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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture, Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, Directive 2000/53/EC of 18 September 2000 on end-of life vehicles, Regulation (EC) No 1013/2006 on shipments of waste, Directive 2006/66/EC of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and Directive 2008/98/EC of 19 November 2008 on waste

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1. Introduction

The Commission was conferred on the power to adopt delegated acts for a period of five years, starting from 4 July 2018, under:

a) Article 15a(2), first sentence, of Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture[1],
b) Article 21a(2), first sentence, of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste[2],
c) Article 9a(2), first sentence, of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles[3],
d) Article 38a(2), first sentence, of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[4].

Under Article 58a(2), first sentence, of the Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste[5], and under Article 23a(2), first sentence, of 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[6] the Commission was conferred on the power to adopt delegated acts for a period of five years starting from 17 July 2014 and 30 December 2013, respectively.

The Commission is required to draw up a report in respect of the delegation of power not later than 9 months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

1 OJ L 181, 4.7.1986, p. 6.
2 OJ L 365, 31.12.1994, p. 10.
3 OJ L 269, 21.10.2000, p. 34.
4 OJ L 312 22.11.2008, p. 3.
5 OJ L 190, 12.7.2006, p.1.
6 OJ L 266, 26.9.2006, p. 1.

Reports on the exercise of powers under Regulation (EC) 1013/2006 and Directive 2006/66/EC were adopted on 22 November 2018[7] and 14 May 2018[8], respectively. As neither the European Parliament nor the Council opposed to the extension of the Commission's empowerments, the delegation of power to the Commission was tacitly extended to a period of an identical duration starting from 17 July 2019 and 30 December 2018.

This report describes the Commission's activity in the period starting from 4 July 2018, 17 July 2019, and 30 December 2018, respectively.

2. Directive 86/278/EEC

Directive 86/278/EEC empowers the Commission to adopt delegated acts, as referred to in Article 15a, in view of amending the Annexes and adapting them to technical and scientific progress except for the parameters and values listed in Annexes I A, I B and I C, any factors likely to affect the evaluation of those values, and the parameters for analysis referred to in Annexes II A and II B.

2.1. Exercise of Delegation

During the period covered by this report, the Commission did not make use of the delegated powers conferred upon it under Directive 86/278/EEC. None of the abovementioned Annexes were adapted to scientific and technical progress. A 2023 evaluation of the Directive[9] concluded that adaptation of the Directive to the latest scientific and technical progress (notably on the set of pollutants to be covered and their appropriate limit values) would be needed. This, however, goes beyond the current empowerment contained in Article 15a.

3. Directive 94/62/EC

Directive 94/62/EC empowers the Commission to adopt delegated acts, as referred to in Article 21a, in view of:

- determining the conditions under which the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium present in packaging specified in Article 11(1) do not apply to recycled materials and to product loops which are in a closed and controlled chain, as well as determining the types of packaging which are exempted from the requirement regarding the content of these heavy metals in packaging and packaging components laid down in the third indent of Article 11(1), as provided for in Article 11(3);
- amending the illustrative examples for the definition of packaging listed in Annex I, as provided for in Article 19(2);

[7] COM(2018)762 final.
[8] COM(2018) 266 final.
[9] SWD/2023/0157 final.

- supplementing the Directive where necessary to deal with any difficulties encountered in applying its provisions, in particular to inert packaging materials placed on the market in very small quantities (i.e. approximately 0.1 % by weight) in the EU, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging, as provided for in Article 20.

An agreement on the proposal for a new Packaging and Packaging Waste Regulation[10] was reached on 4 March 2023 and was provisionally approved by the co-legislators. The present empowerments contained in Directive 94/62/EC remain relevant and should be maintained until the entry into force of the new Regulation, which is expected in 2025.

3.1. Exercise of Delegation

During the period covered by this report, the Commission did not make use of the delegated powers conferred upon it under Directive 94/62/EC. However, Commission acts had been adopted in the areas covered by the delegation of powers prior to the period covered by this report, based on former empowerments preceding the revision of the Directive in 2018[11], as detailed below.

