of products throughout their life cycle, the waste hierarchy and, where appropriate, the potential for multiple recycling.

(21) Extended producer responsibility schemes form an essential part of efficient waste management. However, their effectiveness and performance differ significantly between Member States. It is necessary therefore to set minimum operating requirements for such extended producer responsibility schemes, and to clarify that those requirements also apply to extended producer responsibility schemes established pursuant to other legislative acts of the Union, in particular Directives 2000/53/EC[(10)],