

Manual of European Environmental Policy

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Waste Framework Directive

Formal references	
75/442/EEC (OJ L194 25.7.1975)	Directive on waste
Proposed 10.9.74 – COM(74)1297	
91/156/EEC (OJ L78 26.03.1991)	Amendment
Proposed 5.8.88 – COM(88)391	
2006/12/EC (OJ L114 27.4.2006)	Codified Version of the Directive on waste repealing 75/442/EEC
Proposed 27.11.2003 (COM(2003)731)	
2008/98/EC (OJ L312 22.11.2008)	
Proposed 27.11.03 – COM(2003)731	Revised Directive on waste repealing 2006/12/EC , 75/439/EEC , 91/689/EEC as of 12 December 2010
Legal base	Article 192 TFEU (originally Article 130s EEC Treaty)
Supporting measures	
94/3/EC (OJ L5 07.01.1994)	Commission Decision establishing a list of wastes
96/350/EC (OJ L135 06.06.1996)	Commission Decision adapting annexes (listing ‘disposal’ and ‘recovery’ operations)
96/302/EC (OJ L116 11.05.1996)	Commission Decision establishing format for information
2000/532/EC (OJ L226 6.9.2000)	Council Decision replacing Decision 94/3/EC establishing a list of wastes
2001/118/EC (OJ L47 16.2.2001)	Commission Decision amending Decision 2000/532/EC
2001/119/EC (OJ L47 16.2.2001)	Commission Decision amending Decision 2000/532/EC
2001/573/EC (OJ L203 28.7.2001)	Commission Decision amending Decision 2000/532/EC
Council Regulation (EU) No 333/2011 (OJ L94 8.4.2011)	Council Regulation establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC
Binding dates	
2008/98/EC	
Transposition Deadline	12 December 2012
Target dates	Household waste – by 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly from other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50 per cent by weight
	Constriction and demolition waste – by 2020, the preparing for re-use, recycling and other material recovery, including backfilling

	operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 per cent by weight
Other key dates	<p>Waste prevention</p> <ul style="list-style-type: none"> – By end 2011 – the formulation of an action plan for further support measures at European level seeking, in particular, to change current consumption patterns; – By end of 2014 the setting of waste prevention and decoupling objectives for 2020, based on best available practices – By 12 December 2013 – Member States shall establish prevention programmes

Purpose of the Directives

Directive 2008/98/EC and Directive 2006/12/EC (originally 75/442/EEC) are intended to provide a basis for coherent Member State action to address the challenge of waste management. In December 2010 Directive 2006/12/EC will be repealed by Directive 2008/98/EC (along with the [Hazardous Waste Directive](#) and [Waste Oils Directive](#)), the latter will then take on the role as the central coordinating measure for EU waste laws. This sets out key definitions, principles and requirements for the environmentally responsible management of waste and attempts to move treatment up the waste hierarchy. It essentially acts as a framework Directive under which other waste laws sit. Directive 2008/98/EC was intended to improve and re-conceive waste policy in Europe, providing an improved baseline for future policy making and addressing ongoing inconsistencies and a perceived lack of clarity within the existing Directives.

Directive 2006/12/EC (formerly 75/442/EEC)

Summary of the Directive

Under the Directive four general duties are placed on Member States, to take measures to:

1. encourage the prevention or reduction of waste production and its harmfulness, particularly through the development of clean technologies, techniques for the final disposal of dangerous substances in waste destined for recovery and the development and marketing of products designed to have minimal environmental impact by nature of their manufacture, use or final disposal;
2. encourage the recovery of waste, including recycling, reuse or reclamation and the use of waste as a source of energy;
3. ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular without risk to air, soil and plants and animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest. The abandonment, dumping or uncontrolled disposal of waste must be prohibited (Article 4);

4. establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network is to enable the Community to be self sufficient in waste disposal.

Certain categories of waste are excluded from the scope of the Directive, for example gaseous effluents and, where covered by other legislation, radioactive waste, mining waste, waste waters and some agricultural waste. An Advisory Committee, with representatives of the Member States and chaired by a Commission representative, is established to assist the Commission, for example in amending the annexes. Member States are to inform the Commission of measures they intend to take in connection with the first of the above duties, except where Directive [83/189/EEC](#) laying down a procedure for the provision of information in the field of technical standards and regulations applies (on information on technical standards). The Commission is to inform the other Member States and the Advisory Committee.

