

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Text with EEA relevance)

DIRECTIVE 2008/98/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 19 November 2008

on waste and repealing certain Directives

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

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 procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste⁽⁴⁾ establishes the legislative framework for the handling of waste in the Community. It defines key concepts such as waste, recovery and disposal and puts in place the essential requirements for the management of waste, notably an obligation for an establishment or undertaking carrying out waste management operations to have a permit or to be registered and an obligation for the Member States to draw up waste management plans. It also establishes major principles such as an obligation to handle waste in a way that does not have a negative impact on the environment or human health, an encouragement to apply the waste hierarchy and, in accordance with the polluter-pays principle, a requirement that the costs of disposing of waste must be borne by the holder of waste, by previous holders or by the producers of the product from which the waste came.
- (2) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme⁽⁵⁾ calls for the development or revision of the legislation on waste, including a clarification of the distinction between waste and non-waste, and for the development of measures regarding waste prevention and management, including the setting of targets.
- (3) The Commission communication of 27 May 2003 towards a Thematic Strategy on the prevention and recycling of waste noted the need to assess the existing definitions of recovery and disposal, the need for a generally applicable definition of recycling and a debate on the definition of waste.

- (4) In its resolution of 20 April 2004 on the abovementioned communication⁽⁶⁾, the European Parliament called on the Commission to consider extending Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control⁽⁷⁾ to the waste sector as a whole. It also asked the Commission to differentiate clearly between recovery and disposal and to clarify the distinction between waste and non-waste.
- (5) In its conclusions of 1 July 2004, the Council called on the Commission to bring forward a proposal for the revision of certain aspects of Directive 75/442/EEC, repealed and replaced by Directive 2006/12/EC, in order to clarify the distinction between waste and non-waste and that between recovery and disposal.
- (6) The first objective of any waste policy should be to minimise the negative effects of the generation and management of waste on human health and the environment. Waste policy should also aim at reducing the use of resources, and favour the practical application of the waste hierarchy.
- (7) In its Resolution of 24 February 1997 on a Community strategy for waste management⁽⁸⁾, the Council confirmed that waste prevention should be the first priority of waste management, and that re-use and material recycling should be preferred to energy recovery from waste, where and insofar as they are the best ecological options.
- (8) It is therefore necessary to revise Directive 2006/12/EC in order to clarify key concepts such as the definitions of waste, recovery and disposal, to strengthen the measures that must be taken in regard to waste prevention, to introduce an approach that takes into account the whole life-cycle of products and materials and not only the waste phase, and to focus on reducing the environmental impacts of waste generation and waste management, thereby strengthening the economic value of waste. Furthermore, the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. In the interests of clarity and readability, Directive 2006/12/EC should be repealed and replaced by a new directive.
- (9) Since most significant waste management operations are now covered by Community legislation in the field of environment, it is important that this Directive be adapted to that approach. An emphasis on the environmental objectives laid down in Article 174 of the Treaty would bring the environmental impacts of waste generation and waste management more sharply into focus throughout the life-cycle of resources. Consequently, the legal basis for this Directive should be Article 175.
- (10) Effective and consistent rules on waste treatment should be applied, subject to certain exceptions, to movable property which the holder discards or intends or is required to discard.
- (11) The waste status of uncontaminated excavated soils and other naturally occurring material which are used on sites other than the one from which they were excavated should be considered in accordance with the definition of waste and the provisions on by-products or on the end of waste status under this Directive.

