



**REPORT ON THE CONSULTATION OF
THE SUBSIDIARITY EXPERT GROUP AND
THE SUBSIDIARITY MONITORING NETWORK:**

**Proposal for a Directive of the European Parliament and of the Council
amending Directives 2008/98/EC on waste , 94/62/EC on packaging and packaging waste,
1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on
batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on
waste electrical and electronic equipment
COM(2014) 397 final**



<http://subsidiarity.cor.europa.eu>

Disclaimer:

This report does not seek to reproduce all the contributions to the consultation, but rather to synthesise the main points. The report is not binding on the Committee of the Regions and does not prejudice the final content of its relevant opinions.

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1. Introduction

On 2 July 2014, the European Commission published its "circular economy package".

As part of this package, the Commission adopted the above-mentioned proposal for a Directive¹ to review recycling and other waste-related targets² in the EU.

The proposal aims, *inter alia*, to:

- increase the recycling/re-use of municipal waste to 70% by 2030;
- increase packaging waste recycling/re-use to 80% by 2030 – with material-specific targets set to gradually increase between 2020 and 2030 (to reach 90% for paper and 60% for plastics by 2025; and 80% for wood, and 90% for ferrous metal, aluminium and glass by the end of 2030);
- phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste;
- reduce food waste generation by 30% by 2025 (aspirational target);
- introduce an Early Warning System to anticipate and avoid possible compliance difficulties in Member States; and
- introduce modified reporting obligations.

The review of the EU waste legislation is on the 2014 CoR subsidiarity work programme, and a CoR opinion (rapporteur: **Mariana Gâju** (RO/PES) is under preparation and scheduled to be adopted at the February 2015 plenary session.

This is why the Subsidiarity Expert Group (SEG)³ and the Subsidiarity Monitoring Network (SMN) have been consulted. Participants were asked to answer several subsidiarity- and proportionality-related questions, as well as a question concerning delegated and implementing powers.⁴ The consultation was launched on 25 July and ran until 6 October 2014.

The consultation report will be shared with the rapporteur and her expert so that she will be able to take it into account for the drafting of her opinion, it will be sent to the European Commission and published on the SMN-website⁵.

¹ Hereafter referred to as "draft Directive".

² This review is based on the examination of current waste targets in line with the review clauses in the Waste Framework Directive - Article 11(4), the Landfill Directive – Article 5(2) c, and the Packaging and Packaging Waste Directive – Article 6(5).

³ The CoR Subsidiarity Expert Group includes 12 members drawn up from institutions that are members of the Subsidiarity Monitoring Network.

⁴ See the **questionnaire** in **Appendix I**.

⁵ <http://portal.cor.europa.eu/subsidiarity/Pages/default.aspx>

In total, the consultation received **13 contributions**⁶ from seven Member States.

Nine contributions were received from SMN-partners, three replies were submitted by members of the SEG⁷ and one from another stakeholder.

In terms of administrative level, 10 replies were submitted by/on behalf of regional authorities (regional governments/parliaments, subsidiarity experts nominated by REGLEG⁸ and by the CoR Intergroup "Regions with legislative power") with a further three from associations of local authorities (including one from the expert nominated by the Convention of Scottish Local Authorities, COSLA).

In terms of geographical origin, two replies were received from Austria⁹, four from Italy, three from Spain, and one each from Denmark, Germany¹⁰, the Netherlands and the United Kingdom¹¹.

⁶ See **the list of respondents in Appendix II**; the **contributions** which have been translated into English can be found in **Appendix III**.

⁷ One contribution answering the consultation's questionnaire, two contributions summarising each expert's point of view on issues included in the questionnaire. As the two latter do not directly respond to the questionnaire they have been taken into account for the drafting of this report only insofar as they refer to the questions. They can be found as contributions No 1 and 13 in Appendix III.

⁸ REGLEG is a political network for EU regions with legislative power gathering representatives of regional governments who work together on issues of common concern.

⁹ Including the one from the Austrian expert nominated by REGLEG

¹⁰ Contribution of the German expert nominated by the CoR Intergroup "Regions with Legislative Power"

¹¹ Contribution of the expert nominated by COSLA

2. Main findings of the consultation and main conclusions

2.1 Main findings

The contributions to the consultation show that most respondents do not see subsidiarity problems resulting from the new EU waste targets. However, several contributions raise concerns regarding proportionality in this context and also relate to the modified reporting obligations of the draft Directive. Moreover, the majority of respondents criticise the considerable number of empowerment clauses for delegated acts contained in the legislative proposal.

- According to the prevailing opinion of respondents¹², there is a need for legally binding EU waste prevention targets, particularly concerning packaging waste.
- A majority of respondents¹³ consider that the new EU recycling targets for municipal and packaging waste do not give cause for concern in terms of subsidiarity. However, a few respondents see subsidiarity problems, mainly referring to the different levels of implementation of current targets, a problem which cannot be solved by EU action in their view, but only by national/regional measures. One national parliament and two chambers of national parliaments¹⁴ have issued a reasoned opinion and thus share the view that the draft Directive causes subsidiarity concerns.
- Most respondents¹⁵ consider that neither the proposal to phase out landfilling by 2025 for recyclable waste nor a possibly binding target for 2030 to virtually eliminate landfill gives cause for concern in terms of subsidiarity.
- A slight majority of respondents¹⁶ do not see proportionality problems regarding the new recycling/landfill diversion targets. However, several respondents believe that the new targets are not realistic and thus disproportionate, considering the time schedule envisaged by the Commission and the fact that the implementation of existing targets varies considerably between Member States. They take the view that priority should be given to the consistent implementation of the current legislation. This view is shared by three chambers of national parliaments having issued opinions in the framework of the political dialogue¹⁷.

¹² Nine out of 12 contributions responding to this question, see point 3.2.1.

¹³ Nine out of 13 contributions responding to this question, see point 3.2.2.

¹⁴ The Croatian Parliament, the Austrian Federal Council and the Czech Senate, see point 5.1.

¹⁵ 10 out of 12 contributions, see point 3.2.3.

¹⁶ Seven out of 13 contributions, see point 3.3.1.

¹⁷ German Bundesrat, Czech Chamber of Deputies, Polish Senate, see point 5.2.

- According to the prevailing opinion of respondents¹⁸, the Early Warning System is proportionate.
- Most respondents¹⁹ consider that the modified reporting obligations contained in the draft Directive are proportionate.
However, some respondents raise proportionality concerns, mainly stressing that these obligations would unnecessarily incur additional costs and administrative burdens, without providing a clear environmental benefit.
- A majority of respondents²⁰ consider that the delegated powers contained in the draft Directive are a cause for concern. These respondents mainly refer to the considerable number of delegations and make the point that the Commission would be empowered to regulate essential elements having an impact on local and regional authorities. These concerns are shared by several chambers of national parliaments²¹.

2.2 Main conclusions

2.2.1 Setting of new targets

In light of the contributions and the opinions of the national parliament and the chambers of national parliaments, it can be concluded that the setting of new EU waste targets with new deadlines appears to be problematic not from a subsidiarity point of view, but as regards proportionality.

- The principle of subsidiarity appears not to be infringed. The question if the EU should act in the field of waste management by setting EU targets and thus the question about the general necessity and value added of EU action in this area had already been answered in the affirmative when the EU legislator adopted the the Waste Framework Directive, the Landfill Directive and the Packaging and Packaging Waste Directive containing the current waste targets.
- Now, in the process of revision of these targets, the question is rather how the EU should act, i.e. how (quantitatively and qualitatively) the existing targets should be modified/increased/complemented by new requirements. This touches upon aspects of proportionality. Indeed, the proportionality principle stipulates that the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties²², i. e. the means proposed by the EU must be suitable and appropriate.

¹⁸ Eight out of 11 contributions, see point 3.3.1.

¹⁹ Seven out of 12 contributions, see point 3.3.2.

²⁰ Eight out of 13 contributions, see point 3.4.

²¹ See point 5.

²² Article 5 (4) TEU

- It appears to be doubtful if these requirements are met:

The implementation of the current targets varies considerably between Member States and therefore still involves significant challenges; even the Commission itself acknowledges in its Impact Assessment that "that there is a risk that some Member States will fail to meet the existing targets on time."²³

Furthermore, the Commission's approach to refer to the "best performing" Member States in the implementation of *existing* EU waste targets when assessing the feasibility of the new targets seems questionable.

On the one hand, it fails to take account of different geographic and demographic conditions and possible regional disparities in various Member States, and of the differences in the required investments. On the other hand, it is not clear if the efforts made to achieve the current targets can be simply compared with those to be made in order to achieve the increased targets. Indeed, it is reported that even Member States with highly developed waste management systems will not easily or perhaps not at all be able to achieve the new targets within the given time schedule.

In addition, it appears that the implementation of the new targets would possibly involve considerable economic and also environmentally questionable efforts and disadvantages (e. g. high consumption of energy and raw materials, increased transport of waste, the doubtful quality of secondary raw materials being counter-productive as regards the high quality recycling put forward by the Commission). Furthermore, there are criticisms concerning the implications of the proposed change in the calculation methods for recycling rates possibly making them stricter.

The conclusion of the German Bundesrat that with the setting of new targets "the second step would be made before the first one"²⁴ seems thus justified and it appears that, in order to achieve better resource and waste management, it would be more appropriate if priority were given perhaps to a consistent EU-wide implementation of the existing targets, at least to a more thorough evaluation of the feasibility of the new targets and their consequences for the Member States, including the sub-national levels which are involved to an important extent in the implementation of EU waste legislation.

2.2.2 Modified reporting obligations

The contributions of several respondents, as well as the opinions of chambers of national parliaments, show that the modifications relating to reporting obligations (annual reporting instead of every three years, data to be accompanied by a quality check report and verified by an independent third party) appear to be disproportionate too.

²³ Impact Assessment SWD(2014) 207 final, part 1/6, p. 34

²⁴ See point 5.2.1.

Such tightened reporting obligations could cause additional administrative burdens for public authorities in the Member States, including at the sub-national level, as well as for businesses, without there being a clear environmental benefit.

2.2.3 Delegated/implementing powers of the Commission

The numerous clauses in the draft Directive empowering the Commission to adopt delegated acts are a cause for concern for most respondents as well as for several chambers of national parliaments.

Indeed, thorough examination would be needed regarding whether the conditions of Article 290 TFEU are met by every delegation, i.e. whether the latter concern non-essential elements and if their objectives, content, scope and duration are explicitly defined.

This could for example be questionable concerning the empowerment to adopt delegated acts necessary to amend Annex VII of the draft Directive containing the minimum requirements for extended producer responsibility²⁵ - are these really non-essential elements? What about the objectives and scope of such amendments?

By contrast, implementing powers can be conferred on the Commission "where uniform conditions for implementing legally binding Union acts are needed", Article 291 TFEU.

In this context, one could ask the question as to whether an implementing act is the suitable tool for the revision of a part of the basic legislative act, as proposed for the revision of Annex VI²⁶ (composition of municipal waste); supplements and amendments of non-essential elements can only be done by delegated acts.

²⁵ Article 1 (21) c of the draft Directive

²⁶ Ibid.

3. Synthesis of contributions

3.1 Implementation of EU waste legislation by local and regional authorities (question 1)

All the local and regional authorities represented by respondents replying to this question are involved in the implementation of EU waste legislation.

Nine respondents (from Austria²⁷, Denmark, Italy, and Spain, as well as the German expert nominated by the CoR Intergroup "Regions with legislative power"²⁸) indicated that their local/regional authority is involved in the transposition of EU waste legislation into national law; two respondents (from the Netherlands and Spain²⁹) gave a negative answer to that question.

Eleven respondents (from Austria, Denmark, Italy, Spain and the Netherlands, as well as the German expert) reported that their local/regional authority is involved in the application of transposed EU waste legislation³⁰.

Finally, nine respondents (from Austria, Denmark, Italy and Spain, as well as the expert nominated by the CoR Intergroup") replied that their relevant authority is involved in the enforcement of transposed EU waste legislation³¹; one respondent from Italy³² gave a negative answer and the respondent from the Netherlands indicated that Dutch municipalities only issue "general administrative orders".

3.2 Subsidiarity

3.2.1 Waste prevention (question 2)

According to the prevailing opinion of respondents, there is a need for legally binding EU waste prevention targets, particularly concerning packaging waste.

The draft Directive does not contain an overall waste prevention target and/or a target for packaging waste prevention. There is just a non-binding objective concerning the prevention of food waste.

²⁷ Austrian State Governors' Conference

²⁸ The German expert specified that the whole question cannot be answered uniformly for all regions with legislative power, but that, however, the implementation of EU waste legislation is an issue that falls very firmly within regional competences.

²⁹ Basque Government

³⁰ E.g. issuing permits, setting up waste prevention programmes and/or waste management plans; developing and managing waste management infrastructures.

³¹ E.g. surveillance, inspections.

³² Lombardy Regional Assembly

Nine respondents (from Denmark, Italy, the Netherlands and Spain) see a need for setting legally binding EU waste prevention targets.

Respondents opting for such targets highlight the following aspects in this context:

- As waste prevention is the top priority in the waste management hierarchy and one of the fundamental components of the circular economy, there should be clearly worded EU targets so as to prevent national/regional imbalances³³.
- Binding waste prevention targets are particularly important for packaging waste and electronic and electrical waste (WEEE). Such targets would help to ensure that the Member States' waste prevention commitments are properly evaluated³⁴.
- Binding prevention targets should be included in product legislation requiring producers to reduce packaging³⁵.
- Such targets should be accompanied by clear monitoring indicators at EU level³⁶ and complemented by national financial incentives (e.g. reduction of regional ecotaxes if the targets are met)³⁷.

Three respondents (from Austria and Italy³⁸, as well as the expert nominated by REGLEG) gave a negative answer to the question.

They put forward the following arguments:

- The respondent from Austria³⁹ considers that further legal requirements without additional obligations for product manufacturers are neither satisfactory nor desirable. The respondent refers to the differing degrees of implementation of existing EU waste legislation and considers that it would be necessary to first monitor compliance with existing targets throughout the EU. However, producers and the public should be made more aware of the need for waste prevention through non-binding measures. The respondent also takes the view that there should, in particular, be more focus on the prevention of packaging waste, which the draft Directive does not deal with, and that waste management targets come too late in the process.

³³ Agència de Residus de Catalunya on behalf of the Catalan Regional Parliament

³⁴ Basque Government

³⁵ Trento Regional Government

³⁶ Lombardy Regional Assembly

³⁷ Abruzzo Regional Assembly

³⁸ Friuli-Venezia Giulia Regional Assembly

³⁹ Austrian State Governors' Conference

- The expert nominated by REGLEG considers that waste prevention is the best concept, whereas treatment and reuse of waste are only the second best solutions. Nevertheless, he believes that an overall EU target in this context does not make any sense, but that there should be broader discussions on provisions in the framework of the internal market (e.g. EU bans concerning packaging).
- A respondent from Italy⁴⁰ believes that it makes sense to allow Member States to lay down their own national obligations based on their own circumstances and needs.

Finally, the respondent from the Netherlands sees a fundamental need for EU waste prevention targets, but considers that this is a complex issue requiring further research before the introduction of legally binding targets.

3.2.2 Setting of new waste recycling targets with new deadlines (question 3)

Most respondents consider that new EU recycling targets for municipal and packaging waste do not give cause for concern in terms of subsidiarity. However, a few respondents raise subsidiarity concerns, mainly referring to the different levels of implementation of current targets, a problem which could only be solved by national/regional action and not by EU action in their view. Moreover, a few respondents consider that the Commission did not sufficiently justify the need for new EU targets.

Substantive aspects of subsidiarity (question 3a)

Nine respondents (from Denmark, Italy, Spain, the Netherlands and the expert nominated by COSLA) do not consider the Commission's proposals to increase the recycling rates for municipal and packaging waste by setting new targets⁴¹ to be a cause for concern in terms of subsidiarity.

They mainly refer to the following aspects in this context:

- The transition towards a circular economy should be facilitated at EU level as it is a global challenge which cannot be addressed by individual Member States⁴².
- The current EU waste targets have had a positive impact on national legislation and policy implementation. This, combined with the EU's current policy of optimising the use of resources, makes it legitimate to introduce overall EU targets⁴³.

⁴⁰ Friuli-Venezia Giulia Regional Assembly

⁴¹ 70% for municipal waste in 2030 and 80% for packaging waste in 2030

⁴² Association of Netherlands Municipalities

⁴³ Agència de Residus de Catalunya on behalf of the Catalan Regional Parliament

- New recycling targets have the effect of bringing the policies of Member States closer together, providing guidance to the markets and helping to bring the principle of sustainability to bear more closely on the production of goods and services⁴⁴.

By contrast, four respondents (from Austria, Italy⁴⁵ and Spain⁴⁶, as well as the expert nominated by REGLEG) consider that increased targets are a cause for concern in terms of subsidiarity.