3.1.1. Exemptions from restrictions on heavy metals in packaging

Pursuant to Article 11(1) of Directive 94/62/EC, Member States shall ensure that the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium present in packaging or packaging components shall not exceed 100 ppm by weight.

According to former Article 11(3) of Directive 94/62/EC, the Commission shall determine the conditions under which the concentration levels referred to in Article 11(1) do not apply to recycled materials and to product loops which are in a closed and controlled chain, as well as the types of packaging which are exempted from the requirement laid down in the third indent of former Article 11(3).

Commission decisions adopted based on former Article 11(3) include:

1) Commission Decision 2001/171/EC of 19 February 2001 establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC[12];
2) Commission Decision 2006/340/EC of 8 May 2006 amending Commission Decision 2001/171/EC for the purpose of prolonging the validity of the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC[13];

[10] COM/2022/677 final.
[11] Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste (OJ L 150, 14.6.2018, p. 141).
[12] OJ L 62, 2.3.2001, p. 20.
[13] OJ L 125, 12.5.2006, p. 43.

3) Commission Decision 2009/292/EC of 24 March 2009 establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC[14].

The Commission has not identified the need to amend the abovementioned decisions, nor to adopt new acts in this field.

3.1.2. Amendment of illustrative examples for the definition of packaging

Annex I to Directive 94/62/EC lists illustrative examples of the application of criteria established in Article 3(i)-(iii) complementing the definition of packaging set in Article 3(1) of the Directive. Article 19(2) empowers the Commission to amend the list of illustrative examples listed in Annex I.

The Commission exercised this power by adopting Commission Directive 2013/2/EU of 7 February 2013 amending Annex I to Directive 94/62/EC[15].

3.1.3. Supplementing the Directive to deal with any difficulties encountered in applying the provisions of the Directive

The Commission has not identified the need to make use of the delegated power under this provision. However, the necessity to supplement Directive 94/62/EC by addressing practical difficulties of inert packaging materials placed on the market in very small quantities, primary packaging for medical devices and pharmaceutical products, small packaging, and luxury packaging could arise in the future, which is why the empowerment should be maintained until the entry into force of a new Regulation.

4. Directive 2000/53/EC

Directive 2000/53/EC empowers the Commission to adopt delegated acts in view of:

- amending Annex II to adapt it in the light of scientific and technical progress, pursuant to Article 4(2)(b)(i-iv), as provided for in Article 4(2)(b);
- establishing minimum requirements for the certificate of destruction, as provided for in Article 5(5);
- amending Annex I to adapt it to scientific and technical progress, as provided for in Article 6(6);
- establishing component and material coding standards, in particular to facilitate the identification of those components and materials which are suitable for reuse and recovery, to be used by producers, in concert with material and equipment manufacturers, as provided for in Article 8(2).

A proposal for a new End-of-Life Vehicles Regulation[16] was adopted on 13 July 2023 and is currently being discussed in the ordinary legislative procedure. The present empowerments

[14] OJ L 79, 25.3.2009, p. 44.
[15] OJ L 37, 8.2.2013, p. 10.

contained in Directive 2000/53/EC remain relevant and should be maintained until the entry into force of the new Regulation.

4.1. Exercise of Delegation

During the period covered by the report, the Commission adopted three delegated acts modifying Annex II to Directive 2000/53/EC listing exemptions from the scope of its application.

4.1.1. Amendments of Annex II

According to Article 4(2)(a) of Directive 2000/53/EC, Member States shall ensure that materials and components of vehicles put on the market after 1 July 2003 do not contain lead, mercury, cadmium or hexavalent chromium other than in cases listed in Annex II under the conditions specified therein.

During the period covered by this report[17], the Commission adopted three delegated acts amending Annex II:

1) Commission Delegated Directive (EU) 2020/362 of 17 December 2019 amending Annex II to Directive 2000/53/EC as regards the exemption for hexavalent chromium as anti-corrosion agent of the carbon steel cooling system in absorption refrigerators in motor caravans[18];
2) Commission Delegated Directive (EU) 2020/363 of 17 December 2019 amending Annex II to Directive 2000/53/EC as regards certain exemptions for lead and lead compounds in components[19]; and
3) Commission Delegated Directive (EU) 2023/544 of 16 December 2022 amending Directive 2000/53/EC as regards the exemptions for the use of lead in aluminium alloys for machining purposes, in copper alloys and in certain batteries[20].