Definitions

Seven essential terms are defined, including ‘management’, ‘holder’ and ‘collection’. ‘Producer’ is interpreted as the ‘original producer’ and/or anyone who carries out pre-processing, mixing or other similar operations. ‘Waste’, ‘disposal’ and ‘recovery’ are defined by reference to Annexes listing respectively categories of waste, disposal operations and operations which may lead to recovery.

Network of disposal installations

The network of disposal installations must enable the Community to become self-sufficient in waste disposal and the Member States to ‘move towards that aim individually’. In addition to best available technology not entailing excessive cost (BATNEEC), geographical circumstances or the need for specialized installations for certain wastes must be taken into account. The network must enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies.

Competent authorities

Member States are required to establish or designate the competent authority or authorities responsible for implementing the Directive. Specified tasks include drawing up waste management plans, issuing permits and inspecting installations.

Waste management plans

The competent authorities must draw up one or more waste management plans in order to meet the general duties imposed by the Directive. The plan(s) must cover:

- the type, quantity and origin of waste to be recovered or disposed of;
- general technical requirements;
- any special arrangements for particular wastes;
- suitable disposal sites or installations;

and may cover:

- the natural or legal persons empowered to manage waste;
- estimated costs of recovery and disposal;
- appropriate measures to encourage rationalization of collection, sorting and treatment.

Member States must collaborate with other Member States and the Commission ‘as appropriate’ and may take measures necessary to prevent movements of waste not in accordance with their waste management plans. In both cases, the Commission and other Member States must be informed.

Permits

Permits must be obtained from the competent authority by any establishment or undertaking which carries out disposal or possible recovery operations (as listed in the Annex). Permits must cover:

- the types and quantities of waste;
- technical requirements;
- security precautions;
- the disposal site; and
- the treatment method.

Permits may be time-limited, renewable, subject to conditions and obligations and, where appropriate, refused.

Exemptions from the permitting requirement may be made for establishments or undertakings which carry out their own waste disposal at the place of production or which carry out waste recovery, provided that the competent authorities have adopted ‘general rules’ governing these activities and that the general duty to recover or dispose of waste safely is complied with (Article 11). The Commission must be informed of any such general rules adopted. The establishments or undertakings must be registered with the competent authorities, as too must those which collect or transport waste ‘on a professional basis’ or act as dealers or brokers for disposal or recovery, but which are not subject to authorization (Article 12). All these bodies must be inspected periodically by the competent authorities (Article 13).

Holders of waste must have it handled by a collector or a disposal or recovery undertaking, or recover or dispose of it themselves in accordance with the Directive (Article 8).

Record-keeping

Establishments or undertakings which carry out disposal or possible recovery operations are required to keep a record of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method involved, and to make this information available to the competent authorities on request. Member States may also require producers to do likewise.

‘Polluter pays’ principle

The cost of disposing of waste must be borne by the holder who has waste handled by a collector or disposer; and/or by the previous holder or the producer of the product from which the waste came.

List of wastes

In consultation with the Advisory Committee, the Commission was supposed to have drawn up a list of wastes belonging to the categories listed in the Annex by 1 April 1993. Known as the ‘European Waste Catalogue’ this was actually published in January 1994 with Commission Decision 94/3/EC. The list is ‘non-exhaustive’ and will be reviewed periodically. It does not prejudice the list of hazardous wastes required under Directive [91/689/EC](#).

In May 2000 Decision [2000/532/EC](#) on a unified list of waste was approved. This Decision establishes a single Community list which integrates the list of dangerous waste laid down in Decision [94/904/EC](#) and the *list of waste* laid down in Decision 94/3/EC. It repeals these two Decisions as from 1 January 2002. Decisions 2001/118/EC and 2001/119/EC of January 2001 and Decision 2001/573/EC amend the unified list on the basis of further notifications by Member States, thereby amending Decision 2000/532/EC.

Implementation reports

In consultation with the Advisory Committee, the Commission was required under the Directive to draw up a questionnaire to send to Member States as the basis for national reports. Directive [91/692/EEC](#) amended this obligation, requiring a report covering several of the waste Directives together every three years, the first report to cover 1995 to 1997. The format of a questionnaire as the basis for this report was adopted by the Commission through Decision [94/741/EC](#).

