

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)

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

Article 2

Exclusions from the scope

- 1 The following shall be excluded from the scope of this Directive:
 - a gaseous effluents emitted into the atmosphere;
 - b land (in situ) including unexcavated contaminated soil and buildings permanently connected with land;
 - c uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated;
 - d radioactive waste;
 - e decommissioned explosives;
 - f faecal matter, if not covered by paragraph 2(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.
- 2 The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:
 - a waste waters;
 - b animal by-products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, landfilling or use in a biogas or composting plant;
 - c carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No 1774/2002;
 - d waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries⁽¹⁾.

3 Without prejudice to obligations under other relevant Community legislation, sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation shall be excluded from the scope of this Directive if it is proved that the sediments are non-hazardous.

4 Specific rules for particular instances, or supplementing those of this Directive, on the management of particular categories of waste, may be laid down by means of individual Directives.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'waste' means any substance or object which the holder discards or intends or is required to discard;
2. 'hazardous waste' means waste which displays one or more of the hazardous properties listed in Annex III;
3. 'waste oils' means any mineral or synthetic lubrication or industrial oils which have become unfit for the use for which they were originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;
4. 'bio-waste' means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants;
5. 'waste producer' means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;
6. 'waste holder' means the waste producer or the natural or legal person who is in possession of the waste;
7. 'dealer' means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;
8. 'broker' means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;
9. 'waste management' means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;
10. 'collection' means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;
11. 'separate collection' means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;
12. 'prevention' means measures taken before a substance, material or product has become waste, that reduce:

- (a) the quantity of waste, including through the re-use of products or the extension of the life span of products;
 - (b) the adverse impacts of the generated waste on the environment and human health; or
 - (c) the content of harmful substances in materials and products;
13. 're-use' means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;
14. 'treatment' means recovery or disposal operations, including preparation prior to recovery or disposal;
15. 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;
16. 'preparing for re-use' means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;
17. 'recycling' means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
18. 'regeneration of waste oils' means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;
19. 'disposal' means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations;
20. 'best available techniques' means best available techniques as defined in Article 2(11) of Directive 96/61/EC.

Article 4

Waste hierarchy

1 The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- a prevention;
- b preparing for re-use;
- c recycling;
- d other recovery, e.g. energy recovery; and
- e disposal.

2 When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome.

This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Member States shall ensure that the development of waste legislation and policy is a fully transparent process, observing existing national rules about the consultation and involvement of citizens and stakeholders.

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 13.

Article 5

By-products

1 A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste referred to in point (1) of Article 3 but as being a by-product only if the following conditions are met:

- a further use of the substance or object is certain;
- b the substance or object can be used directly without any further processing other than normal industrial practice;
- c the substance or object is produced as an integral part of a production process; and
- d further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

2 On the basis of the conditions laid down in paragraph 1, measures may be adopted to determine the criteria to be met for specific substances or objects to be regarded as a by-product and not as waste referred to in point (1) of Article 3. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

Article 6

End-of-waste status

1 Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

- a the substance or object is commonly used for specific purposes;
- b a market or demand exists for such a substance or object;
- c the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and
- d the use of the substance or object will not lead to overall adverse environmental or human health impacts.

The criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental effects of the substance or object.

2 The measures designed to amend non-essential elements of this Directive by supplementing it relating to the adoption of the criteria set out in paragraph 1 and specifying

the type of waste to which such criteria shall apply shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). End-of-waste specific criteria should be considered, among others, at least for aggregates, paper, glass, metal, tyres and textiles.

3 Waste which ceases to be waste in accordance with paragraphs 1 and 2, shall also cease to be waste for the purpose of the recovery and recycling targets set out in Directives 94/62/EC, 2000/53/EC, 2002/96/EC and 2006/66/EC and other relevant Community legislation when the recycling or recovery requirements of that legislation are satisfied.

4 Where criteria have not been set at Community level under the procedure set out in paragraphs 1 and 2, Member States may decide case by case whether certain waste has ceased to be waste taking into account the applicable case law. They shall notify the Commission of such decisions in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services⁽²⁾ where so required by that Directive.

Article 7

List of waste

1 The measures designed to amend non-essential elements of this Directive relating to the updating of the list of waste established by Decision 2000/532/EC shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). The list of waste shall include hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. The list of waste shall be binding as regards determination of the waste which is to be considered as hazardous waste. The inclusion of a substance or object in the list shall not mean that it is waste in all circumstances. A substance or object shall be considered to be waste only where the definition in point (1) of Article 3 is met.

2 A Member State may consider waste as hazardous waste where, even though it does not appear as such on the list of waste, it displays one or more of the properties listed in Annex III. The Member State shall notify the Commission of any such cases without delay. It shall record them in the report provided for in Article 37(1) and shall provide the Commission with all relevant information. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.

3 Where a Member State has evidence to show that specific waste that appears on the list as hazardous waste does not display any of the properties listed in Annex III, it may consider that waste as non-hazardous waste. The Member State shall notify the Commission of any such cases without delay and shall provide the Commission with the necessary evidence. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.

4 The reclassification of hazardous waste as non-hazardous waste may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.

5 The measures designed to amend non-essential elements of this Directive relating to the revision of the list in order to decide on its adaptation pursuant to paragraphs 2 and 3 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2).

6 Member States may consider waste as non-hazardous waste in accordance with the list of waste referred to in paragraph 1.

Status: This is the original version (as it was originally adopted).

7 The Commission shall ensure that the list of waste and any review of this list adhere, as appropriate, to principles of clarity, comprehensibility and accessibility for users, particularly small and medium-sized enterprises (SMEs).

- (1) OJ L 102, 11.4.2006, p. 15.
- (2) OJ L 204, 21.7.1998, p. 37.