4.1.2. Establishment of minimum requirements for the certificate of destruction

According to Article 5(3) of Directive 2000/53/EC, Member States shall set up a system according to which the presentation of a certificate of destruction is a condition for deregistration of end-of life vehicles.

In the period preceding this report, based on former Article 5(5) of Directive 2000/53/EC, the Commission adopted a Commission Decision 2002/151/EC of 19 February 2002 on minimum requirements for the certificate of destruction issued in accordance with Article 5(3) of Directive 2000/53/EC[21].

The Commission has not identified the need to amend this act nor adopt a new one.

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16 COM/2023/451 final.
17 The Commission used the powers conferred to it in this respect several times before the beginning of the period covered by this report.
18 OJ L 67, 5.3.2020, p. 116.
19 OJ L 67, 5.3.2020, p. 119.
20 OJ L 73, 10.3.2023, p. 5.
21 OJ L 50, 21.2.2002, p. 94.

4.1.3. Amendment of Annex I

Annex I to Directive 2000/53/EC establishes minimum technical requirements for treatment of end-of-life vehicles.

The Commission has not identified the need to make use of the delegated power under this provision. However, the need to amend Annex I could arise in the future, therefore the empowerment should be maintained until the entry into force of the new Regulation.

4.1.4. Establishment of component and material coding standards

According to Article 8(1) of Directive 2000/53/EC, Member States shall take the necessary measures to ensure that producers, in concert with material and equipment manufacturers, use component and material coding standards, in particular to facilitate the identification of those components and materials which are suitable for reuse and recovery.

Pursuant to Article 8(2) of Directive 2000/53/EC, the Commission is empowered to adopt delegated acts in order to supplement the Directive by establishing these standards.

In the period preceding this report, based on former Article 8(2) of Directive 2000/53/EC, the Commission adopted a Commission Decision 2003/138/EC of 27 February 2003 establishing component and material coding standards for vehicles pursuant to Directive 2000/53/EC[22].

The Commission has not identified the need to amend this act nor adopt a new one.

5. Regulation (EC) 1013/2006

The Union is a party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 that serves to protect human health and the environment against the adverse effects of hazardous wastes. Regulation (EC) 1013/2006 transposes this Convention into Union law. The Regulation empowers the Commission to adopt delegated acts, as referred to in Article 58, to amend:

- Annexes IA, IB, IC, II, III, IIIA, IIIB, IV, V, VI and VII to take account of changes agreed under the Basel Convention and the OECD Decision[23];
- Annex V to reflect changes to the list of waste adopted in accordance with Article 7 of Directive 2008/98/EC;
- Annex VIII to reflect decisions taken under relevant international conventions and agreements.

A new Regulation of the European Parliament and of the Council (EU) 2024/1157 on shipments of waste was adopted on 11 April 2024[24]. The present empowerments contained in Regulation (EC) 1013/2006 remain relevant and should be maintained as long as this Regulation applies.

5.1. Exercise of delegation

[22] OJ L 53, 28.2.2003, p. 58.
[23] Decision C(2001)107/Final of the OECD Council.
[24] OJ L, 2024/1157, 30.4.2024, ELI: http://data.europa.eu/eli/reg/2024/1157/oj.

During the period covered by this report, the Commission adopted a Commission Delegated Regulation (EU) 2020/2174 of 19 October 2020 amending Annexes IC, III, IIIA, IV, V, VII and VIII to Regulation (EC) No 1013/2006[25] to reflect the changes to the entries on plastic waste in the Annexes to the Basel Convention.

6. Directive 2006/66/EC

Directive 2006/66/EC empowers the Commission to adopt delegated acts, as referred to in Article 23a(2), in view of:

- laying down criteria for the assessment of equivalent conditions for the recycling of waste batteries and accumulators taking place outside of the EU, as provided for in Article 15(3), to supplement the rules referred to by Article 15(2);
- establishing detailed rules supplementing the requirement to indicate the capacity of portable and automotive batteries and accumulators on them in a visible, legible and indelible form, as provided for in Article 21(2);
- granting exemptions from labelling requirements set in Article 21, as provided for in Article 21(7).