Development of Directives 75/442/EEC and 2006/12/EC

When drawing up the draft that became Directive 75/442/EEC, the Commission had to take account of recent developments in waste disposal policy in Germany, France and the United Kingdom. Giving evidence to the House of Commons Scrutiny Committee in 1975, the British Minister responsible, Denis Howell, claimed that the:

Control of Pollution Act ... was in fact a model for this Directive. It has the same aims. I think we can claim that there the EEC has been following our Control of Pollution Act rather than the other way about.

The Directive was little amended during negotiations and was adopted just ten months after being proposed.

The Commission proposed the amending Directive in August 1988 alongside the proposal to amend the Toxic Waste Directive [78/319/EEC](#), with the intention of strengthening its provisions, introducing more precise definitions, and emphasizing priorities such as waste reduction, recovery and clean technology. The new draft Directive was not based on Article

130s of the EEC Treaty but on Article 100a, to which some Member States expressed objections. The United Kingdom was also concerned that ‘the inference of the definition [of “waste”] that all recyclable materials should be classified as waste’. Environment Minister Virginia Bottomley criticized the new definition of waste, ‘based on a long and, we believe, arbitrary list of reasons why materials become waste’ rather than depending on the attitude of the producer or holder of the material and that ‘paradoxically the Directive contains some provisions which we fear will inhibit rather than stimulate recycling’, referring to the lack of distinction between recyclable materials and waste in both definition and licensing requirements.

In its opinion on the proposal, the Economic and Social Committee also doubted the adequacy of Article 100a as the legal base, and urged stronger harmonization and waste avoidance measures. The European Parliament put forward a number of minor amendments at its May 1989 plenary and suggested maintaining the 1975 Directive's general obligation to dispose of waste safely. This was included in the Commission's revised proposal of November 1989, which was otherwise little changed.

The Environment Council in September 1989 discussed the Commission's new waste management strategy. The principles of moving towards self-sufficiency and establishing a network of disposal facilities were included in the Council's [Resolution](#) on waste policy (May 1990) and added to the amending Directive. It was agreed in principle by the Council in June 1990, by which time the legal base had been changed to Article 130s and the definition of waste revised. Waste recovery operations were allowed limited exemption from the permitting requirements. The Parliament expressed its opinion in a Resolution in February 1991 that the Directive should be based on Article 100a but this had no effect and the Directive was formally adopted in March 1991.

The Commission, with the support of the Parliament, brought a case before the European Court (Case [C-155/91](#)) seeking annulment of the Directive on the grounds that the legal base should have been Article 100a. The Court decided in March 1993 that the main objective of the Directive was to protect the environment and that there was only an ancillary effect on the conditions of competition and trade. It accordingly held that Article 130s was the correct legal base. The issue of the correct legal basis for waste related legislation continues with some daughter Directives justified under the environment Articles of the treaty Marks out a point of debate that continues re the legal base on waste measures with some justified under internal market conditions, others under environment and others under both (i.e. specific articles allocated to the different legal bases).

Directive 75/442/EEC (before its amendment) was the subject of a case before the European court – known as the Lombardia case ([C-236/92](#))¹. An environmental group had challenged decisions of an Italian authority on the grounds that they did not fulfil the general requirements of the Directive to ensure that waste is disposed of without harming the environment. The Court held that the requirement set out objectives and did not itself require the adoption of specific measures and therefore did not have ‘direct effect’.

Implementation of Directives 75/442/EEC and 2006/12/EC

In January 2000 the Commission published a consolidated report on progress made in the implementation of several of the waste Directives over the period 1995 to 1997 ([COM\(99\)752](#)). In respect of the Directive 75/442/EEC, this report noted a number of problems. Possibly the most significant issue lay in the continuing existence of divergences among Member States surrounding the meaning of 'waste'. The report noted that only five Member States had transposed correctly all of the necessary elements of the waste definition. Some Member States, for example the United Kingdom, had transposed the basic definition in the Directive itself but had not adopted the European Waste Catalogue. The Commission therefore concluded that there was still much work to be done in harmonizing waste definitions and lists. This was addressed in part by Decision 2000/532/EC on a unified waste list (see 'List of wastes' above).