- The expert nominated by REGLEG sees no necessity for EU waste targets at all. He considers that there is no transnational aspect concerning either municipal waste, which has to be treated at local/regional level, or packaging waste, which is handled at Member State level too. He takes the view that the achievement of the EU targets depends exclusively on national measures, because some Member States (like Austria) have achieved high recycling rates for municipal and packaging waste whereas other Member States are not in compliance with these targets. Therefore, he does not see any value added resulting from EU targets and considers that the Member States are able to resolve problems in the context of waste on their own. He concludes that increased targets will widen the implementation gap between the Member States.
- The respondent from Austria⁴⁷ believes that it is not necessary to increase the EU waste targets, since the same level of waste management has not been achieved in all Member States yet. In the respondent's view, the differences in the implementation of current targets are a local/regional problem which has to be solved by the Member States and regions. Therefore, the respondent considers that full compliance with the existing targets would be sufficient and a priority to pursue.
- The respondent from Spain points out that local administrations should have enough time to adapt to and manage the new infrastructures⁴⁸.

The expert nominated by the CoR Intergroup responds neither "yes" nor "no" to the question, pointing out nevertheless that he does not expect any breach of the subsidiarity principle "in the narrow/formal sense", because in his view, the EU does, in principle, have the power to amend – and to tighten up – existing legislation. However, the respondent considers that many elements of the proposal would entail additional costs and bureaucracy both for economic operators and for the enforcement authorities, with no clear evidence that they will serve to protect the environment. He concludes that these consequences cast doubt on the European added value of the proposals, which is necessary under the subsidiarity principle and shares the view of the respondents from Austria that priority should be given to the consistent implementation of already existing legislation.

⁴⁴ Lombardy Regional Assembly

⁴⁵ Regional Government of Trento

⁴⁶ Extremadura Regional Assembly

⁴⁷ Austrian State Governors' Conference

⁴⁸ However, this is an aspect that is more related to the principle of proportionality.

Formal aspects: justification of the need for new EU recycling targets (question 3b)

Most respondents favouring new EU recycling targets consider that the Commission has sufficiently justified the need for such new targets.

However, the expert nominated by the CoR Intergroup believes that the Commission's statement on the proposal's compliance with the subsidiarity principle is rudimentary and thus does not meet the requirements of Protocol No 2 on the application of the principles of subsidiarity and proportionality. He concludes that the subsidiarity check by national and regional parliaments cannot be completed properly. The respondent considers that the Commission took the attitude that amendments to existing EU legislation require only a cursory subsidiarity check and points out that there is no legal basis for this in the Treaties. Furthermore, the respondent takes the view that Commission proposals in general do not refer to the implementation and enforcement structures in the Member States, particularly at subnational level and thus to the subnational dimension of the subsidiarity principle. In this specific case, he concludes that "the inadequacy of the subsidiarity statement" is all the more significant given that the implementation of EU waste legislation falls to a significant extent within the competence of subnational authorities.

The respondent from Austria⁴⁹ shares the view that the justification is insufficient, pointing out that the reasons why the existing targets do not suffice and the extent to which they are not achieved by all Member States is not set out in the recitals of the draft Directive. Moreover, the respondent considers that the Commission cannot justify the need for new EU waste targets on the basis of their job creation effects, because measures to optimise employment possibilities in the green economy are not covered by the legal basis for EU environment legislation (Article 191 TFEU); however, such effects could just be taken into account in this context.

A respondent from Italy⁵⁰ believes that there should be a better justification, particularly with a view to making private and public operators more aware of their responsibilities.

⁴⁹ Austrian State Governors' Conference

⁵⁰ Abruzzo Regional Assembly

3.2.3 Phasing out landfilling (question 4)

Most respondents consider that neither the proposal to phase out landfilling by 2025 for recyclable waste⁵¹ nor a possibly binding target for 2030 to eliminate landfill gives cause for concern in terms of subsidiarity.

Landfill diversion target for 2025 (question 4a)

Ten respondents (from Denmark, Italy, the Netherlands and Spain, as well as the German and Austrian experts) do not see a cause for subsidiarity concern regarding the Commission proposal to phase out landfilling by 2025 for recyclable waste.

expert highlights that such a target would be a clear incentive for a change of system in Member States not achieving the current targets and would stimulate proper investment by Member States (instead of investments in inflexible and large-scale landfill projects).

Two respondents (from Spain and Italy) made the following points concerning the way such a target should be designed and thus raised more proportionality-related issues:

- The target should be worded in such a way as to take account of specific regional circumstances⁵².
- The introduction of such a target should be accompanied by appropriate measures to support the achievement of the latter by regions⁵³.

The German expert pointed out that such a target does not mean that landfilling can be phased out completely; as regards the safe storage of contaminated mineral waste, for example from construction, the remediation of contaminated sites and certain industries, there are no viable alternatives to landfill.

Two respondents (from Austria⁵⁴ and Italy⁵⁵) consider that there is a cause for subsidiarity concern. The Austrian respondent takes the view that the Commission's proposal completely ignores existing systems for the energy recovery of non-recyclable municipal waste. The respondent deems the planned quantitative restrictions to be unattainable, even where landfill concerns exclusively residual waste (e.g. residues of combustion). Moreover, the respondent points out that there is an imbalance between the Member States in terms of compliance with existing requirements, which would only be further increased by the new target.

⁵¹ Corresponding to a maximum landfilling rate of 25% for municipal waste.

⁵² Agència de Residus de Catalunya on behalf of the Catalan Regional Parliament

⁵³ Abruzzo Regional Assembly

⁵⁴ Austrian State Governors' Conference

⁵⁵ Trento Regional Government

Justification of the need for a new target for 2025 (question 4b)

Eight respondents (from Denmark, Italy, the Netherlands and Spain) consider that the need is sufficiently justified.

The two respondents who think that the justification concerning new recycling targets is insufficient⁵⁶ take this view also in this context.

A respondent from Italy⁵⁷ believes that the target should be better justified in terms of positive effects on the carbon footprint and service costs.

Landfill diversion target for 2030 (question 4c)

As far as a possibly binding target for 2030 is concerned, nine respondents (from Denmark, Italy, the Netherlands and Spain, as well as the Austrian and German experts) do not see a concern in terms of subsidiarity.

The two respondents from Austria and Italy who are against a landfill diversion target for 2025 are consequently against the target for 2030 too.

The Italian respondent takes the view that it is currently not possible to envisage a waste management system without landfilling and that the "zero waste" option cannot be pursued – back-up landfills should still be used for crises or for disposal.

Another Italian respondent⁵⁸ considers the target for 2030 to be extremely restrictive and that it makes sense to allow the Member States to establish obligations based on their own circumstances and needs.

3.3 Proportionality

3.3.1 New targets – varying implementation of existing targets/Early Warning System (question 5)

A slight majority of respondents do not see proportionality problems regarding new recycling/landfill diversion targets. However, several respondents consider that the new targets are disproportionate, mainly referring to the fact that the implementation of existing targets varies considerably between the Member States. They take the view that priority should be given to the consistent implementation of the current targets.

Most respondents believe that the Early Warning System is proportionate.

⁵⁶ Expert nominated by REGLEG, Austrian State Governors' Conference, see point 3.2.2.

⁵⁷ Abruzzo Regional Assembly

⁵⁸ Friuli Venezia Giulia Regional Assembly

Proportionality of new targets (question 5a)

Seven respondents (from Denmark, Italy, the Netherlands and Spain) believe that the setting of new recycling and/landfill diversion targets is the suitable and appropriate way to achieve better resource and waste management in line with EU ambitions regarding resource efficiency and the circular economy; they thus do not see any proportionality problems.

- A respondent from Spain⁵⁹ considers that establishing targets that are ambitious and framed in high-level legal instruments is a must if EU strategies are to move forward in terms of resources and the circular economy, as this is one way of keeping policies on waste management and resources on national agendas. The respondent takes the view that otherwise, interest in these policies could simply fade away nationally and regionally.
- Another Spanish respondent⁶⁰ believes that the draft Directive leaves enough leeway for Member States to select the measures to ensure its implementation and detailed application.
- An Italian respondent⁶¹ takes the view that new recycling and landfill diversion targets have the effect of bringing the policies of the various Member States closer together, providing guidance to the markets and helping to bring the principles of sustainability to bear more closely on the production of goods and services.
- The respondent from the Netherlands gives a differentiated answer by pointing out that new targets stimulate Member States to invest in programmes and infrastructure, waste management systems, etc. However, the respondent considers that the calculation methods for recycling and reuse are very ambitious and therefore "somewhat unrealistic"⁶².

By contrast, five respondents (from Austria and Italy as well as the experts nominated by REGLEG and the CoR Intergroup) are against new EU waste targets because they consider that they are disproportionate. The expert nominated by COSLA does not respond directly to the question, but formulates proportionality concerns.

- The expert nominated by REGLEG points out that two thirds of Member States are currently unable to manage and finance the existing targets concerning municipal waste and concludes that increased targets are not realistic and that their cost-effectiveness depends on regional conditions. Waste prevention would be preferable in his view.

⁵⁹ Agència de Residus de Catalunya on behalf of the Catalan Regional Parliament

⁶⁰ Basque Government

⁶¹ Lombardy Regional Assembly

⁶² The opinion concerning calculation methods is shared by the expert nominated by the CoR Intergroup who is against new EU waste targets, see the following paragraph.

As far as packaging waste is concerned, the expert believes that stakeholders and operators will object due to the additional investment required and perhaps on the grounds of decreasing prices for recycled materials, and that citizens will object as they have to pay higher costs for enhanced recycling efforts. He considers that incentives (and perhaps even EU provisions) for developing prevention techniques and methods are preferable. In relation to a possibly binding landfill diversion target for 2030, the expert takes the view that there is no leeway for alternative national measures and that Member States can achieve high recycling rates satisfactorily on their own and plan properly their investments. As a less restrictive, alternative way, the expert suggests the exchange of good practice, taking into account local and regional conditions, as well as non-binding guidelines.

- A respondent from Italy⁶³ also considers a binding landfill diversion target for 2030 to be too restrictive.
- The respondent from Austria⁶⁴ argues that as long as existing requirements are not met by all Member States, no new targets should be set, but that first of all, steps should be taken to ensure that all Member States achieve the existing targets.
- An Italian respondent⁶⁵ shares the view concerning the differences in the implementation of existing targets and highlights that all the Member States need to be able to achieve and consolidate the waste management system under the current targets in order to avoid creating excessively wide disparities.
- The expert nominated by the CoR Intergroup considers that it is not enough to set ambitious targets for an effective and sustainable waste policy, but that the latter must be methodologically sound, statistically verifiable, technically feasible and of environmental benefit and must not lead to additional bureaucracy. According to the expert, it is doubtful whether all of the proposed targets meet these requirements. As far as the recycling targets for municipal waste are concerned, he considers that even Member States with highly developed waste management systems will not be able to achieve them and that they would involve huge economic and environmentally questionable efforts (consumption of energy and raw materials). He also points out that changing the calculation for recycling rates to be based on output volumes would make the rates stricter, and significantly increase the burden both on businesses and on authorities in terms of data collection. In general, the expert considers that priority should be given to the consistent implementation of existing EU legislation.
- The expert nominated by COSLA also refers to the differences in the implementation of existing targets. He stresses that it is not entirely clear whether it is correct to assume – as the Commission does – that using the timescales of the best performing Member States for the implementation of existing EU waste targets would automatically translate into improved performance of the "worst performers" concerning the new targets.

⁶³ Friuli Venezia Giulia Regional Assembly

⁶⁴ Austrian State Governors' Conference

⁶⁵ Trento Regional Government

Early Warning System (question 5 b)

Eight respondents (from Denmark, Italy and Spain) consider that the Early Warning System, which should monitor the achievement of targets by Member States and anticipate and avoid possible compliance difficulties, is proportionate.

- A respondent from Italy⁶⁶ considers that the Early Warning System is "fair and useful" and that it enables Member States to act in good time by presenting a plan based on the European Commission's recommendations.
- A respondent from Spain⁶⁷ believes that this mechanism should establish and consolidate the role of regional and local tiers of administration in implementing waste legislation and in drafting compliance plans.

Three respondents (from Austria⁶⁸, Italy⁶⁹ and the Netherlands) consider that such an Early Warning System is disproportionate as it would unnecessarily increase the administrative burden in their view.

3.3.2 Reporting (question 6)

Most respondents consider that the modified reporting obligations contained in the draft Directive are proportionate. However, some respondents raise proportionality concerns, mainly stressing that these obligations would unnecessarily entail additional costs and increase the administrative burden.

Seven respondents (from Denmark, Italy and Spain) do not see any proportionality concern related to regarding the Commission proposal to increase the frequency of reporting by Member States and to set the obligation to that the data be accompanied by the data by a quality check report with a verification by an independent third party.

- A respondent from Spain⁷⁰ stresses that the reporting mechanisms should guarantee the comparability of outcomes both between and within Member States. The respondent considers that the authorities responsible for implementing legislation should produce these reports.

⁶⁶ Abuzzo Regional Assembly

⁶⁷ Agència de Residus de Catalunya on behalf of the Catalan Regional Parliament

⁶⁸ Austrian State Governors' Conference

⁶⁹ Friuli Venezia Giulia Regional Assembly

⁷⁰ Agència de Residus de Catalunya on behalf of the Catalan Regional Parliament

- Another respondent from Spain⁷¹ also highlights that reliable information and data on statistical waste management is of the utmost importance in order to ensure efficient application and secure a level playing field for all Member States. Nevertheless, the respondent considers that, in cases where specific regional legislation exists, it seems unnecessary for the reports to be verified by an independent third party⁷².

However, five respondents (from Austria and Italy as well as the experts nominated by REGLEG and by the CoR Intergroup) believe that the modified reporting obligations are disproportionate.

- The expert nominated by REGLEG considers that the reporting obligations are too complex and have less added value and that there is no leeway for Member States to establish alternative measures. In his view, such a modification would also mean that functioning national/regional reporting systems have to be changed. As a less restrictive alternative, the expert suggests the harmonisation of reporting through non-binding guidelines.
- The expert nominated by the CoR Intergroup takes the view that the higher frequency of reporting as well as the verification by a third party unnecessarily increases the administrative burden. He refers in particular to the annual reporting obligation requiring new statistical data on waste used for backfilling⁷³ which, in his view, would lead to considerable additional costs, but will be of no environmental benefit.
- The respondent from Austria⁷⁴ does not consider it useful to set new and/or further reporting obligations as long as a series of Member States do not comply with the current level of legislation. Attention should be paid to keeping reporting obligations to a minimum of data, creating the least burden possible, as in many cases the regions incur the additional costs.
- The respondent from the Netherlands considers that the deadlines for reporting would become too tight and favours reporting every two years.
- A respondent from Italy⁷⁵ points out that the EU waste management reporting models must be clear and unambiguous, and based on the actual data collection capacity.

⁷¹ Basque Government

⁷² The respondent refers to the Basque statistics law with waste inventories and target attainment monitoring in this context.

⁷³ Article 1(20) of the draft Directive

⁷⁴ Austrian State Governors' Conference

⁷⁵ Trento Regional Parliament

3.4 Delegated and implementing acts (question 7)

Most respondents consider that the delegated powers contained in the draft Directive are a cause for concern. They mainly refer to the considerable number of delegations and point out that the Commission would be empowered to regulate essential elements having an impact on local and regional authorities.

Eight respondents (from Austria, Denmark, Italy and the Netherlands, as well as the experts nominated by REGLEG, the CoR Intergroup and COSLA) consider that the empowerment clauses which give the Commission the power to adopt delegated acts are a cause for concern.

This critical position is limited to delegated acts and does not concern the implementing powers of the Commission contained in the draft Directive; three respondents even ask that delegated powers should be replaced by empowerments to adopt implementing acts⁷⁶.

- According to the respondent from the Netherlands, the relevant articles in the draft Directive contain some essential provisions with a profound impact on (local) governments, for example in the field of harmonisation. The respondent prefers implementing acts.
- The expert nominated by the CoR Intergroup also considers that the draft Directive confers wide-ranging regulatory powers on the Commission and that implementing powers are preferable.
- The expert nominated by COSLA considers that there is an “excessive use” of delegated powers in the draft Directive and that for legal certainty, some of the aspects to be regulated by delegated acts should be integrated into the draft Directive; “at the very least”, delegated acts should be replaced by implementing acts. In particular, the expert points out that questions about subsidiarity may emerge from the way in which future delegated acts amend the minimum standards concerning extended producer responsibility⁷⁷.
- According to the respondent from Austria, the considerable number of delegated powers entails the risk that the “content” of the draft Directive will only be “added later”. Furthermore, it is to be feared in the respondent’s view that the costly and labour-intensive details (e.g. form, content and scope of data collection and reports) will only be laid down at a later stage and passed on within Member States to the authorities responsible.

⁷⁶ Under the regime of implementing acts, the involvement of Member States is ensured, because the comitology committees deliberating and deciding on such acts are composed of Member State representatives, under Regulation No 182/2011. Member States can also send representatives of the regional level to such committee meetings. By contrast, the composition of expert groups deciding on delegated acts is at the sole discretion of the Commission. **However, it should be noted that the replacement of delegated by implementing powers has to respect the requirements contained in Articles 290 and 291 TFEU:** Only delegated acts can supplement or amend non-essential elements of the basic legislative act, whereas implementing acts shall set uniform conditions necessary for implementing the rules laid down in the basic act.

