

Commission Decision of 30 April 2009 completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries (notified under document number C(2009) 3012) (2009/359/EC)

COMMISSION DECISION

of 30 April 2009

completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries

(notified under document number C(2009) 3012)

(2009/359/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC<sup>(1)</sup>, and in particular Article 22(1)(f) thereof,

Whereas:

- (1) Article 3(3) of Directive 2006/21/EC provides for a definition of inert waste.
- (2) The purpose of complementing the definition of inert waste is to establish clear criteria and conditions under which waste from extractive industries can be considered as inert waste.
- (3) To minimise the administrative burden linked with the implementation of this Decision, it is appropriate from a technical point of view to exempt from specific testing those wastes for which existing relevant information is available, and to allow Member States to establish lists of waste material which could be considered as inert in accordance with the criteria set out in the present Decision.
- (4) In order to ensure the quality and the representativity of the information used, this Decision should be applied in the framework of the waste characterisation carried out in accordance with Commission Decision 2009/360/EC<sup>(2)</sup> and should be based on the same sources of information.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 18 of Directive 2006/12/EC of the European Parliament and of the Council<sup>(3)</sup>,

HAS ADOPTED THIS DECISION:

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**Changes to legislation:** There are currently no known outstanding effects for the Commission Decision of 30 April 2009 completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries (notified under document number C(2009) 3012) (2009/359/EC). (See end of Document for details)

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**Modifications etc. (not altering text)**

- C1** Decision: power to modify conferred (26.2.2022) by [The Waste and Agriculture \(Legislative Functions\) Regulations 2022 \(S.I. 2022/190\)](#), regs. 1(1), **10(1)(2)(c)**

*Article 1*

1 Waste shall be considered as being inert waste, within the meaning of [<sup>F1</sup>the relevant definition provision], where all of the following criteria, are fulfilled in both the short and the long term:

- a the waste will not undergo any significant disintegration or dissolution or other significant change likely to cause any adverse environmental effect or harm human health;
- b the waste has a maximum content of sulphide sulphur of 0,1 %, or the waste has a maximum content of sulphide sulphur of 1 % and the neutralising potential ratio, defined as the ratio between the neutralising potential and the acid potential, and determined on the basis of a static test prEN 15875 is greater than 3;
- c the waste presents no risk of self-combustion and will not burn;
- d the content of substances potentially harmful to the environment or human health in the waste, and in particular As, Cd, Co, Cr, Cu, Hg, Mo, Ni, Pb, V and Zn, including in any fine particles alone of the waste, is sufficiently low to be of insignificant human and ecological risk, in both the short and the long term. In order to be considered as sufficiently low to be of insignificant human and ecological risk, the content of these substances shall not exceed national threshold values for sites identified as not contaminated or relevant national natural background levels;
- e the waste is substantially free of products used in extraction or processing that could harm the environment or human health.

2 Waste may be considered as inert waste without specific testing if it can be demonstrated, to the satisfaction of the competent authority, that the criteria set out in paragraph 1 have been adequately considered and are met on the strength of existing information or valid procedures or schemes.

3 The [<sup>F2</sup>appropriate agency] may draw up lists of waste materials to be regarded as inert in accordance with the criteria defined in paragraphs 1 and 2.

[<sup>F3</sup>4. In paragraph 1, “the relevant definition provision”—

- a as it extends to England and Wales, means Article 3(3) of Directive [2006/21/EC](#);
- b as it extends to Scotland, means regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010;
- c as it extends to Northern Ireland, means regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015.

5. In paragraph 3, “appropriate agency” means—

- a in relation to England, the Environment Agency;
- b in relation to Wales, the Natural Resources Body for Wales;
- c in relation to Scotland—
  - i a planning authority, or
  - ii a National Park authority within the meaning of section 35(1) of the National Parks (Scotland) Act 2000 (as the case may be);

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- d in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.
6. A term which is used in this Article—
- a as it extends to Scotland and which is defined in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010 has the meaning given by that regulation;
  - b as it extends to Northern Ireland and which is defined in regulation 2(2) of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 has the meaning given by that regulation.]