A second key area of difficulty identified in the report was the implementation of the Directive's planning requirements. The report found that Greece and Luxembourg had not produced any waste plans at all, and of all the other Member States, only Austria had submitted plans covering the complete national territory. The report noted, however, that a set of guidelines was being prepared for competent authorities in order to improve the level and quality of waste management planning.

On 19 May 2003 the Commission released a report ([COM\(2003\)250](#)) on the implementation of a number of waste Directives, including Directive 75/442/EEC. The report covered the period 1998 to 2000, and was based on information received from Member States via questionnaires (as adopted by Commission Decision 94/741/EC). The report highlighted that the transposition of the definition of waste remained an issue for a number of Member States, including Austria, Italy, Luxembourg and the United Kingdom. Although progress had been made on waste management plans since the previous implementation report (1995–1997), the state of national waste management planning, on the whole, was still not satisfactory. In terms of recycling municipal/domestic waste, the level had increased slightly from the previous period, and varies across the Member States from a low of 8 per cent to a high of 40 per cent. The average was 26 per cent. Five Member States had recycling rates below 10 per cent. Incineration (with or without energy recovery) continued to be an important part of domestic waste management, with a mean rate of 23 per cent. Landfill, however, remained the most common way of handling waste, with an average rate of 45 per cent. The average weight of waste per person had increased from 400 kg/year in 1995–1997 to 500 kg/year in 1998–2000.

In November 2009 the Commission released a draft implementation report assessing Member State implementation of all the key waste Directives, including Directive 2006/12/EC, between 2004 and 2009 ([COM\(2009\)633](#)). This summary report was supported by detailed analysis of the implementation of the individual laws based on submissions from the Member States². This report noted that many of the Member States which acceded to the EU in 2004 and 2007 had not yet fully succeeded in creating an integrated and adequate network of disposal installations. It also concluded, that based on Member State submissions, many still relied primarily upon disposal technologies to manage the majority of their wastes, especially domestic wastes.

In June 2011, Eurostat released the latest statistics on the generation and treatment of municipal waste. Total municipal waste generation in 2009 ranged from 831 kg per capita in

Denmark to 316 kg in the Czech Republic, reflecting differences in consumption patterns, economic wealth and also the organisation of municipal waste collection and management. The average was 514 kg per capita. Waste generated per capita increased between 1995 and 2009 in the majority of Member States. With regards to municipal waste treatment in the EU-27, in 2009, 38 per cent was landfilled (down from 68 per cent in 1995), recycling and composting together accounted for 42 per cent, and incineration accounted for 20 per cent. There were, nevertheless, huge variations in waste treatment between the Member States: Bulgaria landfilled all its waste, whilst Germany succeeded in recycling or composting 64 per cent.

Enforcement and court cases

Due to the uncertainties surrounding the definition of waste and other treatment options including recycling there has been a catalogue of cases brought forward to try and clarify these issues. Below the key European Court of Justice cases of relevance are set out categorized by the key issues under debate. Due to the volume of cases in the waste field they are presented below by category and then in descending date order, that is the most recent cases are presented first.

Definition of waste

[C-252/05](#) 10.05.07. This case followed flooding events in the United Kingdom. In response from the case brought by Thames Water the Court ruled that waste water that escapes from sewerage networks can be classified as waste under the Directive.

[C-457/02](#) 11.11.04. This case clarified that the definition of waste should not be interpreted as excluding all production and consumption residues. Moreover, importantly the ruling set out that the definition of waste cannot be construed as covering exclusively substances or objects intended for, or subjected to, the disposal or recovery operations mentioned in Annexes II A and II B of the Directive, to that Directive or in the equivalent lists. As a consequence it was clarified that Annexes IIA and II B represent indicative lists rather than comprehensive lists.

[C-235/02](#) 15.01.04. This case ruled on the issue of by-products versus waste. The Court set out that petroleum coke produced intentionally or in the course of producing petroleum fuels in an oil refinery and is certain to be used as fuel to meet the energy needs of the refinery and those of other industries does not constitute waste.