⁷⁷ Art. 1 (21) c of the draft Directive

- The expert nominated by REGLEG shares this view, considering that definitions of packages, the criteria specifying the type of waste and the formula for incineration facilities are essential elements of the draft Directive to be decided by the legislator. He stresses that these elements are of utmost interest to the Member States and their local and regional authorities, because they have a decisive bearing on the efforts to be made by the latter and consequently the costs they will incur. The expert stresses that this may be true also for other parts of the Annexes, regulating standards and technical efforts.
- A respondent from Italy⁷⁸ believes that delegated powers should be limited to broader guidelines that ensure transparency and fair treatment in terms of the roles, responsibilities and targets concerning waste management that the European Union wishes to pursue. The respondent specifies that these acts must leave the Member States free to specify their own obligations based on their own circumstances and needs.

However, five respondents (from Italy and Spain) do not see a cause for concern in this context.

3.5 Additional remarks related to subsidiarity/proportionality

Some respondents raise further subsidiarity and proportionality concerns:

- The expert nominated by REGLEG considers that the requirement for separate collection of bio-waste, ferrous metals and aluminium (with targets set up to 2025) infringes the subsidiarity principle as municipal waste, including bio-waste, is exclusively treated at local/regional level and thus EU action is not necessary in this context.
- The respondent from the Netherlands shares this view, stressing that the separate collection of waste at source (for example bio-waste) should be regulated at national level. The respondent concludes that the EU should set targets, but how they are to be met should be left to the Member States.
- The expert nominated by the CoR Intergroup believes that the minimum requirements for extended producer responsibility⁷⁹ should be assessed from a subsidiarity point of view, to determine whether it would be possible to continue using tried-and-tested national legislation or if EU action is absolutely necessary. As far as proportionality is concerned, the expert has objections against the extension of the obligation to keep records to all producers, professional collectors, transporters, dealers and brokers of waste⁸⁰, whereas this obligation currently applies only in the case of hazardous waste. The expert believes that the extension to non-hazardous waste is not necessary to protect the environment, places a disproportionate burden on those who handle waste and makes the administrative process unnecessarily difficult.

⁷⁸ Friuli Venezia Giulia Regional Assembly

⁷⁹ Annex VII of the draft Directive

⁸⁰ Article 1 (18) a of the draft Directive

4. Other aspects (not directly related to subsidiarity/proportionality)

A respondent from Italy⁸¹ points out that the methods for calculating recycling rates (percentages) are not properly addressed and that the Commission should establish a uniform approach in this context.

The expert nominated by the CoR Intergroup shares this view, considering that the Commission does not propose a clear calculation formula, which would be necessary in order to obtain data that can be compared across Europe and that reflect the reality of recycling rates.

Another respondent from Italy⁸² refers to the simplification of permit and registration requirements for small establishments or undertakings and sees a need to rethink the application of the proposed limits⁸³, since in the respondent's view this would mean a lack of adequate supervision of most businesses collecting and transporting waste at local level.

The respondent from Austria⁸⁴ believes that the implementation of the requirements of the draft Directive for composite packaging is unfeasible. (If packaging is composed of different materials, each material shall be separately taken into account for the calculation of the packaging waste recycling/re-use targets⁸⁵). Moreover, the respondent highlights the following aspects:

- In order to ensure the comparability of Member States' recycling rates, uniform quality standards for recycling products have to be defined and sham recycling banned.
- Waste landfill with a total organic carbon value (TOC) of more than 5% should be banned as, in the respondent's view, this would be a simple rule to implement and would contribute to more separate collection of waste, material and energy recycling.

A respondent from Spain⁸⁶ believes that the Commission did not explain adequately why the packaging waste generation rates per capita continue to raise slightly despite the economic recession.

Two respondents from Italy believe that further EU action concerning uniform incentives would be necessary:

- There is a need to introduce uniform incentives across the EU to promote waste prevention and recycling, in particular in order to make food waste prevention economically more attractive.⁸⁷

⁸¹ Trento Regional Government

⁸² Friuli Venezia Giulia Regional Assembly

⁸³ Establishments/undertakings employing fewer than 250 people and having an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, Article 1(1) e of the draft Directive

⁸⁴ Austrian State Governors' Conference

⁸⁵ Article 2(3) d of the draft Directive.

⁸⁶ Basque Government

⁸⁷ Lombardy Regional Assembly

- The transposition of the various European directives must be carefully assessed and verified by the Commission in order to avoid transposition disparities. Moreover, the respondent⁸⁸ believes that a new system of tax incentives and disincentives should be introduced uniformly across the EU⁸⁹. This system should make waste prevention and recycling more convenient and financially advantageous than energy recovery and landfilling (e.g. reduced VAT for products using recycled materials, eliminating incentives for energy recovery, penalties for landfilling).

⁸⁸ Abruzzo Regional Assembly

⁸⁹ Based on Article 113 TFEU.

5. Opinions of national parliaments

5.1 Reasoned opinions

The Subsidiarity Early Warning System (EWS) deadline expired on 6 October 2014, by which time three national parliaments/chambers had issued reasoned opinions with regard to the proposal: the Austrian Federal Council (*Bundesrat*), the Croatian Parliament and the Czech Senate. They mainly refer to the incomplete implementation of existing waste targets and consider that there should first be compliance in this regard before new targets are set, while also calling for more thorough analyses of the impact of the proposed provisions.

5.1.1 Austrian Federal Council (*Bundesrat*)

The Federal Council considers the draft Directive to be incompatible with the principle of subsidiarity pointing out that there is no transnational aspect in favour of an EU regime setting new targets as, in its view, the failure of numerous Member States to meet the current targets is due to regional problems, which ought to be solved by the Member States concerned in accordance with the principle of subsidiarity.

Moreover, the Federal Council found that the justification for the need for such targets is not convincing as in its view the recitals of the draft Directive do not convincingly outline why the current targets are insufficient and to what extent they are not met by all Member States.

The Federal Council believes that, as long as the current targets are not reliably met by all Member States, raising these targets is not necessary. It considers the measures proposed for municipal waste, packaging waste and waste sorting to run counter the principles of subsidiarity and proportionality and takes the view that the impact of the new definitions and the new calculation method on the current recycling targets and their implementation has not been assessed by the Commission.

Finally, the Federal Council expresses reservations with regard to the scope of the delegated and implementing acts foreseen by the Commission.

5.1.2 Croatian Parliament

The Croatian Parliament (European Affairs Committee) believes that, due to significant differences in the management of various kinds and classes of waste in the Member States, setting more ambitious targets, without a differentiated and flexible approach, in terms of deadlines and quantitative limits on waste flows, would generate additional disparities as regards economic and social development, which is contrary to the Union's objectives.

In conclusion, the parliament considers that the matter of setting additional waste targets should be within the competence of the Member States themselves, depending on their economic possibilities. In the parliament's view, Member States, acting within the scope of their own competences, could contribute in a satisfactory manner to the achievement of the objectives of the European circular economy, and at the same time contribute to the greater democratic legitimacy of the European Union by bringing the European decision-making process closer to citizens.

5.1.3 Czech Senate

The Czech Senate feels that the draft Directive, insofar as it defines binding targets, does not comply with the principle of subsidiarity. In its view, the Commission has not substantiated that the proposed targets are realistically attainable at reasonable costs for the Member States, and therefore, the Commission has not justified the real added value of the proposed action at EU level. According to the Senate, it is unclear whether it is realistically possible to attain the proposed objectives within the given time schedule and thus obtain the benefits claimed by the Commission, especially in comparison with the economic burden that would be connected with fulfilling the new targets.

Moreover, the Senate considers that the proposed changes affect the competence of municipalities and may interfere in their long-term investments as well as in the functioning of the sorted waste collection system. It is therefore of the opinion that, prior to setting any binding targets, the impact on the individual Member States should be analysed, taking into consideration their specific economic structures. "Concrete realistic targets" should be set only on the basis of a thorough evaluation of results of these analyses.

5.2 Opinions issued in the framework of the political dialogue

Without seeing a subsidiarity breach, the German Bundesrat and the Polish Senate each issued an opinion in the framework of the political dialogue⁹⁰ pointing out that the emphasis should be put on achieving the existing targets, and raising proportionality-related issues.

5.2.1 German Bundesrat⁹¹

The Bundesrat considers that with the draft Directive the "second step is made before the first one" as, in its view, the implementation of the existing EU waste legislation in all the Member States still involves considerable challenges.

⁹⁰ For the political dialogue see:

http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm

⁹¹ [http://www.bundesrat.de/SharedDocs/drucksachen/2014/0301-0400/308-14\(B\).pdf?__blob=publicationFile&v=1](http://www.bundesrat.de/SharedDocs/drucksachen/2014/0301-0400/308-14(B).pdf?__blob=publicationFile&v=1)
(in German)

Moreover, it expresses doubts as to whether the new legislation is proportionate. It stresses that implementation of the new recycling targets for municipal waste would mean that in 2025 50% of municipal waste had to be transformed into products. This would not be feasible for Germany without enormous efforts which would be questionable from an economic and ecological point of view (consumption of energy and raw materials). The Bundesrat also considers that, for physical and practical reasons, the new recycling targets for packaging waste cannot be achieved.

Furthermore, the Bundesrat takes the view that the Early Warning System is not appropriate and increases the administrative burden, and that the modified reporting obligations are disproportionate too. As far as subsidiarity is concerned, the Bundesrat says that the need for EU minimum criteria for extended producer responsibility needs to be examined.

Finally, the Bundesrat considers that the empowerments for the Commission to adopt delegated acts should be examined and that in several cases implementing acts instead of delegated acts would be preferable in order to ensure uniform implementation within the EU and the participation of the (German) regions.

5.2.2 Polish Senate⁹²

The Polish Senate (European Affairs Committee) also takes the view that greater emphasis should be put on meeting the existing targets rather than setting new ones which will require major investments in some countries. Moreover, it considers the scope for delegated acts to be too wide.

5.2.3 Czech Chamber of Deputies⁹³

The Czech Chamber of Deputies considers that the European Commission's assessment of the costs associated with collecting and processing waste is "too minimalist and does not sufficiently deal with the issue of financial burden for the Member States".

Furthermore, it believes, that the Early Warning System places an "excessive administrative burden on underperforming Member States". Moreover, it takes the view that the empowerments for the Commission to adopt delegated acts should be curtailed and that the minimum requirements for extended producer responsibility are too extensive.

⁹² <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20140201/plsen.do>

⁹³ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20140201/czpos.do>

Appendix I: Questionnaire

COMMITTEE OF THE REGIONS – DIRECTORATE E – Horizontal Policies and Networks



CONSULTATION OF THE SUBSIDIARITY MONITORING NETWORK (SMN)

Questionnaire

**Proposal for a Directive of the European Parliament and of the Council
amending Directives 2008/98/EC on waste⁹⁴, 94/62/EC on packaging and packaging waste,
1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on
batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on
waste electrical and electronic equipment
COM(2014) 397 final**

BACKGROUND

On 2 July 2014, the European Commission published its "circular economy package".

As part of this package, the Commission adopted the above-mentioned proposal for a Directive to review recycling and other waste-related targets⁹⁵ in the EU.

The proposal aims, *inter alia*, to:

- increase the recycling/re-use of municipal waste to 70% by 2030;
- increase packaging waste recycling/re-use to 80% by 2030 – with material-specific targets set to gradually increase between 2020 and 2030 (to reach 90% for paper and 60% for plastics by 2025; and 80% for wood, and 90% for ferrous metal, aluminium and glass by the end of 2030);

⁹⁴ Waste Framework Directive.

⁹⁵ This review is based on the examination of current waste targets in line with the review clauses in the Waste Framework Directive - Art. 11(4), the Landfill Directive – Art. 5(2) c and the Packaging and Packaging Waste Directive – Art. 6(5).

- phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste;
- reduce food waste generation by 30% by 2025 (aspirational target);
- introduce an early-warning system to anticipate and avoid possible compliance difficulties in Member States; and
- introduce modified reporting obligations.

The review of EU waste legislation is on the **CoR Subsidiarity Work Programme 2014**; this is why you have been asked to contribute to the subsidiarity and proportionality analysis on relevant aspects of the Commission proposal.

The outcome of the consultation will be forwarded to **Mariana Gâju** (RO/PES), rapporteur of the CoR opinion scheduled to be adopted at the February 2015 plenary session. The rapporteur will thus be able to take account of the outcome of the consultation for the drafting of her opinion. The consultation report will also be sent to the European Commission.

Please complete and submit by **6 October 2014**. You may upload the completed questionnaire directly onto the Subsidiarity Monitoring Network website (<http://subsidiarity.cor.europa.eu> – remember to log in). Alternatively, you can send it by email to subsidiarity@cor.europa.eu.

Name of Authority:	
Contact person:	
Contact details (phone, email)	
Member of	SMN

Please answer the following questions:

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES

1a. *Is your local/regional authority involved in:*

aa) *The transposition of EU waste legislation into national law?*

Yes / No

bb) *The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?*

Yes / No

cc) *Its enforcement (e.g. surveillance, inspections)?*

Yes / No

1b. *As relevant, please specify briefly your answer.*

SUBSIDIARITY⁹⁶

Waste prevention

Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention⁹⁷, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"⁹⁸. There is just a non-binding objective concerning the prevention of food waste⁹⁹.

⁹⁶ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

⁹⁷ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

⁹⁸ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49

⁹⁹ Art. 1(7) of draft Directive COM(2014) 397

During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets¹⁰⁰.

2a. *Do you still see a need for the introduction of legally binding EU waste prevention targets?*

Yes / No

2b. *Please specify briefly your answer.*

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030¹⁰¹ and 80 % for packaging waste in 2030¹⁰²)¹⁰³.

3a. *Do you consider these new targets to be a cause for concern in terms of subsidiarity?*

Yes / No

3b. *Do you consider that the need for such new EU targets has been sufficiently justified by the Commission¹⁰⁴?*

Yes / No

3c. *Please specify briefly your answers.*

¹⁰⁰ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

¹⁰¹ While maintaining the existing target (50% for 2020).

¹⁰² With interim targets of 60% by 2020 and 70% by 2025.

¹⁰³ Art. 1(8) (a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

¹⁰⁴ See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste¹⁰⁵. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?¹⁰⁶*

Yes / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes / No

4d. *Please specify briefly your answers.*

PROPORTIONALITY¹⁰⁷

New targets - different implementation of existing targets/Early Warning System

The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States¹⁰⁸.

¹⁰⁵ Art. 3(2) (a) of draft Directive COM(2014) 397.

¹⁰⁶ See footnote 11.

¹⁰⁷ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

¹⁰⁸ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

The majority of respondents participating in the targeted consultation at the pre-legislative stage¹⁰⁹ were opposed to upgraded recycling targets¹¹⁰ and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

Yes / No

The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties¹¹¹.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste¹¹², targets for packaging waste¹¹³ as well as landfill diversion targets¹¹⁴. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

¹⁰⁹ See footnote 7.

¹¹⁰ However, the majority of respondents opted for new landfill diversion targets.

¹¹¹ Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

¹¹² Art. 1(20) of draft Directive COM(2014) 397.

¹¹³ Art. 2(6) (c) of draft Directive COM(2014) 397.

¹¹⁴ Art. 3(6) of draft Directive COM(2014) 397.

6a. Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?

Yes / No

6b. Please specify briefly your answer.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts¹¹⁵.

Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility¹¹⁶.

7a. Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?

Yes / No

7b. Please specify briefly your answer.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

¹¹⁵ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

¹¹⁶ Art. 1(21) (c) of draft Directive COM(2014) 397.

Privacy Statement: *The follow-up to your contribution requires that your personal data (name, contact details, etc.) be processed in a file. All the answers to the questions are voluntary. Your replies will be kept for a period of 5 years after the reception of the questionnaire. Should you require further information or wish to exercise your rights under Regulation (EC) No 45/2001 (e.g. to access, rectify, or delete your data), please contact the data controller (Head of Unit E2) at subsidiarity@cor.europa.eu. If necessary, you may also contact the CoR Data Protection Officer (data.protection@cor.europa.eu). You have the right of recourse to the European Data Protection Supervisor at any time (www.edps.europa.eu).*

Please note that the questionnaire with your contribution and your contact details will be published online. Your questionnaire may be transmitted to CoR rapporteurs and other EU institutions for information purposes. If you do not wish your questionnaire to be made available for this purpose, please notify us accordingly.

Appendix II: List of respondents

#	Name	Network	Member State	Local or regional level
1.	Johannes Maier – Head of Unit "Internal EU-Affairs", Carinthia State Government, SEG member for REGLEG ¹¹⁷	SEG	AT	Regional
2.	Austrian State Governors' Conference	SMN	AT	Regional
3.	Gregor Raible – Head of the office of the Bavarian State Parliament in Brussels, SEG member for the CoR Intergroup "Regions with legislative power"	SEG	DE	Regional
4.	Denmark Local Government	SMN	DK	Local
5.	Basque Government (Departamento de Medio Ambiente y Política Territorial)	SMN	ES	Regional
6.	Agència de Residus de Catalunya (ARC) on behalf of the Catalan Regional Parliament	Catalan Regional Parliament is SMN member	ES	Regional
7.	Extremadura Regional Assembly	SMN	ES	Regional
8.	Agenzia per la Depurazione on behalf of the Trento Regional Government	Other stakeholder	IT	Regional
9.	Friuli Venezia Giulia Regional Assembly	SMN	IT	Regional
10.	Lombardy Regional Assembly	SMN	IT	Regional
11.	Abruzzo Regional Assembly	SMN	IT	Regional
12.	Association of Netherlands Municipalities (VNG)	SMN	NL	Local
13.	Serafin Pazos-Vidal, SEG member for COSLA ¹¹⁸	SEG	UK	Local

¹¹⁷ REGLEG is a political network for EU regions with legislative power gathering representatives of regional governments which work together on issues of common concern.