Directive 2006/66/EC was repealed by Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries[26] with effect from 18 August 2025. Thus, the Commission is not likely to exercise any empowerments from this Directive in the future.

6.1. Exercise of Delegation

During the period covered by this report, the Commission did not make use of the delegated powers conferred upon it under Directive 2006/66/EC. However, Commission acts had been adopted in the areas covered by the delegation of powers prior to the period covered by this report.

6.1.1. Criteria for the assessment of equivalent conditions for the recycling of waste batteries and accumulators taking place outside of the EU

Pursuant to Article 15(1) of Directive 2006/66/EC, treatment may be undertaken outside the Member State concerned or outside the EU, provided that the shipment of waste batteries and accumulators is in compliance with Regulation (EC) 1013/2006. According to Article 15(2), waste batteries and accumulators exported out of the EU pursuant to respective laws shall count towards the fulfilment of the obligations and efficiencies laid down in Annex III to this Directive only if there is sound evidence that the recycling operation took place under conditions equivalent to the requirements of this Directive. The Commission has been entitled to lay down detailed rules supplementing the rules referred to in Article 15(2), in particular criteria for the assessment of equivalent conditions as referred to therein.

[25] OJ L 433, 22.12.2020, p. 11.
[26] OJ L 191, 28.7.2023, p. 1.

As the newly adopted Regulation (EU) 2024/1157 provides rules on criteria related to the assessment of equivalent conditions for the treatment of waste outside the EU, a delegated act under Directive 2006/66/EC was not adopted.

6.1.2. Detailed rules supplementing the requirement to indicate the capacity of portable and automotive batteries and accumulators on them

According to Article 21(2) of Directive 2006/66/EC, Member States shall ensure that the capacity of all portable and automotive batteries and accumulators is indicated on them in a visible, legible and indelible form by 26 September 2009. The Commission is entitled to adopt delegated acts laying down detailed rules supplementing that requirement.

In the period preceding this report, based on former Article 21(2) of this Directive, the Commission adopted Commission Regulation (EU) No 1103/2010 of 29 November 2010 establishing, pursuant to Directive 2006/66/EC, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators[27].

The Commission has not identified the need to amend this act nor adopt a new one.

6.1.3. Granting exemptions from labelling requirements

According to Article 21(7) of Directive 2006/66/EC, the Commission is empowered to adopt delegated acts to grant exemptions from the labelling requirements set out in Article 21.

In the period preceding this report, based on the former Article 21(7) of this Directive, the Commission adopted Commission Regulation (EU) No 1103/2010.

The Commission has not identified the need to amend this act nor adopt a new one.

7. Directive 2008/98/EC

Directive 2008/98/EC empowers the Commission to adopt delegated acts, as referred to in Article 38a, in view of:

- establishing, and reviewing a list of waste in accordance with Article 7(2) and (3) as provided for in Article 7(1);
- establishing a common methodology and minimum quality requirements for the uniform measurement of levels of food waste, as provided for in Article 9(8);
- establishing rules for the calculation, verification and reporting of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled, based on average loss rates for sorted waste, as provided for in Article 11a(10);
- setting out technical minimum standards for treatment activities, including for sorting and recycling of waste, which require a permit pursuant to Article 23 where there is evidence that a benefit in terms of the protection of human health and the

[27] OJ L 313, 30.11.2010, p. 3.

environment would be gained from such minimum standards, as provided for in Article 27(1);

- setting out the minimum standards for activities of establishments or undertakings which collect or transport waste on a professional basis as well as of dealers or brokers, that require registration where there is evidence that a benefit in terms of the protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards, as provided for in Article 27(4);
- amending point R1 of Annex II by specifying the application of the formula for incineration facilities referred thereto, as provided for in Article 38(2);
- amending Annexes IV and V in the light of scientific and technical progress, as provided for in Article 38(3).