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- (12) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption⁽⁹⁾ provides, inter alia, for proportionate controls as regards the collection, transport, processing, use and disposal of all animal by-products including waste of animal origin, preventing it from presenting a risk to animal and public health. It is therefore necessary to clarify the link with that Regulation, avoiding duplication of rules by excluding from the scope of this Directive animal by-products where they are intended for uses that are not considered waste operations.
- (13) In the light of the experience gained in applying Regulation (EC) No 1774/2002, it is appropriate to clarify the scope of waste legislation and of its provisions on hazardous waste as regards animal by-products regulated by Regulation (EC) No 1774/2002. Where animal by-products pose potential health risks, the appropriate legal instrument to address these risks is Regulation (EC) No 1774/2002 and unnecessary overlaps with waste legislation should be avoided.
- (14) The classification of waste as hazardous waste should be based, inter alia, on the Community legislation on chemicals, in particular concerning the classification of preparations as hazardous, including concentration limit values used for that purpose. Hazardous waste should be regulated under strict specifications in order to prevent or limit, as far as possible, the potential negative effects on the environment and on human health due to inappropriate management. Furthermore, it is necessary to maintain the system by which waste and hazardous waste have been classified in accordance with the list of the types of waste as last established by Commission Decision 2000/532/EC⁽¹⁰⁾, in order to encourage a harmonised classification of waste and ensure the harmonised determination of hazardous waste within the Community.
- (15) It is necessary to distinguish between the preliminary storage of waste pending its collection, the collection of waste and the storage of waste pending treatment. Establishments or undertakings that produce waste in the course of their activities should not be regarded as engaged in waste management and subject to authorisation for the storage of their waste pending its collection.
- (16) Preliminary storage of waste within the definition of collection is understood as a storage activity pending its collection in facilities where waste is unloaded in order to permit its preparation for further transport for recovery or disposal elsewhere. The distinction between preliminary storage of waste pending collection and the storage of waste pending treatment should be made, in view of the objective of this Directive, according to the type of waste, the size and time period of storage and the objective of the collection. This distinction should be made by the Member States. The storage of waste prior to recovery for a period of three years or longer and the storage of waste prior to disposal for a period of one year or longer is subject to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste⁽¹¹⁾.
- (17) Waste collection schemes which are not conducted on a professional basis should not be subject to registration as they present a lower risk and contribute to the separate collection of waste. Examples of such schemes are waste medicines collected by

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pharmacies, take-back schemes in shops for consumer goods and community schemes in schools.

- (18) Definitions of prevention, re-use, preparing for re-use, treatment and recycling should be included in this Directive, in order to clarify the scope of these concepts.
- (19) The definitions of recovery and disposal need to be modified in order to ensure a clear distinction between the two concepts, based on a genuine difference in environmental impact through the substitution of natural resources in the economy and recognising the potential benefits to the environment and human health of using waste as a resource. In addition, guidelines may be developed in order to clarify cases where this distinction is difficult to apply in practice or where the classification of the activity as recovery does not match the real environmental impact of the operation.
- (20) This Directive should also clarify when the incineration of municipal solid waste is energy-efficient and may be considered a recovery operation.
- (21) Disposal operations consisting of release to seas and oceans including sea bed insertion are also regulated by international conventions, in particular the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13 November 1972, and the 1996 Protocol thereto as amended in 2006.
- (22) There should be no confusion between the various aspects of the waste definition, and appropriate procedures should be applied, where necessary, to by-products that are not waste, on the one hand, or to waste that ceases to be waste, on the other hand. In order to specify certain aspects of the definition of waste, this Directive should clarify:
 - when substances or objects resulting from a production process not primarily aimed at producing such substances or objects are by-products and not waste. The decision that a substance is not waste can be taken only on the basis of a coordinated approach, to be regularly updated, and where this is consistent with the protection of the environment and human health. If the use of a by-product is allowed under an environmental licence or general environmental rules, this can be used by Member States as a tool to decide that no overall adverse environmental or human health impacts are expected to occur; an object or substance should be regarded as being a by-product only when certain conditions are met. Since by-products fall into the category of products, exports of by-products should meet the requirements of the relevant Community legislation; and
 - when certain waste ceases to be waste, laying down end-of-waste criteria that provide a high level of environmental protection and an environmental and economic benefit; possible categories of waste for which ‘end-of-waste’ specifications and criteria should be developed are, among others, construction and demolition waste, some ashes and slags, scrap metals, aggregates, tyres, textiles, compost, waste paper and glass. For the purposes of reaching end-of-waste status, a recovery operation may be as simple as the checking of waste to verify that it fulfils the end-of-waste criteria.