#### Textual Amendments

- F1** Words in Art. 1(1) substituted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **19(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 1(3) substituted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **19(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Art. 1(4)-(6) inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **19(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### *[<sup>F4</sup>Article 1A*

1. For the purposes of Article 1, Directive [2006/21/EC](#) of the European Parliament and the Council concerning the management of waste from extractive industries is to be read in accordance with paragraphs 2 and 3.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before IP completion day, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.
3. Article 3 is to be read as if—
  - a in point (1), for “Article 1(a) of Directive [75/442/EEC](#)” there were substituted “ Article 3(1) of the Waste Framework Directive, as read with Articles 5 and 6 of that Directive ”;
  - b in point (2), for “Article 1(4) of Council Directive [91/689/EEC](#) of 12 December 1991 on hazardous waste” there were substituted “ Article 3(2) of the Waste Framework Directive ”;
  - c in point (4), for the words from “the national law” to the end there were substituted “ national law ”;
  - d in point (24), for the words from “the national law” to “takes place” there were substituted “ national law ”.
4. In paragraph 2—
  - a “appropriate agency” has the meaning given in Article 1(5);
  - b “appropriate authority” means—
    - i in relation to England, the Secretary of State;
    - ii in relation to Wales, the Welsh Ministers;
  - c “local authority” means—
    - i in England outside Greater London—
      - a district council,
      - a county council, or

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- the Council of the Isles of Scilly;
- ii in Greater London—
  - the council of a London borough,
  - the Common Council of the City of London,
  - the Sub-Treasurer of the Inner Temple, or
  - the Under-Treasurer of the Middle Temple;
- iii in Wales—
  - a county council, or
  - a county borough council.

#### Textual Amendments

- F4** Arts. 1A, 1B inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **19(3)** (as amended by [S.I. 2020/1540](#), regs. 1(3), **14(15)**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Article 1B

1. In Article 1A(3), the “Waste Framework Directive” means Directive [2008/98/EC](#) of the European Parliament and of the Council on waste, as last amended by [Directive (EU) 2018/851], and read in accordance with this Article.
2. A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before [IP completion day], was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of England or Wales.
3. Article 5 is to be read as if—
  - a in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - b after paragraph 1 there were inserted—
 

*1A*

Any decision as to whether a substance or object is a by-product must be made—

    - a in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and
    - b having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.;
  - c paragraphs 2 and 3 were omitted.
4. Article 6 is to be read as if—
  - a in paragraph 1, “Member States shall take appropriate measures to ensure that” were omitted;
  - b after paragraph 1 there were inserted—
 

*1A*

Any decision as to whether a substance or object has ceased to be waste must be made—

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- a in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and
  - b having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article.;
  - c in paragraph 2—
    - i the first subparagraph were omitted;
    - ii in the second subparagraph, for “Those detailed criteria” there were substituted “Any detailed criteria set out in guidance as referred to in paragraph 1A”;
    - iii the third and fourth subparagraphs were omitted;
  - d paragraph 3 were omitted;
  - e in paragraph 4—
    - i in the first subparagraph—
      - aa in the first sentence, for the words from the beginning to “Member State”, there were substituted “Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency”;
      - bb the second sentence were omitted;
    - ii in the second subparagraph—
      - aa for “Member States” there were substituted “The appropriate agency”;
      - bb “by competent authorities” were omitted.
5. Article 7 is to be read as if—
- a before paragraph 1 there were inserted—

*AI*

In this Article, the “list of waste” means the list contained in the Annex to Commission Decision 2000/532/EC, as that list has effect in England, Wales, Scotland or Northern Ireland (as the case may be).;
  - b in paragraph 1—
    - i the first and second sentences were omitted;
    - ii for the third sentence there were substituted “The list of waste shall, except as provided in Commission Decision 2000/532/EC, be binding as regards determination of the waste which is to be considered as hazardous waste or as non-hazardous waste.”;
  - c paragraphs 2, 3, 6 and 7 were omitted.
6. Annex 3 is to be read as if, in entry HP 9, in the second sentence, “in the Member States” were omitted.
7. In [this Article]—
- a “appropriate agency” has the meaning given in Article 1(5);
  - b “appropriate authority” and “local authority” have the meanings given in Article 1A(4).]

#### Textual Amendments

- F4** Arts. 1A, 1B inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **19(3)** (as amended by [S.I. 2020/1540](#), regs. 1(3), **14(15)**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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### *Article 2*

The assessment of the inert property of waste in accordance with this Decision shall be completed in the framework of the waste characterisation referred in Decision 2009/360/EC and shall be based on the same sources of information.

### *<sup>F5</sup>Article 3*

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#### **Textual Amendments**

**F5** [Art. 3](#) omitted (31.12.2020) by virtue of [The Waste \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/620\)](#), regs. 1(2)(b), **19(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Done at Brussels, 30 April 2009.

*For the Commission*

Stavros DIMAS

*Member of the Commission*

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**Changes to legislation:** *There are currently no known outstanding effects for the Commission Decision of 30 April 2009 completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries (notified under document number C(2009) 3012) (2009/359/EC). (See end of Document for details)*

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- (1) [OJ L 102, 11.4.2006, p. 15.](#)
- (2) See page 48 of this Official Journal.
- (3) [OJ L 114, 27.4.2006, p. 9.](#)

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