¹¹⁸ Convention of Scottish Local Authorities

Appendix III: Contributions

1. Johannes Maier, SEG member for REGLEG

MATRIX EU Subsidiarity and KISS („Keep It Simple as Smart“)-Check©
on EU Proposal: “Waste package” Com(2014) 397 (Directive)

Problem identified by EC	Reasons/ causes of the problem ⁱ (market/regulatory failure)	Objectives ⁱⁱ (overall, specific, operational)	Legal base ⁱⁱⁱ EU-Treaties compet. shared support. exclusive	any national action ^{iv} will conflict with Treaties or other nat. interests	proposed EU action to solve/reduce the problem (ideas in case of communications)	Proposed EU action has ^v ...			Action complies with Subsidiarity ^{vi}
						trans-national aspects	clear benefits ^{vii} (rate 1-5)	effectiveness ^{viii} (rate 1-5)	
						... in solving the basic problem!			
loss of raw	not reflected in market prices (mf); poor capture of loc/reg authorities (rf)	Reduce resource dependency (ov), enhance resource efficiency (ov) and circular economy (ov)	(sh)	art 193 TFEU: intensified action of MS explicitly allowed	(see actions below)				
	producer take less care in using efficiently resources (mf)	Enhance producer responsibility (sp)	114 TFEU (sh)	prohibit single market	01 Introduction of minimum standards of Extended Producer Responsibility	Concerns single market	3 (only “minimum” planned)	3 “minimum” (5 in case of higher standards)	√

materials in waste	insufficient municipal waste management, <i>(lack of financial and administrative means!)</i>	Establish mid-term (2025/2030) legal binding waste targets as clear signal to MS and waste operators (sp)	192-1 TFEU (sh)	no conflict, some MS prove evidence to achieve still higher rates	02 Increase the recycling/reuse target for municipal waste up to 60/70%	municipal waste has to be treated at loc/reg. level	0 enhanced measures causes huge costs at loc/reg level	0 many MS (incl. LRA) are not able even to meet current EU targets	NO
	not reflected in market prices (mf), less producer/selling responsibility (mf); dependence on landfilling		192-1 TFEU (sh)	no conflict MS (incl. LRA ^{ix}) are already conducting well having their prevention plans	03 Increase the re-use/recycling targets for (plastic) packaging waste up to 80%	Packing waste is handled mainly at MS level	1 MS (incl. LRA) have to tighten their systems	0 some MS (incl. LRA) are not able to meet current EU targets	NO (very small scale of benefits)
	contamination of recyclable waste-materials by bio-waste;		192-1 TFEU (sh)	no conflict (art 193 TFEU)	04 reduction of food waste up to 30% until 2025	concerns single market (manufacturing, retailing)	0 benefits only envisaged, if 'single market' actions are taken at EU-level	1 as regards obligation on MS to take measures for food services, households	√
	low rate of recycled ferrous metals and aluminium		192-1 TFEU (sh)	no conflict, some MS (incl. LRA) are already conducting	05 introduction of the obligation of separate collection of bio-waste, ferrous metals and	municipal waste incl. bio-waste is treated at	0 introducing new separating systems efforts high costs	0 depends on loc./reg. circumstances and will vary thro-	NO

				well separate collection	aluminium until 2025	loc/reg. level	depending on regional conditions	throughout EU substantially	
Risks of wrong investments in inflexible and large-scale projects	Missing of orientation for future developments?		192-1 TFEU (sh)	no conflict (art 193 TFEU)	06 Phasing out landfilling of recoverable municipal waste, max 5% by 2030	only in cases of operating cross-border treatment of waste	3 stimulating proper investment by MS (incl. LRA) and private operators throughout EU	4 Clear incentive for a change of systems in missing MS	√
			192-1 TFEU (sh)	no conflict (art 193 TFEU)	07 an extension of landfill ban to all waste similar to municipal waste				√
only 40% of municipal waste recycled	'lack' of enforcement of existing EU directives (rf); obligation for 50%	Improve waste management (sp) by enforcement of EU Directives (Option 1)	(ex)	Some MS (incl. their local and regional authorities) have proven evidence being capable not only achieving the targets set by the EU directives but also in exceeding the operational targets; IA (Commission) did not mention her activities (infringement procedures) in order to enforce still existing law.					new or additional EU legislation not justified for political as well as legal reasons
implementation gap of existing law	'lack' of enforcement of existing EU-law (rf)	enforcement of EU Directives (Option 1)	(ex)	Some MS (incl. their local and regional authorities) have proven evidence being capable not only achieving the targets set by the EU directives but also in exceeding the operational targets; IA (Commission) did not mention her activities (infringement procedures) in order to enforce still existing law.					
Interpretation	'lack' of	simplify EU waste legislation (sp) (Option 2)	192-1 TFEU (sh)		08 as 'accompanying measure': definitions in Directive	only in	0 (benefits following addi-	3 aligning definitions enables EC,	√

<p><i>of existing law differs from MS to MS (not directly mentioned by the Commission)</i></p>	<p>coherence; (no clear reasoning provided by the EC): rf at EU-level</p>	<p>adapting and clarifying key definitions (op)</p>	<p>192-1 TFEU (sh)</p>		<p>94/62/EC and 1999/31/EC are aligned to those of Directive 2008/98/EC; new definition of residual waste in Directive 1999/31/EC in order to clarify the scope; inclusion of definitions of municipal waste, food waste, backfilling in Directive 2008/98/EC</p>	<p>cases of operating cross-border treatment of waste</p>	<p><i>tionnal alignment are difficult to assess, has to be made by 'waste experts')</i></p>	<p>MS (incl. LRA) to enforce properly EU law in general</p>	
<p>reporting obligations are complex having less added value</p>	<p>'waste legislat-ion' has been identified as one of the most burdensome for smaller establishments; 3 year MS reports are ineffective for</p>	<p>reduce burden on "waste stakeholders" (op)</p>	<p>192-1 TFEU (sh)</p>	<p>no conflict, some MS (incl. LRA) are already conducting well single national entry points (e.g. AT is cited as a best example)</p>	<p>09 as 'accompanying measure': Introduction of a single entry point for all waste data; deletion of obsolete reporting requirements; benchmarking national reporting methodlo-</p>	<p>reporting on waste streams, etc. is mainly done at national (incl. LRA) level; only few elements</p>	<p>0 some few priv. small operators will benefit, public authorities are imposed with substant.</p>	<p>3 voluntary actions of MS (incl. LRA) will differ and hardly being comparable; an obligatory reporting system will ensure</p>	<p>√ (but not proportionate)</p>

	verifying compliance				gies and third party verification of data quality	are trans-national	efforts	effectiveness	
monitoring tools statistics on waste generation and management are sub-optimal		Improve EU-monitoring (sp)	192-1 TFEU	no conflict; some MS (incl. LRA) prove evidence of efficient reporting and reforming their national targets and measures	10 as ‘accompanying measure’: establishment of electronic registries for hazardous waste; extended to other types; national waste management plans have to take care of recovery of waste containing significant amounts of critical raw materials;	only few elements are trans-national comparison of performance throughout EU	0 additional administrative burden on some MS and LRA in changing their reporting system	3 compulsory standards on reports and the introduction of a ‘semester procedure’ can improve controlling of the enforcement of (existing) EU law	√
		improving the quality of waste statistics (op)	192-1 TFEU (sh)						
	current reporting system missis a ‘prevention’ and ‘corrective’ element (rf)	“early warning” Procedure (op)	192-1 TFEU (sh)						
		Ensure optimal waste management in all Member States (sp);	192-1 TFEU (sh)						
negative effects of food wastage on the environment	high rate of food waste due to consumer sensibility on fresh products	flexible reaction to technical progress (op)	192-1 TFEU (sh)	no conflict; some MS (incl. LRA) are already conducting well in preventing food waste	11 obligation to develop national food waste prevention plans and to collect and report levels of food waste;	regarding manufacturing, distribution no appropriate action proposed	0 depends on how MS (incl. LRA) are able to find solutions at the roots	1 the action itself does not tackle the problem/causes at the roots, but has a strong incentive	NO (small scale of benefits)
<i>(climate change)</i>	<i>In general: increase of</i>	<i>reduction of 443 millions of tons</i>	192-1 TFEU	no conflict	12 amongst others: Increase		0 by-	0 accom-	

	<i>GHG and others</i>	<i>of GHG (op)</i>	(sh)		the recycling/reuse target for municipal waste up to 60/70%; increase the re-use/recycling targets for packaging waste up to 80%	only in cases of operating cross-border treatment of waste	impacts are very high, nevertheless costs have to be bared by LRA (fees on citizens)	panying effects of the measure but not solving the basic problem (political argument)	NO
<i>(unemployment in general)</i>	<i>general reason: economic crisis (mf)</i>	<i>Approx. 140.000 additional direct jobs (op); nearly 40.000 will be created by proper implementation of existing law</i>	no direct legal base to act	no conflict, MS are competent to foster employment					
Implement- ation gap of existing law in MS		promoting dissemination of best practices (op)	192-1/3 TFEU (sh)	no conflict	13 <i>(no action currently indicated)</i>	clear trans-national character	4 clear advantage for participating MS and LRA	3 depends on methods and range of partners	√
DELEGATED ACTS PROPOSED			290 TFEU		14 delA				
'need' to adapt and adjust to the technical development, progress and state of play in due time (regarding non-essential elements of several directives)	Ensure optimal waste management in all Member States (sp); flexible reaction to technical progress (op)	Directive 94/62/EC (packaging waste): art 3.1 (definitions of 'package'), 11.3 (exemptions of heavy metals in packages), 19.2 (adjustments of data – annexes – to the state of play), 20-1 (specific measures) Directive 1999/ 31/EC (landfill): art. 16 (huge range of norms and technical standards – annexes) Directive 2008/ 98/EC (waste): art 5.2 (criteria for by-products), 6.2 (criteria specifying the type of waste), 7.1 (list of waste for end-of-life vehicles), 27.1 (technical minimum standards for treatment activities regarding permits), 27.4 (minimum standards for activities that require registration), 38.1 (formula for incineration facilities), 38.2 (amend Annexes I to V) and 38.3 and 38.4 (amend Annexes VII and VIII);				<i>early consultation of experts intended</i>			

IMPLEMENTING ACTS PROPOSED		291 TFEU		15 implA				
'need' for proper implementation		ensure uniform conditions for the implementation (sp)	Directive 94/62/EC (packaging waste): 12(3b) and 19(1); Directive 1999/31/EC (landfill): art. 3(3), 5(2), 5(2a), 5(2b), Annex I, paragraph 3.5 and Annex II, paragraph 5; Directive 2008/98/EC (waste): Articles 9(3), 11(3), 24(2), 29(4), 33(2), 35(4), 37(4) and 38(4)				<i>discussed and partly decided in Regulatory Committee</i>	

- i. Use reasons listed inexhaustibly in IA Guidelines 15.01.2009, Chapter 5.1, page 21
- ii. See info boxes in IA Guidelines 15.01.2009, Chapter 6, page 26 and 27
- iii. Use the clarification in IA Guidelines 15.01.2009, Chapter 5.2, page 22
- iv. See info boxes and explanation in IA Guidelines 15.01.2009, Chapter 5.2, page 23f
- v. See info boxes and explanation in IA Guidelines 15.01.2009, Chapter 5.2, page 23f
- vi. Consider that action within 'supporting competences' of the EU are less capable to achieve benefits and effectiveness throughout the whole Union
- vii. Consider particularly cost-effectiveness not only based on figures provided by the Commission
- viii. Consider any doubts and counteracting effects perhaps not assessed/mentioned by the Commission in its IA particularly for LRAs
- ix. Compare good examples mentioned in SWD(2014) 209 on Ex-post evaluation of Five Waste Stream Directives, table 2, page 20

MATRIX EU Proportionality and KISS („Keep It Simple as Smart“)-Check©
 On EU Proposal: “Waste package” Com(2014) 397 (Directive)

Problem identified by EC	proposed EU action to solve the problem <i>(ideas in case of communications)</i>	proposed EU-Action is formally ^x and procedurally ^{xi} dis-/proportionate, because ...	proposed EU-Action ^{xii} is dis-/ proportionate ^{xiii} regarding its content ^{xiv} , because ...	proposed EU-Action is Simple ^{xv} as Smart ^{xvi} ...			Action complies with Proportionality ^{xvii}
				... due its simple and logical concept rate 1 - 5	... regarding its possible acceptance/objection by the citizens ^{xviii} rate 1 - 5	... due its ability to be communicated easily to citizens rate 1 - 5	
loss of raw materials in waste	01 Introduction of minimum standards of Extended Producer Responsibility	<i>clear information and justifying arguments are not mentioned by EC nor any on the scale of (low) ambition</i>	“minimum standards” seems to be able to harmonize “waste” reduction at its origin	5 To reduce waste at its origin is the most simple and efficient way saving raw materials and tackling waste problems	3 producers, marketing enterprises and packaging industry will object, but citizens will broadly welcome	5 “waste reduction at the origin” can be easily communicated	√ <i>(proced. EC should deliver better info)</i>
	02 Increase the recycling/reuse target for municipal waste up to 60/70%	target posed by a ‘directive’ in a very general form will leave enough leeway for MS (incl. LRA); but no reasoning, why the upgrading of recycling targets	2/3 of MS (incl. LRA) are currently unable to manage and finance existing targets; enhanced targets are not realistic in any way; the cost-effectiveness relation differs depending on	-3 Tackling waste and reusing it are the second best solutions; its prevention is the best concept; efforts/costs of recycling are increasing with the percentage of the target	-4 Stakeholder and operators will object due to additional investments and perhaps even decreasing prices for recycled materials; citizens will object as they have to pay	0 in general reduction of waste and efforts for better reusing raw materials are of general interest of the public/citizens as long they are not concerned individually	NO (unless existing targets are achieved by a great majority of MS)

		is proportionate	regional conditions		higher fees for enhanced recycling efforts		
03	Increase the reuse/recycling targets for (plastic) packaging waste up to 80%	many MS (incl LRA) proved evidence to increase reuse by non-binding provisions; target posed by a 'directive' will leave discretion for national transformation; the same is true for the reduction of food waste	to pose obligation on 'waste operators' at the end of the waste hierarchy is disproportionate as long as no action is taken to prevent packaging waste and save raw materials at manufacturing, retailing, etc.	- 2 Incentives (or utmost even regulations) for developing prevention technics and methods are the more rational approach	- 2 Operators will oppose due to increasing costs, which will be allocated to the consumer/citizens by fees	0 in general reduction of waste and efforts for better reusing raw materials are of general interest of the public/citizens as long they are not concerned individually	NO (unless action for prevention will be implemented successfully)
04	reduction of food waste up to 30% until 2025		decreasing food waste will mitigate contamination of municipality waste	3 action contributes to solve the problem at the roots	1 depends on action by the MS and LRA accompanying awareness raising	1 citizens are in general positive minded, but must be actively convinced	√
05	introduction of the obligation of separate collection of bio-waste, ferrous metals and aluminium		strongly able to prohibit contamination respectively to reuse raw materials	2 separation of waste is after prevention a rational approach	- 4 separate collection combined with costs (higher fees) will strongly be opposed by citizens	-2 greater individual 'efforts' on waste handling are not welcomed, thus communicating positively seems	NO (low scale of KISS)

		for alternative measures of MS (incl. LRA), despite the 'directive' character				infeasible	
Risks of wrong investments in inflexible and large-scale projects	06 Phasing out landfilling of recoverable municipal waste, max 5% by 2030		MS and LRA can achieve high rates - as proved for evidence - satisfactorily on their own and plan properly their investments; compulsory action at EU level goes beyond what is necessary to achieve	0 in the past landfill bans proved to serve as 'driver' for waste reduction; a general ban now seems to be simple only at the first glance; the higher the rate of recovering the higher the (financial) efforts for alternative solutions	- 3 intensifying collection systems and alternative treatment generating costs (higher fees) will strongly be opposed by citizens	0 in general 'bans' on landfill will be welcomed by the public/citizens as long they are not concerned individually	NO (altern.: exchange of good practice, taking into account loc./reg. conditions, guidelines)
	07 an extension of landfill ban to all waste similar to municipal waste		(same as above); costs of alternative waste treatment in case of a general ban are not commensurated to the different loc./reg. situations; MS and LRA are able to find the cost-effective solutions and prevent high-scale			NO (altern.: exchange of good practice, guidelines, recommendations)	