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- (23) In order to verify or calculate if the recycling and recovery targets set in European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste⁽¹²⁾, Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles⁽¹³⁾, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)⁽¹⁴⁾ and Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators⁽¹⁵⁾ as well as other relevant Community legislation are met, the amounts of waste which have ceased to be waste should be accounted for as recycled and recovered waste when the recycling or recovery requirements of that legislation are satisfied.
- (24) On the basis of the definition of waste, in order to promote certainty and consistency, the Commission may adopt guidelines to specify in certain cases when substances or objects become waste. Such guidelines may be developed inter alia for electrical and electronic equipment and vehicles.
- (25) It is appropriate that costs be allocated in such a way as to reflect the real costs to the environment of the generation and management of waste.
- (26) The polluter-pays principle is a guiding principle at European and international levels. The waste producer and the waste holder should manage the waste in a way that guarantees a high level of protection of the environment and human health.
- (27) The introduction of extended producer responsibility in this Directive is one of the means to support the design and production of goods which take into full account and facilitate the efficient use of resources during their whole life-cycle including their repair, re-use, disassembly and recycling without compromising the free circulation of goods on the internal market.
- (28) This Directive should help move the EU closer to a 'recycling society', seeking to avoid waste generation and to use waste as a resource. In particular, the Sixth Community Environment Action Programme calls for measures aimed at ensuring the source separation, collection and recycling of priority waste streams. In line with that objective and as a means to facilitating or improving its recovery potential, waste should be separately collected if technically, environmentally and economically practicable, before undergoing recovery operations that deliver the best overall environmental outcome. Member States should encourage the separation of hazardous compounds from waste streams if necessary to achieve environmentally sound management.
- (29) Member States should support the use of recyclates, such as recovered paper, in line with the waste hierarchy and with the aim of a recycling society, and should not support the landfilling or incineration of such recyclates whenever possible.
- (30) In order to implement the precautionary principle and the principle of preventive action enshrined in Article 174(2) of the Treaty, it is necessary to set general environmental objectives for the management of waste within the Community. By virtue of those principles, it is for the Community and the Member States to establish a framework to

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prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures whereby recognised risks are eliminated.

- (31) The waste hierarchy generally lays down a priority order of what constitutes the best overall environmental option in waste legislation and policy, while departing from such hierarchy may be necessary for specific waste streams when justified for reasons of, inter alia, technical feasibility, economic viability and environmental protection.
- (32) It is necessary, in order to enable the Community as a whole to become self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from private households and to enable the Member States to move towards that aim individually, to make provision for a network of cooperation as regards disposal installations and installations for the recovery of mixed municipal waste collected from private households, taking into account geographical circumstances and the need for specialised installations for certain types of waste.
- (33) For the purposes of applying Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste⁽¹⁶⁾, mixed municipal waste as referred to in Article 3(5) of that Regulation remains mixed municipal waste even when it has been subject to a waste treatment operation that has not substantially altered its properties.
- (34) It is important that hazardous waste be labelled in accordance with international and Community standards. However, where such waste is collected separately from households, this should not result in householders being obliged to complete the requisite documentation.
- (35) It is important, in accordance with the waste hierarchy, and for the purpose of reduction of greenhouse gas emissions originating from waste disposal on landfills, to facilitate the separate collection and proper treatment of bio-waste in order to produce environmentally safe compost and other bio-waste based materials. The Commission, after an assessment on the management of bio-waste, will submit proposals for legislative measures, if appropriate.
- (36) Technical minimum standards concerning waste treatment activities not covered by Directive 96/61/EC may be adopted where there is evidence that a benefit would be gained in terms of protecting human health and the environment and where a coordinated approach to the implementation of this Directive would ensure the protection of human health and the environment.
- (37) It is necessary to specify further the scope and content of the waste management planning obligation, and to integrate into the process of developing or revising waste management plans the need to take into account the environmental impacts of the generation and management of waste. Account should also be taken, where appropriate, of the waste planning requirements laid down in Article 14 of Directive 94/62/EC and of the strategy for the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.

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- (38) Member States may apply environmental authorisations or general environmental rules to certain waste producers without compromising the proper functioning of the internal market.
- (39) According to Regulation (EC) No 1013/2006, Member States may take the measures necessary to prevent shipments of waste which are not in accordance with their waste management plans. By way of derogation from that Regulation, Member States should be allowed to limit incoming shipments to incinerators classified as recovery, where it has been established that national waste would have to be disposed of or that waste would have to be treated in a way that is not consistent with their waste management plans. It is recognised that certain Member States may not be able to provide a network comprising the full range of final recovery facilities within their territory.
- (40) In order to improve the way in which waste prevention actions are taken forward in the Member States and to facilitate the circulation of best practice in this area, it is necessary to strengthen the provisions relating to waste prevention and to introduce a requirement for the Member States to develop waste prevention programmes concentrating on the key environmental impacts and taking into account the whole life-cycle of products and materials. Such measures should pursue the objective of breaking the link between economic growth and the environmental impacts associated with the generation of waste. Stakeholders, as well as the general public, should have the opportunity to participate in the drawing up of the programmes, and should have access to them once drawn up, in line with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment⁽¹⁷⁾. Waste prevention and decoupling objectives should be developed covering, as appropriate, the reduction of the adverse impacts of waste and of the amounts of waste generated.
- (41) In order to move towards a European recycling society with a high level of resource efficiency, targets for preparing for re-use and recycling of waste should be set. Member States maintain different approaches to the collection of household wastes and wastes of a similar nature and composition. It is therefore appropriate that such targets take account of the different collection systems in different Member States. Waste streams from other origins similar to household waste include waste referred to in entry 20 of the list established by Commission Decision 2000/532/EC.
- (42) Economic instruments can play a crucial role in the achievement of waste prevention and management objectives. Waste often has value as a resource, and the further application of economic instruments may maximise environmental benefits. The use of such instruments at the appropriate level should therefore be encouraged while stressing that individual Member States can decide on their use.
- (43) Certain provisions on the handling of waste, laid down in Council Directive 91/689/EEC of 12 December 1991 on hazardous waste⁽¹⁸⁾, should be amended in order to remove obsolete provisions and to improve the clarity of the text. In the interests of simplifying Community legislation, they should be integrated into this Directive. In order to clarify the operation of the mixing ban laid down in Directive 91/689/EEC, and to protect the environment and human health, the exemptions to the mixing ban should