[C-114/01](#) 11.09.03. This case also ruled in the case of waste versus by-products. In this case the Court clarified the definition of waste stating that leftover rock and residual sand from ore dressing from mining activities must be classified as waste, unless they are to be used subsequently for the filling-in of galleries of that mine or where there is a definite prospect for their use for that purpose.

[C-9/00](#) 18.04.02. This case concerns whether leftover stone from quarrying activities, which is later discarded. This case again focused on the difference between a waste product and by product of activity. The Court held that, having regard to the principle established in earlier cases that the concept of waste should be interpreted widely in order to limit its inherent risks, the classification of by-products should be confined to situations in which the reuse of

the goods, materials or raw materials is not a mere possibility but a certainty, without any further processing prior to reuse and as an integral part of the production process. Consequently, the leftover stone was classified as waste.

[C-418/97 to C-419/97](#) 15.06.2000. In these cases the Court specifically examined if products discarded by some but are then, for example, used by others as a fuel source (e.g. wood chips) are considered to be waste. The Court ruled that the idea that material had been discarded should not necessarily be regarded as a basis for determining if a material is waste. It stated that each classification should be individually assessed.

[C-129/96](#) 18.12.97. This case examined what is considered a waste, when does it become a waste and how might this differ from a by-product. The Court ruled that a substance cannot be excluded from the definition of waste on the grounds that it directly or indirectly forms an integral part of an industrial production process.

[224/95, C-304/94, C-342/94, C-224/95](#) 25.06.97. This case deals with the fundamental question of when is a material waste and when does this material cease to be waste. The Court importantly ruled that the definition of 'waste' should not exclude substances and objects capable of economic reutilization even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. Moreover, the fact that a substance is classified as a re-usable residue without its characteristics or purpose being considered irrelevant in determining if a material is waste, that is just because it 'could' be re-used or re-processed does not mean for the time being it is not considered waste in need of management.

[C-206/88 and C-207/88](#) 28.03.1980. These cases again examined whether residue materials with economic value are considered to be waste. It was ruled that the definition of 'waste' should not exclude substances and objects which are capable of economic reutilization. The concept does not presume that the holder disposing of a substance or an object intends to exclude all economic reutilization of the substance or object by others.

Definition of recycling

[C-444/00](#) 19.06.03. This important case clarified the point at which a waste material can be considered to be recycled. The case, Mayer Perry Recycling versus the High Court of Justice in England and Wales, sought to identify whether metal packaging waste was recycled when it was transformed into a secondary raw material or when reprocessed into new products, that is ingits, sheers or coils of steel. The Court ruled that recycling could only be deemed to have taken place when the secondary material has been reprocessed into a new product. This has important implications for the recycling industry and manufacturers dealing with secondary raw materials, who are (based on this ruling) considered to be handling waste materials if reprocessing secondary raw materials into goods.

Defining recovery and disposal

[C-307/00 to C-311/00](#) 27.02.03. This series of cases lead to a number of linked rulings. It was ruled that a treatment operation cannot be simultaneously considered both a disposal and recovery operation. The determining of whether the operation is disposal or recovery should be on a case by case basis.

[C-116/01](#) 03.04.03. This case deals with the question of classifying waste treatment operations. It rules that waste treatment processes comprising several stages must be classified as a disposal or recovery operation. The Court also ruled that the calorific value of waste to be combusted is not a relevant basis to determine whether an operation is deemed disposal or recovery.

[C-228/00](#) 13.02.03. This case was brought forward in the context of the Waste Shipment Regulation (EC) No [1013/2006](#), which gives the Member State that is exporting waste greater powers to block exports if it is for disposal rather than recovery. This case concerned the blocking by the German government of transfers of waste to Belgium for use in cement kilns. The Court ruled that the material was being primarily used as a fuel. The judgment, therefore, ruled against the German government deeming that the materials were being exported for recovery. As a consequence of this case and case C-458/00 regarding waste shipment (which ruled the Luxembourg government had been correct to classify the export of materials to France for incineration as disposal) criteria were defined to identify if an operation could be considered as recovery:

- the operation's principal objective must be to allow the use of wastes to produce energy;
- the operation must be able to be considered effectively as 'a means of producing energy', which requires that more energy is produced than consumed and that the surplus energy is put to an effective use as heat or electricity; and
- the majority of the waste must be consumed during the operation, and the majority of energy produced recuperated and used.