			projects on their own.				
only 40% of municipal waste recycled	<i>Improve waste management (sp) by enforcement of EU Directives (Option 1)</i>	Intensified controls, supervising and enforcement are adequate actions to solve the recognized problems in particular to ensure a fair playing level field amongst MS and LRA;					√
implementation gap of existing law	<i>enforcement of EU Directives (Option 1)</i>	as long as already set EU-legislation is not properly implemented any new legal action or enhanced targets are not politically necessary nor proportionate, such action will be extremely beyond what is necessary					√
<i>Interpretation of existing law differs from MS to MS (not directly mentioned by the Commission)</i>	08 as ‘accompanying measure’: definitions in Directives 94/62/EC and 1999/31/EC are aligned to those of Directive 2008/98/EC; new definition of residual waste in Directive 1999/31/EC in order to clarify the scope; inclusion of definitions of municipal	discretion of interpretation in national transformation and application are decreasing	subject to revision by ‘waste experts’ alignments of definitions throughout ‘EU-waste legislation’ seem to make great sense; it is appropriate to meet implementation problems and contribute to enforce the current scope of legislation	3 alignments as such is a simple tool	2 <i>(may be opposed by some operators), but not by the public</i>	0 Legal definitions or their amendments are hardly able to be communicated to citizens directly	√

	waste, food waste, backfilling in Directive 2008/98/EC						
reporting obligations are complex having less added value	09 as ‘accompanying measure’: Introduction of a single entry point for all waste data; deletion of obsolete reporting requirements; benchmarking national reporting methodologies and third party verification of data quality	of any leeway for alternative measures of MS (incl. LRA), despite the ‘directive’ character: some MS and LRA provided already for high standard reporting systems	functioning reporting systems have to be changed; ‘one system fits for all’ go beyond what is necessary; additional administrative costs; deletion option are of a very small scale	3 a common system and standards of reporting are improving comparison throughout EU	3 common standards are generally welcomed by ‘operators’ and technician working on waste; citizens are hardly concerned	0 background administrative and reporting systems are hardly able to be communicated to citizens directly	NO (altern.: harmonising of reporting by guidelines)
monitoring tools statistics on waste generation and management are sub-optimal	10 as ‘accompanying measure’: establishment of electronic registries for hazardous waste; extended to other types; national waste management plans have to take care of recovery of waste containing significant amounts of	even compulsory plans leave leeway to develop own national measures; concerning electronic registries: no leeway (<i>extension to other types maybe posed by</i>)	functioning reporting systems have maybe to be changed; additional costs to public authorities and operators for the introduction	5 the instrument of ‘national/regional action plans’ seems to be feasible to link overarching goals with ownership based action at the bottom; this system guarantees that specific circumstances	3 due to its leeway for individual measures the proposed action would be accepted by public authorities and operators, it opens doors for creativity and innovation	1 the obligation to elaborate ‘action plans’ itself seems rarely feasible to be communicated to the citizens; individual measures taken by MS and LRA in order to prevent food waste maybe good examples to	√

	critical raw materials;	<i>'delegated acts'?</i>		can be taking into account; smart and ideally it combines 'shared competences' to be conducting by multi-level governance		be communicated to citizens	
negative effects of food wastage on the environment	11 obligation to develop national food waste prevention plans and to collect and report levels of food waste;	even compulsory plans leave leeway to develop own national measures	posing national/regional plans is an appropriate and proportionate incentive/intervention at EU-level				√
<i>(climate change)</i>	12 amongst others: Increase the recycling/reuse target for municipal waste up to 60/70%; increase the re-use/recycling targets for packaging waste up to 80%	The envisaged (huge) amounts of additional GHG reduction respectively new jobs are very welcomed side-effects in conformity with important and current EU policy goals, but they do not commensurate with the basic goal of 'saving raw materials in waste' by EU waste legislation.				0 from a political point of view the positive impact at labour market and GHG reduction are top to communicate, but hide the real costs to public authorities, consumer and citizens	NO
<i>(unemployment in general)</i>							NO
Implementation gap of existing law in MS	13 dissemination of best practices (no action currently indicated)	<i>leaves full leeway for own initiatives</i>	<i>contributes directly to the enforcement of existing EU law, depending on the scope and engagement of MS and LRA</i>	4 transfer of good exercise towards lacking authorities is a rational concept	2 acceptance of competent authorities will differ, the general public will welcome any progress	1 communication only on positive project result will make sense	√
'need' to adapt and adjust to the	14 delA	the 'need' to supplement/	<i>(has to be assessed in each individual</i>	regularly the content of 'delegated acts' is very technical			

technical development, progress and state of play in due time	<i>(listed in Matrix Subsidi)</i>	amend more or less 'essential parts' of EU-waste legislation is not justified in all cases	<i>case – the legislation procedure does not provide for a proper involvement and assessment of amendments)</i>	and specific, but amendments are potentially increasing costs of public authorities and stakeholders; moreover certain actions have the potential to rise huge public concerns and discussed badly by media and the citizens damaging the image of the Union as a whole			<i>(have to be assessed case by case)</i>
'need' for proper implementation	15 implA <i>(listed in Matrix Subsidi)</i>		assessed/decided by national/ regional authorities during Comitology procedure	certain actions have the potential to rise huge public concerns and discussed badly by media and the citizens damaging the image of the Union as a whole (e.g. ban on traditional light bulbs within Eco-Design Directive)			

- i. Union Action should “leave as much scope for national decision as possible”, IA Guidelines 15.01.2009, Chapter 7.2, page 29; this means to take properly “into account existing or even planned Member States policies”, IA Guidelines 15.01.2009, Chapter 7.3, page 31
- ii. As to the fact that the ECJ contests regularly procedural infringements of the principle of proportionality scrutinize if the EC has provided for appropriate information/explanation on the coherence on proportionality
- iii. Amongst others objectives and proposed actions/options have to be directly linked and proportionate to the problem and its causes: Chapter 6.5 of IA Guidelines 15.01.2009, page 28 and Info box, Chapter 7, page 29
- iv. Unfortunately the questions contesting proportionality in the info box in IA Guidelines 15.01.2009 (Chapter 7.2, page 30) are not a real help due to their general character
- v. Focus on the appropriate level of ambition of the proposed action regarding its ability to solve the problem in relation to compliance costs; IA Guidelines 15.01.2009, Chapter 7.1, page 29
- vi. “Community action should be as simple as possible”, IA Guidelines 15.01.2009, Chapter 7.2, page 29
- vii. Compare being “SMART” in defining objectives in IA Guidelines 15.01.2009, Chapter 6.4, page 28, which should be applied amongst others to concrete proposed action primarily
- viii. Under the proportionality check the “the option of ‘no EU action’ must always be considered as a viable option” and “where legislation is already in place, better enforcement and implementation should always be considered” or “less can be more”, IA Guidelines 15.01.2009, Chapter 7.3, page 30
- ix. Compare Chapter 3 of IA Guidelines 15.01.2009, mentioning particularly “political importance”

2. Austrian State Governors' Conference

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p><i>Ia. Is your local/regional authority involved in:</i></p> <p><i>aa) The transposition of EU waste legislation into national law?</i></p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p><i>bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</i></p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p><i>cc) Its enforcement (e.g. surveillance, inspections)?</i></p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p>
<p><i>Ib. As relevant, please specify briefly your answer.</i></p> <p>From the viewpoint of the federal constitution, the proposal in hand is relevant to Austrian states (Länder) (within the meaning of the Federal Constitutional Law (Bundes-Verfassungsgesetz (B-VG), Art 23(d)), since waste legislation partly also comes under the legislative responsibility of the Länder according to Art 15(1) in conjunction with B-VG Art.10 (1 Z12). This concerns in particular municipal waste.</p> <p>Moreover, waste legislation is implemented in the framework of indirect federal administration by Länder authorities (district administration authorities and, in individual subjects or procedures, Länder minister-presidents or Länder governments).</p>

SUBSIDIARITY¹¹⁹
<p><i>Waste prevention</i></p> <p><i>Draft Directive COM (2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention¹²⁰, because the Commission considers that "at this stage, it does not seem</i></p>

¹¹⁹ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

¹²⁰ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

appropriate to define a legally binding weight-based target for prevention."¹²¹ There is just a non-binding objective concerning the prevention of food waste.¹²² During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets¹²³.

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes / No

2b. Please specify briefly your answer.

The handling of waste is already clearly dealt with in the EU's five-step waste hierarchy. Those Member States which are economically better developed and responsible, including Austria, implement these steps efficiently, cheaply and effectively. This framework has been amply detailed from a technical and legal viewpoint. Further legal requirements and limitations passing on responsibility for resource conservation to the waste sector without additional requirements and obligations for product manufacturers, in the sense of manufacturer- and/or product responsibility, are not deemed to be either satisfactory or desirable. Producers and the EU public should be given more reminders of the need for waste avoidance, as the first principle of the waste hierarchy.

Another aspect which should not be neglected here is the fact that, across the EU, there has been patchy compliance with waste management targets. It is therefore first and foremost necessary to call for waste management to be to a great extent equally implemented. Key to achieving this is for all Member States to reach the same level in waste processing.

Instead of setting new or higher targets, it would thus be necessary first to monitor compliance with existing targets throughout the EU. Only after they have been achieved should new targets be set at all. Currently, despite the existing uniform standards within the European Union, there are sometimes major differences as regards waste management (recycling rates, landfill rates, etc).

Moreover, the proposal is exclusively aimed at the management of waste which has already been generated. Instead, waste avoidance could be focused on in order to manage absolute quantities of waste. In that respect, the approach involving collecting, storing and recycling comes too late in the process. The amount of waste involved in these processes could likewise be reduced through waste avoidance measures. This particularly concerns packaging waste: The proposal in hand does not deal with the use of packaging and the creation of packaging waste, but exclusively deals with the management of such waste. Targets set at that stage come too late in the process.

¹²¹ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

¹²² Art. 1 (7) of draft Directive COM (2014) 397.

¹²³ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

This should also be borne in mind in connection with the "resource efficiency" target. It already plays a role in the initial use of materials. Sustainable savings targets in the production and use of products could likewise contribute to a reduction in greenhouse gases and dependence on raw materials. Tackling the matter by means of waste recycling (instead of tackling the matter already at the waste creation and avoidance stage) can therefore only be a complement to the top of the waste hierarchy (avoidance).

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030¹²⁴ and 80 % for packaging waste in 2030¹²⁵)¹²⁶.

3a. *Do you consider these new targets to be a cause for concern in terms of subsidiarity?*

Yes / No

3b. *Do you consider that the need for such new EU targets has been sufficiently justified by the Commission¹²⁷?*

Yes / No

3c. *Please specify briefly your answers.*

The reason existing targets in current regulations do not suffice and the extent to which they have not been/are not achieved by all Member States is not set out in the recitals. This is, however, a key point in relation to the increase in existing targets and is mainly a regional/local problem which ought to be solved by Member States/local and regional authorities, in keeping with the subsidiarity principle.

The economic benefit of ambitious aims in waste management has been set out, but the corresponding costs/investments have not been discussed. Even if the proposal could give rise to more jobs, it would be necessary to carry out a comprehensive impact and cost assessment.

Local and regional conditions (in relation to the targets in mind) concerning current regulations have not been taken into account in the proposal in hand. No reason is given for why there is any need at all for the proposed change. The claimed revival of the economy (job creation) does not on its own seem enough to warrant this. Since it is primarily environmental policy objectives which are being aimed at here, economic arguments do not appear to be enough. The need for this environmental policy measure cannot be based on the much-stressed job creation effects, nor would it be

¹²⁴ While maintaining the existing target (50 % for 2020).

¹²⁵ With interim targets of 60 % by 2020 and 70 % by 2025.

¹²⁶ Art. 1 (9) a) of draft Directive COM (2014) 397 concerning municipal waste and Art. 2 (3) b) for packaging waste.

¹²⁷ See Art. 5 Prot No 2 on the application of the principles of subsidiarity and proportionality.

proportionate to the results. Measures to optimise employment possibilities in the green economy are not covered by EU environmental policy aims (TFEU Art 191). Even if such aspects could be taken into account under paragraph 3 of the aforementioned article, they do not constitute direct, exclusive grounds for environmental legislation measures.

The target requirements require considerable financial and human resources. Whether these are appropriate and proportional does of course depend on the extent to which target requirements to date have been complied with and what resources have been needed to achieve this. Raising the target requirements might entail an exponential increase in expenditure.

The option which entails "Ensuring full implementation" of regulations and requirements to date seems comprehensively adequate. No new legal measures are necessary for complying with new quotas. Austria has reached a high standard in waste management and is, in the process, constantly assessing this and in places improving it, even without introducing stricter rules.

It is not necessary to make changes to the current EU regulations to the extent being proposed, The measures being proposed in part seem, from a technical viewpoint, to go too far and be too strict, since to date the same level of waste management has not been achieved in all Member States. This would be a priority to pursue. Full implementation and compliance with the rules to date would therefore seem to be enough. We would view further regulations and higher quotas critically, since these would entail clear intervention in existing environmental management measures.

Basically, the point should be made that, as long as existing targets are not shown to be achieved by all Member States, it is not necessary to impose new or higher targets.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste.¹²⁸ Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?¹²⁹*

¹²⁸ Art. 3 (2) (a) of draft Directive COM (2014) 397.

¹²⁹ See footnote 11.

Yes / No

4c. Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?

Yes / No

4d. Please specify briefly your answers.

The Commission's proposal to limit municipal waste landfill to 25% by 2025 and subsequently ban it altogether completely ignores existing systems for the energy recycling of non-recyclable municipal waste. We deem the planned quantitative restrictions to be unattainable, even where landfill is exclusively residual waste (e.g. residues of combustion). Moreover, also as regards waste landfill, there is an imbalance between Member States in terms of compliance with existing requirements, which would only be further increased by the existing proposal.

PROPORTIONALITY¹³⁰

New targets - different implementation of existing targets/Early Warning System

*The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States*¹³¹.

*The majority of respondents participating in the targeted consultation at the pre-legislative stage*¹³² *were opposed to upgraded recycling targets*¹³³ *and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.*

5a. Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?

*The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties*¹³⁴.

5b. Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?

¹³⁰ Art. 5 (4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

¹³¹ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM (2014) 398 final, pt. 3.1.

¹³² See footnote 7.

¹³³ However, the majority of respondents opted for new landfill diversion targets.

¹³⁴ Art. 1 (9) and Art. 2 (4) of draft Directive COM (2014) 397 concerning recycling targets, Art. 3 (3) concerning landfill diversion targets.

Yes / No

5c. Please specify briefly your answers.

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

As long as existing requirements are not shown to be met by all Member States, there is no point in setting new targets or introducing an early warning system based upon such targets. First of all, steps should be taken to ensure all Member States achieve the existing targets. Existing reporting and data collection obligations can, if the right sanctions are imposed, be left where they are at the moment.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste¹³⁵, targets for packaging waste¹³⁶ as well as landfill diversion targets¹³⁷. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?

Yes / No

6b. Please specify briefly your answer.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

As has generally been noted recently, the European Commission is, for multiple reasons, tending to increase and step up the reporting duties for Member States. Since current data already demonstrate - as the European Commission must itself admit - that a series of Member States do not comply with the current level laid down by law, we do not see any point in setting new and/or further reporting duties. Although steps to relieve smaller firms (defined by the EU as firms with no more than 250 employees) of the burden of reporting and data transmission obligations are essentially to be welcomed, it should be borne in mind that it is the management authorities (as a rule district administration authorities and, in individual subjects and procedures, Länder minister-presidents or Länder governments) who are responsible for the content and accuracy of data in Austria.

Consequently, the Länder incur the (extra) costs. For this reason - as for other subjects such as air purification - attention should be paid to keeping reporting and data collection obligations to a

¹³⁵ Art. 1 (20) of draft Directive COM (2014) 397.

¹³⁶ Art. 2 (6) (c) of draft Directive COM (2014) 397.

¹³⁷ Art. 3 (6) of draft Directive COM (2014) 397.

minimum of data, creating the least burden.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts.¹³⁸

*Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility*¹³⁹.

7a. *Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?*

Yes / No

7b. *Please specify briefly your answer.*

We disagree with the obligation being placed on Member States to submit notification documents on implementation of the directive (almost as "proof" of implementation) to the Commission which can, moreover, determine the content thereof in delegated acts.

The considerable number of delegated acts provided for entails the risk that the "content" of the directive will only be "added later" and thus the directive cannot at all be judged as a whole. Furthermore, it is to be feared that precisely the costly and labour-intensive details (e.g. form, content and scope of data collection and reports) will only be laid down at a later date, and passed on within Member States to the management authorities.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM (2014) 397 gives rise to in your view.

In particular, the phrase inserted in Article 6(1b) of Directive 94/62/EC - "If packaging is composed of different materials, each material shall be separately taken into account for the purpose of calculation of the targets laid down in Article 6(1)(f) to (k)" - seems to be completely unfeasible, particularly for composite packaging.

As regards the insertion of paragraph 4a in Directive 2008/98/EC: inedible parts of food waste have been added here. It is our belief that the quantity of such waste is on the rise, for example where food is prepared using a lot of fresh ingredients, compared to nutrition based on food from tins and other packaged food. Fresh food is, however, to be preferred. This would entail a rise in food waste,

¹³⁸ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290 (1) TFEU; see Art. 291 TFEU for implementing acts.

¹³⁹ Art. 1 (21) (c) of draft Directive COM (2014)397.

although such food is desirable from a nutrition point of view (conflict of goals). This could be viewed as a problem, unless, that is, compost were to be declared a bio-based product and then that particular waste, if composted, would again fall outside the waste arrangements.

In order to ensure comparability of Member States' recycling rates, uniform quality standards for recycling products have to be defined and sham recycling banned.

Waste landfill with a total organic carbon value of more than 5% should be banned. This would be a simple rule to implement, and would contribute to more separate collection of waste, and material and energy recycling.