7.1. Exercise of Delegation

During the period covered by the report, the Commission adopted one delegated act on a common methodology and minimum quality requirements for the uniform measurement of levels of food waste.

7.1.1. Establishment and revision of a list of waste

Pursuant to Article 7(1) of Directive 2008/98/EC, the Commission is empowered to adopt delegated acts establishing, and reviewing in accordance with paragraphs 2 and 3 of this Article, a list of waste.

Prior to the period covered by this report, based on former Article 7(1) of Directive 2008/98/EC, the Commission adopted a Commission Decision 2014/955/EU of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/[28].

The Commission has not identified the need to amend this act nor adopt a new one.

7.1.2. Establishment of common methodology and minimum quality requirements for the uniform measurement of levels of food waste

According to Article 9(8) of the Directive 2008/98/EC, the Commission shall adopt a delegated act establishing a common methodology and minimum quality requirements for the uniform measurement of levels of food waste. On 3 of May 2019, the Commission adopted a Commission Delegated Decision (EU) 2019/1597 supplementing Directive 2008/98/EC as regards a common methodology and minimum quality requirements for the uniform measurement of levels of food waste[29].

7.1.3. Establishment of rules for the calculation, verification and reporting of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled, based on average loss rates for sorted waste

[28] OJ L 370, 30.12.2014, p. 44.
[29] OJ L 248, 27.9.2019, p. 77.

Pursuant to Article 11(10) of Directive 2008/98/EC, by 31 March 2019, the Commission shall adopt a delegated act establishing rules for the calculation, verification and reporting of the weight of materials or substances which are removed after a sorting operation and which are not subsequently recycled, based on average loss rates for sorted waste.

The Commission adopted a proposal for a Commission Delegated Decision on 31 August 2021, but the Council objected to this proposal on 13 December 2021[30].

7.1.4. Setting of technical minimum standards for treatment activities

According to Article 27(1) of Directive 2008/98/EC, the Commission shall adopt delegated acts in order to supplement the Directive by setting out technical minimum standards for treatment activities, including for sorting and recycling of waste, which require a permit, where there is evidence that a benefit in terms of the protection of human health and the environment would be gained from such minimum standards.

The Commission has not identified the need to make use of the delegated power under this provision.

7.1.5. Setting out the minimum standards for activities related to professional waste collection and transport as well as of activities of dealers or brokers

Pursuant to Article 27(4) of Directive 2008/98/EC, the Commission shall adopt delegated acts in order to supplement the Directive by setting out the minimum standards for activities of establishments or undertakings which collect or transport waste on a professional basis as well as of dealers or brokers, where there is evidence that a benefit in terms of the protection of human health and the environment or in avoiding disruption to the internal market would be gained from such minimum standards.

The Commission has not identified the need to make use of the delegated power under this provision.

7.1.6. Amendment of point R1 of Annex II

According to Article 38(2) of Directive 2008/98/EC, the Commission is empowered to adopt delegated acts to amend the Directive by specifying the application of the formula for incineration facilities referred to in point R1 of Annex II. Annex II contains a list of recovery operations, one of which is R1, described as "Use principally as a fuel or other means to generate energy".

In the period preceding this report, based on former Article 38(1) of Directive 2008/98/EC, the Commission adopted Commission Directive (EU) 2015/1127 of 10 July 2015 amending Annex II to Directive 2008/98/EC[31].

The Commission has not identified the need to amend this act nor adopt a new one.

7.1.7. Amendment of Annexes IV and V

[30] Delegated act details - Register of delegated acts (europa.eu)
[31] OJ L 184, 11.7.2015, p. 13.

Pursuant to Article 38(3) of Directive 2008/98/EC, the Commission is empowered to adopt delegated acts to amend Annexes IV and V in light of scientific and technical progress. Annex IV contains examples of waste prevention measures, and Annex V is a correlation table.

The Commission has not identified the need to make use of the delegated power under this provision.

8. Conclusions

In the period covered by this report, the Commission exercised the delegated powers conferred upon it by Directives 2000/53/EC and 2008/98/EC and Regulation (EC) 1013/2006. The Commission invites the European Parliament and the Council to take note of this report.