[C-6/00](#) 27.02.02. This case focused on a controversial point among many environmental groups, that is whether the deposit of waste in disused mines is considered a disposal or recovery operation. The Court ruled that the deposit of waste in disused mines does not constitute waste disposal and that the classification of such activities should be completed on a case by case basis.

Member State responsibilities

[C-254/08](#) 16.07.09. This case related to the imposition of national legislation in Italy intended to tax waste production. The case was brought by Futura Immobiliare and others which were objecting to the Italian system. The Court ruled that community law does not preclude national legislation.

[C-208/04](#) 28.01.05. This case focused on Member States ability to amend the list of wastes, Inter-Environment Wallonie brought a case regarding the addition of categories to the waste list, where certain wastes or products fall outside the scope of existing categories. The Court ruled that Member States may not introduce a new field in to the waste lists even if that category of waste falls under the definition of waste.

[C-297/08](#) 4.3.2010. This case related to an infringement by the Italian Campania Region of Articles 4 and 5 of Directive 2006/12/EC, as a result of failing to establish an integrated and adequate network of disposal installations.

[C-37/09](#) 10.6.2010. This case related to an infringement by Portugal of Articles 4 and 5 of Directive 2006/12/EC, as a result of failing to properly manage waste illegally placed in two old quarries in the commune of Lourosa (Limas and Linos).

[C-286/08](#) 10.9.2009. This was a judgement against Greece for a breach of Articles 1(2) and 6 of Directive 91/689/EEC on hazardous waste (and Articles 5(1) and (2), 7(1), 4 and 8 of Directive 2006/12/EC on waste; and Articles 3(1), 6 to 9, 13 and 14 of Council Directive 1999/31/EC on of 26 April 1999 on the landfill of waste). It related to a failure to draw up an adequate hazardous waste management plan and to establish an integrated and adequate network of disposal installations for hazardous waste.

Directive 2008/98/EC

Summary of the Directive

Directive 2008/98/EC repeals, on 12 December 2010, Directive 2006/12/EC, as well as the [Hazardous Waste](#) and [Waste Oils](#) Directives.

Directive 2008/98/EC sets a new baseline for waste prevention, disposal, recovery, reuse and recycling in Europe. The final measure is dramatically different from the original proposal set out by the European Commission. In essence what was originally envisaged as a clarification and consolidation exercise based on the content of Directive 2006/12/EC was transformed, primarily by the efforts of the European Parliament, into a much more considerable revision of waste law making in the EU.

While some of the core responsibilities under 2006/12/EC are retained in Directive 2008/98/EC, such as the requirement for waste installations to be permitted, the new Directive also ushers in some significant changes relating to the treatment of waste in the EU. For the purposes of clarity it is easiest to consider what will change and what will remain the same under the new regime. Below the key changes that will need to be implemented by 2012 are set out, along with important elements that remain unaltered.

Major changes to EU law associated with Directive 2008/98/EC:

- The emphasis on prevention is increased, with requirements for Member States to take action. Member States must report, by 2015, on the setting of waste prevention and decoupling objectives for 2020. National waste prevention programmes must be established by (approx) the end of 2013.
- The waste hierarchy of prevention, preparing for reuse, recycling, other recovery and disposal is defined as a priority order, to be abided by in waste prevention and management legislation. It is, however, possible to depart from the order to achieve the best environmental outcome based on life cycle impacts.
- Reuse is redefined, making it an activity applied to products and components that are not waste. A new concept, 'preparing for reuse' covers processes by which waste products are prepared for reuse without re-processing. This creates an additional stage in the waste hierarchy, splitting the concept of the reusing of products into two categories – those that have and have not become waste.