In summary, full implementation and compliance with existing rules to date is therefore deemed to be enough. For the reasons set out above, the proposals are not in line with the subsidiarity and proportionality principle.

3. Gregor Raible, SEG member for the CoR Intergroup "Regions with legislative power"

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES

Ia. *Is your local/regional authority involved in:*

aa) *The transposition of EU waste legislation into national law?*

Yes / No

bb) *The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?*

Yes / No

cc) *Its enforcement (e.g. surveillance, inspections)?*

Yes / No

Ib. *As relevant, please specify briefly your answer.*

This question cannot be answered uniformly for all regions with legislative powers. However, waste legislation is an area that falls very firmly within regional competences, with regard to both legislation and enforcement.

In German waste legislation, for example, regions have legislative powers to supplement and implement regulations laid down by the federal/central government, as well as in areas where the federal/central government has not laid down any regulations.

Issuing permits, drafting waste management plans, monitoring and control are also often a regional responsibility (authorities administered at regional level) or else a local responsibility.

SUBSIDIARITY¹⁴⁰

Waste prevention

Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention¹⁴¹, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"¹⁴². There is just a non-binding objective concerning the prevention of food waste¹⁴³.

During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets¹⁴⁴.

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes / No Mixed – see explanation

2b. Please specify briefly your answer.

It is very much to be welcomed that the Commission considers the subjects of the circular economy and resource efficiency to be connected and intends to implement them in the first instance by means of the proposed amending directive. However, the EU's proposal risks taking the second step before the first, in that we are still lacking consistent, EU-wide implementation of currently applicable legislation. This is a very broad field of activity that presents considerable challenges.

On the other hand, a number of passages in the proposal amending directive, and some of the ideas it contains, are questionable in terms of practicability and usefulness, as well as proportionality, particularly with regard to administrative cost. It is already clear that, without intensive discussions with the Member States and local and regional authorities who are responsible for implementation, the proposals cannot be implemented successfully.

¹⁴⁰ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

¹⁴¹ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

¹⁴² Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

¹⁴³ Art. 1(7) of draft Directive COM(2014) 397.

¹⁴⁴ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030¹⁴⁵ and 80 % for packaging waste in 2030¹⁴⁶)¹⁴⁷.

3a. *Do you consider these new targets to be a cause for concern in terms of subsidiarity?*

Yes / No See reason

3b. *Do you consider that the need for such new EU targets has been sufficiently justified by the Commission¹⁴⁸?*

Yes / No

3c. *Please specify briefly your answers.*

Re 3a:

We do not expect any breach of the subsidiarity principle in the narrow/formal sense; the EU does, in principle, have the power to amend – and to tighten up – existing regulations.

Nonetheless, many elements of the proposal will entail additional costs and bureaucracy both for economic operators and for the enforcement authorities, with no clear evidence that they will serve to protect the environment. These consequences cast doubt on the European added value of the proposals, which is necessary under the subsidiarity principle. Unless the proposals are significantly amended, priority should be given to the consistent implementation of currently applicable legislation (see above). Member States and regions that have already implemented currently applicable law – and the environment itself – will be better off, in terms of the subsidiarity principle, if they can pursue their own waste policy strategies without having to deal with the complex implementation of additional EU legislation.

In order to achieve an effective and sustainable waste policy, it is not enough just to set the most ambitious goals possible. New goals must be methodologically sound, statistically verifiable, technically feasible and of environmental benefit; in addition, they must not lead to additional bureaucracy. It is doubtful whether all of the proposals meet these requirements. The consequences of the goals set must also be taken fully into consideration: for example, ambitious quantitative goals absolutely must not result in a reduction in the quality of secondary raw materials so that they are unmarketable, or in an increase in recycling volumes at the expense of a massive rise in energy consumption.

In this connection, we also have criticisms regarding the proposed change to the statistical calculation methods. Changing the quota calculation to be based on output volumes implicitly makes

¹⁴⁵ While maintaining the existing target (50% for 2020).

¹⁴⁶ With interim targets of 60% by 2020 and 70% by 2025.

¹⁴⁷ Art. 1(8) (a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

¹⁴⁸ See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

the quotas stricter, and significantly increases the burden both on businesses and on authorities in terms of data collection. This would impose an approach to recycling focusing on "quantity over quality", rather than on producing high quality secondary raw materials, because the only way of achieving these new quotas would be to require waste that is not really suitable for recycling to be sent for material recovery. Recycling is not an end in itself: it only makes sense if a market is available, or can be created, for the resulting secondary raw materials. If this is not the case, it may in some situations make more sense to make use of the energy potential of certain waste (energy recovery).

On the practicability of the goals, e.g. regarding Article 1(8)(a) of the proposal (amendment to Article 11(2) of Directive 2008/98/EC): according to the Commission proposal, 50% of municipal waste shall be recycled or prepared for re-use by 2020, and 70% by 2030. However, it does not propose a clear calculation formula, which would be necessary in order to obtain data that can be compared across Europe and that reflect the reality of recycling levels. As recycling means the production of goods from waste, the regulation in Article 11(2) means that, by 2020, half of municipal waste will have to be converted into products. Even countries with highly developed waste systems will, by then, be nowhere near being able to recycle such a high proportion of municipal waste into products that meet the requirements of Article 6 of the proposed directive or existing end-of-waste regulations. Achieving this goal will involve huge economic and environmentally questionable efforts (consumption of energy and raw materials), and will mean, among other things, putting on the market a slew of lower-quality products that will be difficult to sell. This would be diametrically opposed to the objective of the amendment, namely ensuring higher quality recycling.

Re 3b.

As is so often the case, the Commission's statement on the proposal's compliance with the subsidiarity principle is rudimentary to say the least, and cliché-ridden to boot. It does not meet the requirements of the subsidiarity protocol, which means that the subsidiarity check by national and regional parliaments cannot be completed properly. This is particularly surprising given that, according to the explanatory memorandum to the proposal, the Commission's impact assessment board also originally requested stronger arguments regarding subsidiarity.

We disagree with the attitude apparently taken by the Commission that amendments to existing EU standards require only a cursory subsidiarity check. There is no legal basis for this in the treaties, and the argument is also untenable from a practical point of view. We would refer to the SEG's contribution to the consultation on the impact assessment.

We hope that, in future, the Commission's services will heed the call, made in the impact assessment guidelines recently submitted for consultation, to stop relying on hackneyed phrases in their statements on proposals' compliance with the subsidiarity principle.

Previous experience suggests, however, that this cannot simply be "ordained". On the contrary, the frequency with which inadequate subsidiarity statements are published raises the question of whether the Commission is sufficiently familiar with how to actually produce such statements in practice. After all, it does naturally require knowledge and understanding of, and also a degree of trust in, the implementation and enforcement structures in the Member States, particularly at subnational level. There is almost never any mention of this aspect (the subnational dimension of the

subsidiarity principle) in the Commission's proposals.

The inadequacy of the subsidiarity statement is all the more important given that the legal area at issue here falls to a significant extent within the competence of subnational authorities.

A reference to comments relating to subsidiarity in the impact assessment is not sufficient.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste¹⁴⁹. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?¹⁵⁰*

Yes / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes / No

4d. *Please specify briefly your answers.*

Re 4a and 4c:

We endorse the Commission's proposals on restricting landfilling, particularly of recyclable waste.

However, that does not mean that landfilling can be phased out completely. On the contrary, the experience of Member States that already largely ban landfilling shows that, with regard to the safe storage of contaminated mineral waste, for example from construction, remediation of contaminated sites and certain industries, there are no available viable alternatives to removing this waste from the environment and landfilling it.

Re 4b:

On the question of the subsidiarity statement, see above.

¹⁴⁹ Art. 3(2) (a) of draft Directive COM(2014) 397.

¹⁵⁰ See footnote 11.

PROPORTIONALITY¹⁵¹

New targets - different implementation of existing targets/Early Warning System

*The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States*¹⁵².

*The majority of respondents participating in the targeted consultation at the pre-legislative stage*¹⁵³ *were opposed to upgraded recycling targets*¹⁵⁴ *and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.*

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

*The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties*¹⁵⁵.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

Re 5a:

With regard to the targets, see above. Even if the objections raised above (higher enforcement costs and more bureaucracy cast doubt on the EU added value, and therefore priority should be given to national waste strategies) are not considered to be subsidiarity issues at least in the wider sense – and we believe they are – the comments are also applicable *mutatis mutandis* to proportionality.

In addition, we have the following objections with respect to proportionality (unnecessary enforcement costs):

¹⁵¹ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

¹⁵² See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

¹⁵³ See footnote 7.

¹⁵⁴ However, the majority of respondents opted for new landfill diversion targets.

¹⁵⁵ Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

Article 1 of the proposed directive (amendment of Directive 2008/98/EC) includes an amendment to Article 35(1) of Directive 2008/98/EC that extends the obligation to keep records on waste to all producers of waste and all professional collectors, transporters, dealers and brokers of waste. This obligation previously applied only in the case of hazardous waste, and moreover the information only had to be made available on request (not automatically). This blanket extension to non-hazardous waste is not necessary to protect the environment, places a disproportionate burden on those who handle waste, and makes administration unnecessarily difficult.

Re 5b:

The Early Warning System is not appropriate, and unnecessarily increases administrative costs.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste¹⁵⁶, targets for packaging waste¹⁵⁷ as well as landfill diversion targets¹⁵⁸. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

6b. *Please specify briefly your answer.*

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

The proposal includes numerous reporting obligations that go beyond what is required for the intended objective:

- the proposal to increase the frequency of reporting from every three years, in general, to every year unnecessarily increases administrative costs.
- The proposal that the data reported should be verified by "an independent third party" also imposes an unnecessarily large burden.
- On top of this criticism regarding the annual reporting obligation under Article 7, the new paragraph 4 requiring new statistical data on waste used for backfilling should be deleted. Keeping account of this will lead to considerable additional costs, but will be of no environmental benefit.

¹⁵⁶ Art. 1(20) of draft Directive COM(2014) 397.

¹⁵⁷ Art. 2(6) (c) of draft Directive COM(2014) 397.

¹⁵⁸ Art. 3(6) of draft Directive COM(2014) 397.

- We do welcome the new wording in Article 1(7) (Article 9 of Directive 2008/98/EC), aimed in particular at preventing food waste. Food is a valuable commodity, and preventing food waste is a priority goal for any rational person. However, there is no need for the European Environment Agency to publish, as laid down in paragraph 2, a report on the subject every year that would also require corresponding reports from the Member States and their constituent parts. This increases bureaucracy.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts¹⁵⁹.

Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility¹⁶⁰.

7a. *Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?*

Yes / No

7b. *Please specify briefly your answer.*

Re Article 1(22) (Article 38a) et al.

At various points, the Committee procedure previously applicable under Article 39 is replaced by a new procedure, introduced by Article 38a, for delegated acts. This confers wide-ranging regulatory powers on the Commission. Given that the previous Committee procedure has proved its worth, this extension of the delegation of powers to the executive at the expense of [lacuna] should be dropped.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

The "Minimum requirements for extended producer responsibility" set out in Annex VII should be assessed from a subsidiarity point of view, to determine whether it would be possible to continue using tried-and-tested domestic regulations or this absolutely must be regulated at EU level.

¹⁵⁹ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

¹⁶⁰ Art. 1(21) (c) of draft Directive COM(2014) 397.

4. Denmark Local Government

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p>Ia. Is your local/regional authority involved in:</p> <p>aa) The transposition of EU waste legislation into national law?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>cc) Its enforcement (e.g. surveillance, inspections)?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p>
<p>Ib. As relevant, please specify briefly your answer.</p>

SUBSIDIARITY¹⁶¹
<p>Waste prevention</p> <p><i>Draft Directive COM (2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention¹⁶², because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention."¹⁶³ There is just a non-binding objective concerning the prevention of food waste.¹⁶⁴</i></p> <p><i>During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets¹⁶⁵.</i></p>

¹⁶¹ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

¹⁶² Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

¹⁶³ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49

¹⁶⁴ Art. 1 (7) of draft Directive COM (2014) 397

¹⁶⁵ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes / No

2b. Please specify briefly your answer.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030¹⁶⁶ and 80 % for packaging waste in 2030¹⁶⁷)¹⁶⁸.

3a. Do you consider these new targets to be a cause for concern in terms of subsidiarity?

Yes / No

3b. Do you consider that the need for such new EU targets has been sufficiently justified by the Commission¹⁶⁹?

Yes / No

3c. Please specify briefly your answers.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste.¹⁷⁰ Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

¹⁶⁶ While maintaining the existing target (50 % for 2020).

¹⁶⁷ With interim targets of 60 % by 2020 and 70 % by 2025.

¹⁶⁸ Art. 1 (9) a) of draft Directive COM (2014) 397 concerning municipal waste and Art. 2 (3) b) for packaging waste.

¹⁶⁹ See Art. 5 Prot No 2 on the application of the principles of subsidiarity and proportionality

¹⁷⁰ Art. 3 (2) (a) of draft Directive COM (2014) 397

4a. Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?

Yes / No

4b. Do you consider that the need for this new EU target has been sufficiently justified by the Commission?¹⁷¹

Yes / No

4c. Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?

Yes / No

4d. Please specify briefly your answers.

PROPORTIONALITY¹⁷²

New targets - different implementation of existing targets/Early Warning System

The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States¹⁷³.

The majority of respondents participating in the targeted consultation at the pre-legislative stage¹⁷⁴ were opposed to upgraded recycling targets¹⁷⁵ and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.

5a. Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?

Yes / No

The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties¹⁷⁶.

¹⁷¹ See footnote 11.

¹⁷² Art. 5 (4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

¹⁷³ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM (2014) 398 final, pt. 3.1.

¹⁷⁴ See footnote 7.

¹⁷⁵ However, the majority of respondents opted for new landfill diversion targets.

¹⁷⁶ Art. 1 (9) and Art. 2 (4) of draft Directive COM (2014) 397 concerning recycling targets, Art. 3 (3) concerning landfill diversion targets.

5b. Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?

Yes / No

5c. Please specify briefly your answers.

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste¹⁷⁷, targets for packaging waste¹⁷⁸ as well as landfill diversion targets¹⁷⁹. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?

Yes / No

6b. Please specify briefly your answer.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts.¹⁸⁰

Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility¹⁸¹.

¹⁷⁷ Art. 1 (20) of draft Directive COM (2014) 397

¹⁷⁸ Art. 2 (6) (c) of draft Directive COM (2014) 397

¹⁷⁹ Art. 3 (6) of draft Directive COM (2014) 397

¹⁸⁰ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290 (1) TFEU; see Art. 291 TFEU for implementing acts.

¹⁸¹ Art. 1 (21) (c) of draft Directive COM (2014)397.

7a. Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?

Yes / No

7b. Please specify briefly your answer.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM (2014) 397 gives rise to in your view.

5. Basque Government (Departamento de Medio Ambiente y Política Territorial)

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p>Ia. Is your local/regional authority involved in:</p> <p>aa) The transposition of EU waste legislation into national law?</p> <p>Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/></p> <p>bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>cc) Its enforcement (e.g. surveillance, inspections)?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p>
<p>Ib. As relevant, please specify briefly your answer.</p> <p>The autonomous regions are responsible for drawing up regional waste plans and for authorisation, monitoring, inspection and penalties with respect to waste production and management activities. The local authorities are responsible for the management of domestic and similar waste, in accordance with the provisions set out in general legislation and, where relevant, the law laid down by the autonomous regions. Municipalities are responsible for the mandatory service of collecting, transporting and, at the very least, disposing of domestic and similar urban waste, in accordance with the relevant legal provisions.</p>
<p>SUBSIDIARITY¹⁸²</p> <p>Waste prevention</p> <p><i>Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention¹⁸³, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"¹⁸⁴. There is just a non-binding objective concerning the prevention of food waste¹⁸⁵.</i></p>

¹⁸² Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

¹⁸³ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

¹⁸⁴ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

¹⁸⁵ Art. 1(7) of draft Directive COM(2014) 397.

During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets¹⁸⁶.

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes / No

2b. Please specify briefly your answer.

Efforts in the area of waste prevention are very much required and the establishment of EU-level objectives will help to ensure that the Member States' waste prevention commitments are properly evaluated.

It is important to establish prevention rates for packaging waste and WEEE. Furthermore, in this instance, we think it is also necessary to establish indicators that reflect the evaluation of prevention policies in conjunction with recycling and sorting policies.

It is important to establish measures aimed at ensuring the economic viability - both for consumers and for companies - of:

- placing less packaging and new electrical and electronic goods on the market, with a view to their repair and re-use;
- extending the operational life of products (as opposed to built-in obsolescence); and
- promoting repair schemes or businesses.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030¹⁸⁷ and 80 % for packaging waste in 2030¹⁸⁸)¹⁸⁹.

3a. Do you consider these new targets to be a cause for concern in terms of subsidiarity?

Yes / No

3b. Do you consider that the need for such new EU targets has been sufficiently justified by the Commission¹⁹⁰?

Yes / No

3c. Please specify briefly your answers.

¹⁸⁶ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

¹⁸⁷ While maintaining the existing target (50% for 2020).

¹⁸⁸ With interim targets of 60% by 2020 and 70% by 2025.