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additionally comply with best available techniques as defined in Directive 96/61/EC. Directive 91/689/EEC should therefore be repealed.

- (44) In the interests of the simplification of Community legislation and the reflection of environmental benefits, the relevant provisions of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils⁽¹⁹⁾ should be integrated into this Directive. Directive 75/439/EEC should therefore be repealed. The management of waste oils should be conducted in accordance with the priority order of the waste hierarchy, and preference should be given to options that deliver the best overall environmental outcome. The separate collection of waste oils remains crucial to their proper management and the prevention of damage to the environment from their improper disposal.
- (45) Member States should provide for effective, proportionate and dissuasive penalties to be imposed on natural and legal persons responsible for waste management, such as waste producers, holders, brokers, dealers, transporters and collectors, establishments or undertakings which carry out waste treatment operations and waste management schemes, in cases where they infringe the provisions of this Directive. Member States may also take action to recover the costs of non-compliance and remedial measures, without prejudice to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage⁽²⁰⁾.
- (46) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²¹⁾.
- (47) In particular, the Commission should be empowered to establish criteria regarding a number of issues such as the conditions under which an object is to be considered a by-product, the end-of-waste status and the determination of waste which is considered as hazardous, as well as to establish detailed rules on the application and calculation methods for verifying compliance with the recycling targets set out in this Directive. Furthermore, the Commission should be empowered to adapt the annexes to technical and scientific progress and to specify the application of the formula for incineration facilities referred to in Annex II, R1. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (48) In accordance with paragraph 34 of the interinstitutional agreement on better law-making⁽²²⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.
- (49) Since the objective of this Directive, namely the protection of the environment and human health, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale or effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of

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proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) OJ C 309, 16.12.2006, p. 55.
- (2) OJ C 229, 22.9.2006, p. 1.
- (3) Opinion of the European Parliament of 13 February 2007 (OJ C 287 E, 29.11.2007, p. 135), Council Common Position of 20 December 2007 (OJ C 71 E, 18.3.2008, p. 16) and Position of the European Parliament of 17 June 2008 (not yet published in the Official Journal). Council Decision of 20 October 2008.
- (4) OJ L 114, 27.4.2006, p. 9.
- (5) OJ L 242, 10.9.2002, p. 1.
- (6) OJ C 104 E, 30.4.2004, p. 401.
- (7) OJ L 257, 10.10.1996, p. 26. Directive replaced by Directive 2008/1/EC of the European Parliament and of the Council (OJ L 24, 29.1.2008, p. 8).
- (8) OJ C 76, 11.3.1997, p. 1.
- (9) OJ L 273, 10.10.2002, p. 1.
- (10) Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).
- (11) OJ L 182, 16.7.1999, p. 1.
- (12) OJ L 365, 31.12.1994, p. 10.
- (13) OJ L 269, 21.10.2000, p. 34.
- (14) OJ L 37, 13.2.2003, p. 24.
- (15) OJ L 266, 26.9.2006, p. 1.
- (16) OJ L 190, 12.7.2006, p. 1.
- (17) OJ L 156, 25.6.2003, p. 17.
- (18) OJ L 377, 31.12.1991, p. 20.
- (19) OJ L 194, 25.7.1975, p. 23.
- (20) OJ L 143, 30.4.2004, p. 56.
- (21) OJ L 184, 17.7.1999, p. 23.
- (22) OJ C 321, 31.12.2003, p. 1.