- There is a new definition of recycling. While this still focuses on the reprocessing of materials, it is now linked to the definition of recovery and specifically excludes activities such as backfilling and the reprocessing of waste materials into fuels.
- There are new definitions for recovery and disposal, although they are still based largely on the same non-exhaustive lists as in Directive 2006/12/EC.
- Incineration activities for processing municipal solid waste can be classed as recovery operations, as long as they generate energy above a given efficiency threshold.
- The separate collection of paper, metal, plastic and glass must be in place by 2015.
- By 2020, Member States must take all ‘necessary measures’ to ensure that at least 50 per cent of paper, plastics, metal and glass from households and similar origins is prepared for reuse or recycled.
- By 2020, Member States must take all ‘necessary measures’ to ensure at least 70 per cent of non-hazardous construction and demolition waste is reused, recycled or undergoes material recovery.
- Extended producer responsibility requirements are introduced, empowering Member States to make producers responsible for managing and financing the treatment of associated waste. It is still unclear how Member States will choose to implement these requirements, as they have been given considerable flexibility.
- Procedures are established for developing criteria for what constitutes a waste by-product and when waste ceases to be waste. Within the Directive conditions are listed that, if met, mean a substance is not, or is no longer, waste. The Directive also proposes a mechanism whereby the generic conditions can be complemented by substance or object specific criteria developed under the comitology procedure. Specific end-of-waste criteria will be established for at least aggregates, paper, glass, metal, tyres and textiles.
- The promotion of the collection and treatment of biowaste, along with the environmentally safe use of resultant materials.
- At EU level technical minimum standards for treatment activities requiring a permit may be adopted. These may include best-available techniques and key environmental impacts and set standards for the quality of treatment and the process requirements.
- Derogations from the ban on mixing hazardous and other wastes are altered to enable mixing, provided that activities are permitted, the environment and human health are protected and mixing operations conform to best-available techniques.

Key elements that will be retained under the new regime:

- The definition of waste and the use of a ‘waste list’.
- Basic requirements for permits to carry out waste treatment, with Member States having the ability to exempt certain disposal and recovery operations.
- Requirements for the inspection of waste-treatment operations and those collecting or transporting waste.
- The requirement to produce waste management plans.
- The requirement to manage hazardous waste in a way that protects human health and the environment. Hazardous waste remains defined by reference to a hazardous waste list, now annexed to the Directive.
- The requirements to collect and manage waste oils separately (although, there is no longer any preference given to reprocessing of waste oils).

Member States are required to transpose and be in a position to fully implement the Directive 2008/98/EC, amending and/or repealing laws related to the original Waste Framework

Directive 2006/12/EC, Hazardous Waste and Waste Oils Directives. This transposition process must be completed by 12 December 2010.

In March 2011, Regulation (EU) No 333/2011 was adopted, establishing criteria determining when iron, steel and aluminium scrap, including aluminium alloy scrap, cease to be waste. The Regulation outlines the relevant criteria (Articles 3 and 4), sets out a model for a 'statement of conformity' which must be issued by the producer or importer (Article 5 and Annex III), requires the producer to implement a quality management system to demonstrate compliance with the criteria (Article 6). The Regulation applies from 9 October 2011.

Development of the Directive

The proposal for the Directive ([COM\(2005\)667](#)) was published by the Commission alongside the Thematic Strategy on waste prevention and recycling ([COM\(2005\)666](#)). This followed an extended period of debate about the continued appropriateness of older waste EU laws (particularly Directive 2006/12/EC) and concern over a lack of clarity in interpreting key terms (such as waste, recycling, reuse etc). The Thematic Strategy represented the outcome of discussions between the Commission, Member States and stakeholders regarding the future of waste policy in Europe, aimed at addressing these concerns. It set out a series of actions aimed at improving and clarifying the, often complex, area of waste law. Given that waste legislation was first adopted in Europe in the 1970s measures and the complexities associated with defining key terms such as waste and when waste ceases to be waste, it was felt a complete remodelling of the existing framework Directive on waste was needed. Moreover, it was considered that certain pieces of waste legislation were no longer needed and should be synthesized into the new framework replacement.

The Commission's proposal was essentially seen as a clarification and simplification exercise, in line with the Commission President's priority of delivering better Regulation. It was proposed that the existing Waste Framework Directive 2006/12/EC, Hazardous Waste Directive and Waste Oils Directive all be repealed and replaced by the new proposed Directive. Beyond this the ambition of the proposal was relatively limited focusing on clarifying definitions of key terms such as waste, recovery and disposal and inserting a clear environmental objective into the text. The proposals were met with some degree of disappointment by those who had hoped for more radical thinking by the Commission, especially given the perceived lack of focus in particular on waste prevention in EU laws.