¹⁸⁹ Art. 1(8) (a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

¹⁹⁰ See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

With regard to these questions, the documentation drawn up claims that the proposal responds to the review clauses of the Packaging and Packaging Waste Directive requiring the Commission to review the current waste management targets. It adds that past experience shows that EU-wide waste management objectives and targets have been a key driver for improving the functioning of the EU waste market; ensuring cooperation between Member States and some harmonisation between the national producer responsibility schemes.

Nevertheless, in Europe, packaging waste generation rates per capita continue to rise slightly despite the economic recession, reaching the rate of 157 kg/capita in 2010, and this is not adequately explained.

Waste recycling rates are on the rise and this trend is expected to continue.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste¹⁹¹. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?¹⁹²*

Yes / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes / No

4d. *Please specify briefly your answers.*

Disposal is the last rung in the waste hierarchy and the idea is therefore to keep this type of waste management to a minimum, giving preference to prevention, preparation for re-use, recycling or recovery.

It is understood that the EU seeks to eradicate the landfill of primary waste by developing instruments to reduce this to the point where only the rejects of recycling and recovery processes are landfilled.

¹⁹¹ Art. 3(2) (a) of draft Directive COM(2014) 397.

¹⁹² See footnote 11.

In this case the prioritisation of waste streams has more to do with the streams that can no longer be landfilled, based on the possibilities for improving previous waste hierarchy strategies.

Priority goes to streams that offer strong potential for solutions. As a result, the streams derived from this criterion are those which offer high prevention and/or recycling and recovery rates, and in which connection a landfill ban is likely to amend and optimise previous strategies.

Nevertheless, the disposal rates to be achieved must be consistent with those of the other strategies.

PROPORTIONALITY¹⁹³

New targets - different implementation of existing targets/Early Warning System

*The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States*¹⁹⁴.

*The majority of respondents participating in the targeted consultation at the pre-legislative stage*¹⁹⁵ *were opposed to upgraded recycling targets*¹⁹⁶ *and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.*

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

*The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties*¹⁹⁷.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

¹⁹³ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

¹⁹⁴ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

¹⁹⁵ See footnote 7.

¹⁹⁶ However, the majority of respondents opted for new landfill diversion targets.

¹⁹⁷ Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

Since the proposal for a directive leaves enough leeway for Member States to select the measures to ensure its implementation and detailed application, it is in line with the principle of proportionality.

At present, the European economy is missing out on significant quantities of potential primary and secondary raw materials that end up in waste streams. The impact assessment studies and quantifies the positive effects on the competitiveness of the EU's waste management and recycling industry, as well as its manufacturing sector (improvement of the broadened producer responsibility scheme, reduction of risks associated with access to primary raw materials) and quantifies the EU economy with respect to secondary raw materials, which will in turn contribute to reducing the EU's dependence on the importation of raw materials.

The content of the early warning reports seems adequate and includes:

- (a) an estimation of the achievement of the targets by each Member State;
- (b) an assessment of the expected time for achieving the targets by each Member State, and
- (c) a list of Member States at risk of not meeting those targets within the respective time limits, with appropriate recommendations.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste¹⁹⁸, targets for packaging waste¹⁹⁹ as well as landfill diversion targets²⁰⁰. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

6b. *Please specify briefly your answer.*

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

Reliable information on statistical waste management data is of the utmost importance in order to ensure efficient application and secure a level playing field for all Member States. As a result, when drawing up the reports on the achievement of targets set out in waste legislation, the best methodology, harmonised across all Member States, should be used.

In cases where specific regional legislation exists, it seems unnecessary for the reports to be verified by an independent third party (Basque statistics law with waste inventories and target attainment monitoring).

¹⁹⁸ Art. 1(20) of draft Directive COM(2014) 397.

¹⁹⁹ Art. 2(6) (c) of draft Directive COM(2014) 397.

²⁰⁰ Art. 3(6) of draft Directive COM(2014) 397.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts²⁰¹.

Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility²⁰².

7a. Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?

Yes / No

7b. Please specify briefly your answer.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

²⁰¹ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

²⁰² Art. 1(21) (c) of draft Directive COM(2014) 397.

6. Agència de Residus de Catalunya (ARC) on behalf of the Catalan Regional Parliament

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES

Ia. *Is your local/regional authority involved in:*

aa) *The transposition of EU waste legislation into national law?*

Yes / No

bb) *The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?*

Yes / No

cc) *Its enforcement (e.g. surveillance, inspections)?*

Yes / No

Ib. *As relevant, please specify briefly your answer.*

Catalonia has legislative and executive competence in the field of the environment. The Catalan Waste Agency (ARC) is part of the Catalan regional administration and carries out the bulk of its tasks concerning waste prevention and management.

Catalonia is consulted on the enactment of sectoral legislation by the Spanish State, which therefore also includes the transposition of EU waste legislation. The ARC contributes to this process by sitting on the waste coordinating committee comprising the Spanish government and regional bodies.

The ARC is also responsible for initiating Catalan legislation on waste and implementing existing laws in the field, as well as surveillance and ensuring compliance with the law. In addition, the ARC acts as coordinator with local bodies responsible for waste.

SUBSIDIARITY²⁰³

Waste prevention

Draft Directive COM (2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention²⁰⁴, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention."²⁰⁵ There is just a non-binding objective concerning the prevention of food waste.²⁰⁶

During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets²⁰⁷.

2a. *Do you still see a need for the introduction of legally binding EU waste prevention targets?*

Yes / No

2b. *Please specify briefly your answer.*

On the one hand, prevention is the top priority in the waste management hierarchy. On the other hand, waste prevention is one of the most basic components of the circular economy. Lastly, economic sectors where prevention is mandatory have a major impact and can therefore represent a source of growth and jobs. For this reason, we think that a waste prevention strategy should be given maximum support.

Thus, in light of the fact that the waste management hierarchy, the circular economy and the question of growth and jobs are strategic issues for the EU, overall quantitative objectives need to be fixed so that these policies find their way on to the agendas of the governments concerned and to ensure that all the EU Member States play their part in bringing about progress at EU level in this field. Failing this, national or regional priorities could result in imbalances that would work to the advantage of precisely those regions that make the least effort in this respect. We also think that uniform preventive targets should be set across the EU, with clear and comparable wording. Targets also need to be rigorously worded in terms of serving as environmental indicators, i.e. enabling them to reflect progress in waste prevention with the least possible sensitivity to other factors.

²⁰³ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

²⁰⁴ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

²⁰⁵ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49

²⁰⁶ Art. 1 (7) of draft Directive COM (2014) 397

²⁰⁷ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030²⁰⁸ and 80 % for packaging waste in 2030²⁰⁹)²¹⁰.

3a. *Do you consider these new targets to be a cause for concern in terms of subsidiarity?*

Yes / No

3b. *Do you consider that the need for such new EU targets has been sufficiently justified by the Commission²¹¹?*

Yes / No

3c. *Please specify briefly your answers.*

The EU targets for recycling municipal waste and packaging have to date had a positive impact on national legislation and on policy implementation. This, combined with the EU's current policy of optimising use of resources, makes it quite legitimate to introduce overall EU targets that are both ambitious and gradually move towards convergence throughout the EU. In the absence of such targets, it could be difficult for the EU as an international player to create a favourable climate regarding the technological, economic and geo-strategic implications of waste management.

We also think that recycling targets should be worded in a clear and comparable manner. Again, the wording should be sufficiently rigorous for them to serve as environmental indicators.

²⁰⁸ While maintaining the existing target (50 % for 2020).

²⁰⁹ With interim targets of 60 % by 2020 and 70 % by 2025.

²¹⁰ Art. 1 (9) a) of draft Directive COM (2014) 397 concerning municipal waste and Art. 2 (3) b) for packaging waste.

²¹¹ See Art. 5 Prot No 2 on the application of the principles of subsidiarity and proportionality

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste.²¹² Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?

Yes / No

4b. Do you consider that the need for this new EU target has been sufficiently justified by the Commission?²¹³

Yes / No

4c. Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?

Yes / No

4d. Please specify briefly your answers.

It is clear from the waste management hierarchy that the landfill option is governed by the most stringent criteria. At the same time, it has been agreed that there is a need for EU level recycling targets that, as an adjunct, impose more restrictions on waste disposal. These targets are also supposed to help offset established national and regional practices that may, as a result of costs or other local management priorities, result in a preference for landfilling.

We therefore agree that it is necessary for these targets to be laid down in EU laws. Nevertheless, the target should be worded in such a way as to take account of regional variables and specificities, such as the link with existing infrastructure and its sustainability, how the waste is generated and what it is made up of, etc.

²¹² Art. 3 (2) (a) of draft Directive COM (2014) 397

²¹³ See footnote 11.

PROPORTIONALITY²¹⁴

New targets - different implementation of existing targets/Early Warning System

*The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States*²¹⁵.

*The majority of respondents participating in the targeted consultation at the pre-legislative stage*²¹⁶ *were opposed to upgraded recycling targets*²¹⁷ *and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.*

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

Yes / No

*The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties*²¹⁸.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

We believe that establishing targets that are ambitious and framed in high-level legal instruments is a must if EU strategies are to move forwards in terms of resources and the circular economy, even though this is not the only tool for achieving these objectives. In any event, for those Member States that have not yet managed to meet current targets, introducing progressively more ambitious targets is one way of keeping policies on waste management and resources on national agendas; otherwise, interest in these policies could simply fade away nationally and regionally.

Similarly, we think that efficient controls on compliance with targets are necessary and should be specifically adapted to each individual situation. To this end we feel that the Early Warning System is appropriate, although it obviously needs to be flanked by other measures (fiscal, awareness-raising etc.).

²¹⁴ Art. 5 (4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

²¹⁵ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM (2014) 398 final, pt. 3.1.

²¹⁶ See footnote 7.

²¹⁷ However, the majority of respondents opted for new landfill diversion targets.

²¹⁸ Art. 1 (9) and Art. 2 (4) of draft Directive COM (2014) 397 concerning recycling targets, Art. 3 (3) concerning landfill diversion targets.

In any event, we consider that this mechanism should establish and consolidate the role of regional and local tiers of administration in implementing waste legislation and in drafting compliance plans to be drawn up at national level.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste²¹⁹, targets for packaging waste²²⁰ as well as landfill diversion targets²²¹. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

6b. *Please specify briefly your answer.*

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

If policies on waste management and resources are to move forwards and planning in terms of resources is to be followed up, reliable and up-to-date indicators will be needed. We therefore endorse this mechanism.

This mechanism should, in our view, guarantee the comparability of outcomes both between and within Member States. For this reason, we think it would be most reliable and most useful for the authorities responsible for implementing legislation to always be the ones to produce these reports, and that this should not automatically entail intervention on the part of the national authorities.

²¹⁹ Art. 1 (20) of draft Directive COM (2014) 397

²²⁰ Art. 2 (6) (c) of draft Directive COM (2014) 397

²²¹ Art. 3 (6) of draft Directive COM (2014) 397

DELEGATED AND IMPLEMENTING ACTS

*Provisions empowering the Commission to adopt delegated or implementing acts.*²²²

*Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility*²²³.

7a. *Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?*

Yes / No

7b. *Please specify briefly your answer.*

In our opinion, most of the delegated acts available to the Commission must, in the first instance, be adjusted swiftly and actively to the specific context; second, they must always follow a clear and detailed plan from the technical point of view; and lastly, the general interests of the EU should take precedence over national interests. For these reasons, among others, and in view of the fact that the Commission has the wherewithal to meet these requirements, we feel that the delegated acts provided for in the proposal are appropriate.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM (2014) 397 gives rise to in your view.

²²² For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290 (1) TFEU; see Art. 291 TFEU for implementing acts.

²²³ Art. 1 (21) (c) of draft Directive COM (2014)397.

7. Extremadura Regional Assembly

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES

Ia. Is your local/regional authority involved in:

aa) The transposition of EU waste legislation into national law?

Yes / No

bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?

Yes / No

cc) Its enforcement (e.g. surveillance, inspections)?

Yes / No

Ib. As relevant, please specify briefly your answer.

The 2009-2015 comprehensive waste management plan of Extremadura (*Plan Integral de Residuos de Extremadura 2009-2015*) based on Law 22/2011 of 28 July on waste and contaminated soil.

SUBSIDIARITY²²⁴

Waste prevention

Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention²²⁵, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"²²⁶. There is just a non-binding objective concerning the prevention of food waste²²⁷.

²²⁴ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

²²⁵ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

²²⁶ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

²²⁷ Art. 1(7) of draft Directive COM(2014) 397.

During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets²²⁸.

2a. *Do you still see a need for the introduction of legally binding EU waste prevention targets?*

Yes / No

2b. *Please specify briefly your answer.*

Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, and ensuring the prudent and rational use of natural resources.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030²²⁹ and 80 % for packaging waste in 2030²³⁰)²³¹.

3a. *Do you consider these new targets to be a cause for concern in terms of subsidiarity?*

Yes / No

3b. *Do you consider that the need for such new EU targets has been sufficiently justified by the Commission²³²?*

Yes / No

3c. *Please specify briefly your answers.*

In order to adapt to the previous targets, local authorities need enough time to adjust and to manage the new infrastructure and the gradual phasing out of municipal landfills.

²²⁸ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

²²⁹ While maintaining the existing target (50% for 2020).

²³⁰ With interim targets of 60% by 2020 and 70% by 2025.

²³¹ Art. 1(8) (a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

²³² See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste²³³. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?²³⁴*

Yes / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes / No

4d. *Please specify briefly your answers.*

The proposal is in line with the subsidiarity and proportionality principles set out in Article 5 of the Treaty on European Union. It is limited to amending the Directives under consideration by providing a framework establishing shared objectives, while leaving Member States free to decide about precise implementation methods.

PROPORTIONALITY²³⁵

New targets - different implementation of existing targets/Early Warning System

The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States²³⁶.

²³³ Art. 3(2) (a) of draft Directive COM(2014) 397.

²³⁴ See footnote 11.

²³⁵ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

²³⁶ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

The majority of respondents participating in the targeted consultation at the pre-legislative stage²³⁷ were opposed to upgraded recycling targets²³⁸ and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties²³⁹.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

²³⁷ See footnote 7.

²³⁸ However, the majority of respondents opted for new landfill diversion targets.

²³⁹ Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste²⁴⁰, targets for packaging waste²⁴¹ as well as landfill diversion targets²⁴². Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

6b. *Please specify briefly your answer.*

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring good implementation. As a result, it would be better to increase the frequency of these reports in order to be able to find out about and to verify the compliance of statistical data.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts²⁴³.

Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility²⁴⁴.

²⁴⁰ Art. 1(20) of draft Directive COM(2014) 397.

²⁴¹ Art. 2(6) (c) of draft Directive COM(2014) 397.

²⁴² Art. 3(6) of draft Directive COM(2014) 397.

²⁴³ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

²⁴⁴ Art. 1(21) (c) of draft Directive COM(2014) 397.

7a. *Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?*

Yes / No

7b. *Please specify briefly your answer.*

There is no cause for concern since the Commission must ensure the simultaneous, timely and appropriate submission of the corresponding documents to the European Parliament and the Council.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

8. Agenzia per la Depurazione on behalf of the Trento Regional Government

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p>Ia. Is your local/regional authority involved in:</p> <p>aa) The transposition of EU waste legislation into national law?</p> <p>Yes X / No <input type="checkbox"/></p> <p>bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</p> <p>Yes X / No <input type="checkbox"/></p> <p>cc) Its enforcement (e.g. surveillance, inspections)?</p> <p>Yes X / No <input type="checkbox"/></p>
<p>Ib. As relevant, please specify briefly your answer.</p>

SUBSIDIARITY²⁴⁵
<p>Waste prevention</p> <p><i>Draft Directive COM (2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention²⁴⁶, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention."²⁴⁷ There is just a non-binding objective concerning the prevention of food waste.²⁴⁸</i></p> <p><i>During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets²⁴⁹.</i></p>

²⁴⁵ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

²⁴⁶ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

²⁴⁷ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49

²⁴⁸ Art. 1 (7) of draft Directive COM (2014) 397

²⁴⁹ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes X / No

2b. Please specify briefly your answer.

Binding prevention targets should be included in the product regulations – the producer user should be required to reduce production of packaging for management of marketable waste. This subject is regulated at European level as it concerns free competition on the market.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030²⁵⁰ and 80 % for packaging waste in 2030²⁵¹)²⁵².

3a. Do you consider these new targets to be a cause for concern in terms of subsidiarity?

Yes X / No

3b. Do you consider that the need for such new EU targets has been sufficiently justified by the Commission²⁵³?

Yes X / No

3c. Please specify briefly your answers.

The procedures for calculating the percentage targets are not properly addressed – the European Union should establish homogenous measures for setting the percentages (e.g. composting should be taken into account in the prevention phase rather than the recovery phase as it is not part of the public collection system).

²⁵⁰ While maintaining the existing target (50 % for 2020).

²⁵¹ With interim targets of 60 % by 2020 and 70 % by 2025.

²⁵² Art. 1 (9) a) of draft Directive COM (2014) 397 concerning municipal waste and Art. 2 (3) b) for packaging waste.

²⁵³ See Art. 5 Prot No 2 on the application of the principles of subsidiarity and proportionality

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste.²⁵⁴ Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes X / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?²⁵⁵*

Yes X / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes X / No

4d. *Please specify briefly your answers.*

It is not currently possible to envisage a waste management system without landfilling. The "zero" waste option cannot at present be pursued – back-up landfills are still to be used for crises or for disposal. There should be differentiated targets for individual types of marketable waste.