Directive 2008/29/EC differs dramatically from the original proposal text adopted by the Commission. The Directive sets out radical changes to the waste laws in Europe and in particular introduces new targets for the recycling of household waste and construction and demolition waste. This dramatic evolution of the Directive was driven by the European Parliament and, in particular, the experienced rapporteur assigned to the dossier Caroline Jackson. As a consequence of the Parliament's amendments what was originally envisaged to be an exercise clarifying some key definitions and consolidating existing Directives, resulted in a Directive that reset the baseline for European waste law.

The Parliament: expanded the number and remodelled the definitions put forward by the Commission; introduced the new concept of preparation for reuse to facilitate target making; introduced the two targets for the preparation for reuse, recycling and material recovery of household and construction and demolition waste; a revised approach to the distinction

between waste and by-products; inserting a new clause clarifying the principle of producer responsibility for waste.

During the negotiations between the Council and the Parliament two of the most controversial elements were discussions over binding targets and the classification of incineration, should this be considered waste disposal or recovery. In terms of binding targets the Parliament ultimately succeeded in getting Member State approval for new targets for the preparation for reuse, recycling and material recovery of household and construction and demolition wastes. However, they also proposed a potentially important new target to cap the level of waste generation in Europe. It was proposed by the Parliament that Member States should stabilise their total waste production by 2012 'as compared to their overall annual waste production in 2008'. This would have represented a significant step forward in terms of promoting waste prevention and the more efficient management of resources. The target was sacrificed in order to reach a deal with the Council.

By far the most divisive issue during discussions over the Directive was that of incineration. Views as to the appropriateness of incineration and public acceptance vary widely across the EU, so too do opinions as to the priority it should be given within the waste hierarchy. Within their proposal the Commission had set out that incineration activities that deliver a certain efficiency of energy recovery should be classified not as disposal but as recovery operations. This pushed incineration as a waste management operation up the hierarchy. The debate focused on firstly, whether incineration should ever be classed as recovery and secondly, what level of efficiency was appropriate to determine that an incinerator is classified as under taking recovery and not disposal. Ultimately, despite extended debate and disagreement incineration was considered as recovery if efficiency criteria set out in the Annex to the Directive are met. If they are not incineration is deemed disposal.

Further developments

Directive 2008/98/EC changed dramatically as a consequence of the amendments adopted during codecision. As a consequence some of the new clauses and requirements overlap or have implications for the broader set out waste laws, in particular those that deal with recycling and reuse, that is the [Batteries](#), [End of Life Vehicles](#), [Waste Electrical and Electronic Equipment](#) and [Packaging Directives](#). The definitions adopted within the framework Directive on waste now differ from those within these more specific elements. This could lead to further confusion as to the appropriate definitions for waste, recycling, reuse etc and importantly the basis for existing targets within these Directives. The Commission is examining these implications.

The Commission is continuing to actively work on the development and evolution of EU waste policies, with a particular emphasis on delivering waste prevention. In the Autumn of 2010 reviews of the [waste Thematic Strategy](#) and [natural resources Thematic Strategy](#). These are anticipated to set out the next steps for action on waste and priorities for the future. This is the first opportunity for the Commission to present how law and policy will evolve in light Directive 2008/98/EC. This is important given the major amendment of the remit of this measure was substantially expanded from the Commission's original.

In May 2010, the Commission published a Communication on future steps in bio-waste management in the European Union ([COM\(2010\)235](#)). The Communication emphasises the

need fully to implement existing waste policies (on prevention, treatment and quality of bio-waste, and soil protection) in order to optimise the management of bio-waste, with better coordination with the waste hierarchy. The Communication does not propose a new specific bio-waste Directive, whereas the European Parliament would like to see a separate Directive.

Related legislation

The framework nature of Directives 2006/12/EC and 2008/98/EC results in them setting general principles and goals for waste management, procedures (such as planning) and looking to delivery through many other Directives. For this reason it is unnecessary to identify specific Directives or Regulations in the Chapters in this Manual on Waste and on Resource Use and Product Policy which are related to these Directives. Additional to these Chapters, a critically important related Directive is the Waste Incineration Directive [2000/76/EC](#).

References

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2 Ecologic and IEEP (2009) *Report on the Implementation of Directive 75/442/EEC on Waste*, May 2009,
http://ec.europa.eu/environment/waste/reporting/pdf/Waste_Framework_Directive.pdf