PROPORTIONALITY²⁵⁶

New targets - different implementation of existing targets/Early Warning System

The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States²⁵⁷.

²⁵⁴ Art. 3 (2) (a) of draft Directive COM (2014) 397

²⁵⁵ See footnote 11.

²⁵⁶ Art. 5 (4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

²⁵⁷ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM (2014) 398 final, pt. 3.1.

The majority of respondents participating in the targeted consultation at the pre-legislative stage²⁵⁸ were opposed to upgraded recycling targets²⁵⁹ and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

Yes / No

The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties²⁶⁰.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

First, all the Member States need to be able to achieve and consolidate the waste and recycling system with the current targets in order to avoid creating disparities that are too great.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste²⁶¹, targets for packaging waste²⁶² as well as landfill diversion targets²⁶³. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

²⁵⁸ See footnote 7.

²⁵⁹ However, the majority of respondents opted for new landfill diversion targets.

²⁶⁰ Art. 1 (9) and Art. 2 (4) of draft Directive COM (2014) 397 concerning recycling targets, Art. 3 (3) concerning landfill diversion targets.

²⁶¹ Art. 1 (20) of draft Directive COM (2014) 397

²⁶² Art. 2 (6) (c) of draft Directive COM (2014) 397

²⁶³ Art. 3 (6) of draft Directive COM (2014) 397

6b. Please specify briefly your answer.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

The waste management reporting models must be clear and unambiguous, and based on actual data collection capacity.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts.²⁶⁴

*Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility*²⁶⁵.

7a. Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?

Yes X / No

7b. Please specify briefly your answer.

Delegated powers could give rise to difficulties between adjacent countries and regions when it comes to implementing the general provisions.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM (2014) 397 gives rise to in your view.

²⁶⁴ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290 (1) TFEU; see Art. 291 TFEU for implementing acts.

²⁶⁵ Art. 1 (21) (c) of draft Directive COM (2014)397.

9. Friuli Venezia Giulia Regional Assembly

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p>Ia. <i>Is your local/regional authority involved in:</i></p> <p>aa) <i>The transposition of EU waste legislation into national law?</i></p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>bb) <i>The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</i></p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>cc) <i>Its enforcement (e.g. surveillance, inspections)?</i></p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p>
<p>Ib. <i>As relevant, please specify briefly your answer.</i></p>
<p><i>N.B.: Monitoring and inspection responsibilities have been delegated to the province</i></p>

SUBSIDIARITY²⁶⁶
<p>Waste prevention</p> <p><i>Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention²⁶⁷, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"²⁶⁸. There is just a non-binding objective concerning the prevention of food waste²⁶⁹.</i></p> <p><i>During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets²⁷⁰.</i></p>

²⁶⁶ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

²⁶⁷ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

²⁶⁸ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

²⁶⁹ Art. 1(7) of draft Directive COM(2014) 397.

²⁷⁰ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes / No

2b. Please specify briefly your answer.

Although we agree on the need to set targets that serve as a point of reference for action to prevent waste being created, we think it makes sense to allow the Member States to state their own obligations based on their own circumstances and needs.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030²⁷¹ and 80 % for packaging waste in 2030²⁷²)²⁷³.

3a. Do you consider these new targets to be a cause for concern in terms of subsidiarity?

Yes / No

3b. Do you consider that the need for such new EU targets has been sufficiently justified by the Commission²⁷⁴?

Yes / No

3c. Please specify briefly your answers.

Since the goals are long term ones, we do not think there is a problem with subsidiarity.

²⁷¹ While maintaining the existing target (50% for 2020).

²⁷² With interim targets of 60% by 2020 and 70% by 2025.

²⁷³ Art. 1(8) (a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

²⁷⁴ See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste²⁷⁵. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?²⁷⁶*

Yes / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes / No

4d. *Please specify briefly your answers.*

The binding targets set by the Commission for 2030 seem extremely restrictive. We think it makes sense to allow the Member States to state their own obligations based on their own circumstances and needs.

PROPORTIONALITY²⁷⁷

New targets - different implementation of existing targets/Early Warning System

The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States²⁷⁸.

The majority of respondents participating in the targeted consultation at the pre-legislative stage²⁷⁹ were

²⁷⁵ Art. 3(2) (a) of draft Directive COM(2014) 397.

²⁷⁶ See footnote 11.

²⁷⁷ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

²⁷⁸ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

²⁷⁹ See footnote 7.

opposed to upgraded recycling targets²⁸⁰ and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

Yes / No

The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties²⁸¹.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

Alternative ways: The binding targets set by the Commission for 2030 seem extremely restrictive. We think it would be better to follow the "environmental" growth of each separate Member State with targets that also take into account data from statistics they themselves provide. These should identify in greater detail the third parties that check the data and the type of data to be presented.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste²⁸², targets for packaging waste²⁸³ as well as landfill diversion targets²⁸⁴. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

6b. *Please specify briefly your answer.*

²⁸⁰ However, the majority of respondents opted for new landfill diversion targets.

²⁸¹ Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

²⁸² Art. 1(20) of draft Directive COM(2014) 397.

²⁸³ Art. 2(6) (c) of draft Directive COM(2014) 397.

²⁸⁴ Art. 3(6) of draft Directive COM(2014) 397.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

More frequent data transmission could ensure better monitoring by the Commission of the growth trend in each Member State in terms of meeting the goals set and reveal more rapidly any action that needs to be taken.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts²⁸⁵.

*Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility*²⁸⁶.

7a. Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?

Yes / No

7b. Please specify briefly your answer.

We think that delegated powers should be limited to broader outlines and guidelines that ensure transparency and fair treatment in terms of the roles, responsibilities and goals on waste management that the European Union wishes to pursue. However, these acts must leave Member States free to specify their own obligations based on their own circumstances and needs.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

With a view to lightening the burden on businesses and stimulating growth and jobs, thresholds have been set that determine the beneficiaries of simplification measures, such as waiving the need for permits for the collection and/or transport of non-hazardous waste or registration on the National Register of Environmental Managers (Albo nazionale dei gestori ambientali).

We think a rethink is needed of the application of the proposed limits – "small establishments or undertakings" employing fewer than 250 people and having an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million –, since this would seem to mean, at local level, lack of adequate supervision of most businesses collecting and transporting waste.

10. Lombardy Regional Assembly

²⁸⁵ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

²⁸⁶ Art. 1(21) (c) of draft Directive COM(2014) 397.

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES

Ia. *Is your local/regional authority involved in:*

aa) *The transposition of EU waste legislation into national law?*

Yes / No

bb) *The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?*

Yes / No

cc) *Its enforcement (e.g. surveillance, inspections)?*

Yes / No

Ib. *As relevant, please specify briefly your answer.*

Regional responsibilities for waste are defined in Article 196 of Legislative Decree 152/2006. The regions are responsible in particular for framing and adopting regional waste management plans, regulating waste management activities, including separate collection, promoting less waste production and recovering waste.

Regions are responsible for approving plans for new waste management installations. Article 17 of Lombardy's Regional Law 26/2003 stipulates the types of waste management installation that fall within the regional remit (waste incineration and energy recovery installations processing unseparated municipal waste, facilities for the disposal of waste containing asbestos, research and experimentation installations, innovative installations under Article 211 of Legislative Decree 152/2006), with the provinces being responsible for issuing permits for other installations.

The contents of regional waste management plans are set out in Article 199 of Legislative Decree 152/2006; in keeping with this article, the Lombardy Region has approved its own programme with Regional Government Decree No 1990 of 20/06/2014, forwarding it to the Ministry for the Environment and the Protection of Natural Resources and the Sea.

Under the terms of Article 197 of Legislative Decree 152/2006 it is the task of the provinces to carry out regular checks on all management, intermediation and commercial activities relating to waste.

SUBSIDIARITY²⁸⁷

Waste prevention

Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention²⁸⁸, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"²⁸⁹. There is just a non-binding objective concerning the prevention of food waste²⁹⁰.

During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets²⁹¹.

2a. *Do you still see a need for the introduction of legally binding EU waste prevention targets?*

Yes / No

2b. *Please specify briefly your answer.*

With regard to Union waste prevention policies, it may be helpful to identify common objectives to be pursued and monitored, provided that they are accompanied by clear and unambiguous monitoring indicators that can effectively measure improvements in reducing waste production. Waste production prevention should also be considered as a principle that can be most effectively applied by introducing regulatory instruments, above all in the goods production sector and, in particular, packaging. Regarding food waste, in keeping with the Regional Waste Management Programme, adopted by Regional Government Decree 1990/2014, the aim is to measure the practical results of waste prevention policies in relation to economic dynamics, by introducing the following parameter: "Variation in the production of municipal waste of less than 8% compared to the variation in household consumption expenditure in 2020 compared to 2011".

²⁸⁷ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

²⁸⁸ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

²⁸⁹ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

²⁹⁰ Art. 1(7) of draft Directive COM(2014) 397.

²⁹¹ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030²⁹² and 80 % for packaging waste in 2030²⁹³)²⁹⁴.

3a. *Do you consider these new targets to be a cause for concern in terms of subsidiarity?*

Yes / No

3b. *Do you consider that the need for such new EU targets has been sufficiently justified by the Commission²⁹⁵?*

Yes / No

3c. *Please specify briefly your answers.*

We consider that the new targets are not a problem in terms of subsidiarity, and it is appropriate to increase them. European objectives have the effect of bringing the policies of the various countries and public administrations closer together, providing guidance to the markets and helping to bring the principles of sustainability to bear more closely on the production of goods and services.

We consider that the introduction of new targets has been sufficiently justified by the Commission in the preamble to the proposal for a directive, their purpose being to achieve increasing recovery of waste material and a consequent reduction in landfill, i.e. in keeping with the principles and waste hierarchy set out in the directive.

²⁹² While maintaining the existing target (50% for 2020).

²⁹³ With interim targets of 60% by 2020 and 70% by 2025.

²⁹⁴ Art. 1(8) (a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

²⁹⁵ See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste²⁹⁶. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?

Yes / No

4b. Do you consider that the need for this new EU target has been sufficiently justified by the Commission?²⁹⁷

Yes / No

4c. Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?

Yes / No

4d. Please specify briefly your answers.

We consider that the objectives set are not a problem in terms of subsidiarity and that they provide significant stimulation for measures to put into practice the European waste management hierarchy, with substantial indirect benefits that can be measured mainly in terms of reduced consumption of natural resources and energy savings.

The Commission has sufficiently justified the target but there are gaps and shortcomings in the definition of the objectives:

- Regarding the deadline of 2025 (Article 5(2a) requiring that Member States "shall not accept the following waste in landfills for non-hazardous waste [...] recyclable waste including plastics, metals, glass, paper and cardboard, and other biodegradable waste", we do not believe that this restriction should apply only to landfills for non-hazardous waste, since some of this waste could otherwise be deposited in landfills for inert or for hazardous waste, while being non-hazardous, thereby circumventing the rule. We believe it would be better to apply the restriction to all landfills, amending the paragraph as follows:
"2a. Member States shall not accept the following waste in landfills by 1 January 2025, recyclable waste including plastics, metals, glass, paper and cardboard, and other biodegradable waste".
- The same applies to the ensuing paragraphs referring to landfills for non-hazardous waste, whereas the quality of being non-hazardous should refer to the waste.

²⁹⁶ Art. 3(2) (a) of draft Directive COM(2014) 397.

²⁹⁷ See footnote 11.

- The provision in Article 2d "Member States shall not accept municipal waste to be deposited in landfills for inert waste" is problematic. The restriction is difficult to apply, since some inert municipal waste is directed only to landfill.

PROPORTIONALITY²⁹⁸

New targets - different implementation of existing targets/Early Warning System

*The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States*²⁹⁹.

*The majority of respondents participating in the targeted consultation at the pre-legislative stage*³⁰⁰ *were opposed to upgraded recycling targets*³⁰¹ *and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.*

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

*The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties*³⁰².

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

²⁹⁸ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

²⁹⁹ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

³⁰⁰ See footnote 7.

³⁰¹ However, the majority of respondents opted for new landfill diversion targets.

³⁰² Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

5c. Please specify briefly your answers.

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

In the same way as for the recycling targets (answer 3a), new recycling and landfill diversion targets have the effect of bringing the policies of the various countries and public administrations closer together, providing guidance to the markets and helping to bring the principles of sustainability to bear more closely on the production of goods and services. These targets must of course fit in with other closely linked policies, especially savings targets for energy and natural resources, and the EU is working towards this with its roadmap to a low-carbon economy.

We consider the introduction of an Early Warning System to be an appropriate way to monitor Member State progress towards meeting the targets. The tool meets the requirement of enabling the Member States to take early action by submitting a compliance plan on the basis of the European Commission's recommendations.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste³⁰³, targets for packaging waste³⁰⁴ as well as landfill diversion targets³⁰⁵. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?

Yes / No

6b. Please specify briefly your answer.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

³⁰³ Art. 1(20) of draft Directive COM(2014) 397.

³⁰⁴ Art. 2(6) (c) of draft Directive COM(2014) 397.

³⁰⁵ Art. 3(6) of draft Directive COM(2014) 397.

The modifications to the reporting obligation may be a suitable and appropriate way to achieve the intended objectives provided that the EU lays down criteria ensuring uniformity in defining the data to be submitted, so that existing and confirmed data collection systems can be used.

By means of Regional Law 37 of 28 June 1988, subsequently confirmed by Regional Law 21 of 1 July 1991 and Regional Law 26 of 12 December 2003 and subsequent amendments and additions, the Lombardy Region set up a Regional Waste Observatory. The Regional Waste Observatory coordinates the Provincial Observatories, which are tasked with compiling and publishing data on solid municipal waste production and management and separate waste collection. The data and information are forwarded by municipalities to the provinces who – once checked – send them on to the Regional Environmental Protection Agency (ARPA) to be included in the Annual Report.

The Lombardy ARPA oversees the collection, checking and compiling of all the data stipulated in current legislation.

The databases managed by the Lombardy ARPA consist of:

- The Supraregional Waste Observatory: a web application (operating entirely via internet) that gathers solid municipal waste production and management data from Lombardy's 1 544 municipalities and the approximately 3 000 waste processing plants in our region. Processing this data provides a picture of municipal waste production, management and flows and data concerning recovery and processing of waste in installations;
- The Single Declaration Model (MUD) database: data on special waste is collected via the MUD declarations, which are submitted annually to the local Chamber of Commerce by the parties obliged to do so (Article 189 of Legislative Decree 152/2006); data on production of special waste are extracted from this information.
- CGR-WEB – Georeferenced Waste Register: this is a web-based application containing all administrative and technical information on waste processing installations in the Region; it has been operating since the beginning of 2013, and is updated by the Provinces and the Region who are the authorities competent to issue permits.

DELEGATED AND IMPLEMENTING ACTS

*Provisions empowering the Commission to adopt delegated or implementing acts*³⁰⁶.

*Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility*³⁰⁷.

7a. *Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?*

Yes / No

7b. *Please specify briefly your answer.*

We agree that delegations are useful, as they make for rapid and targeted implementation of the technical guidelines. These appear to be in keeping with the provisions of Article 290 TFEU.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

We would highlight the need to introduce uniform incentives across the EU to promote waste preventing and recycling. In particular, we urge that consideration be given to introducing incentives that make food waste prevention more economically attractive than sending food waste for recovery or landfill, not least in the light of the ambitious targets for reducing waste production imposed by the Commission.

³⁰⁶ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

³⁰⁷ Art. 1(21) (c) of draft Directive COM(2014) 397.

11. Abruzzo Regional Assembly

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p>Ia. Is your local/regional authority involved in:</p> <p>aa) The transposition of EU waste legislation into national law?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p> <p>cc) Its enforcement (e.g. surveillance, inspections)?</p> <p>Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/></p>
<p>Ib. As relevant, please specify briefly your answer.</p> <p>In Italy, waste is a matter for the national and regional tiers. The state has exclusive horizontal competence for the "protection of the environment and the ecosystem" and "protection of competition", and the regions have competence in areas such as "local government" and "protection of health" – competences which the regions exercise in compliance with the fundamental principles laid down by the state legislator.</p> <p>The state and the regions therefore have the power to implement European legislation in this area. Specifically, European Directives 2008/98/EC on waste and 94/62/EC on packaging and waste packaging have been implemented at national level by decree 152/2006 laying down environmental rules. Part IV of this decree lays down rules for waste management, setting out principles and targets for waste management in line with European legislation.</p> <p>Furthermore, Directive 1999/31/EC on landfill of waste was implemented by means of decree 36/2013; Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators was implemented by means of decree 188/2008; and Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) was implemented by means of decree 49/2014. Lastly, Directive 2000/53/EC on end-of-life vehicles was implemented by means of decree 209/2003.</p> <p>Article 196 of decree 152/2006 details the regional competences in the area of waste. Specifically, the regions are responsible for <u>adopting regional waste management plans, regulating waste activities including the differentiated collection of urban waste, identifying optimal territorial areas (<i>Ambito Territoriale Ottimale</i>) for urban waste management, and encouraging people to reduce the amount of waste produced and to promote waste recovery.</u></p> <p>Specifically, regional waste management plans focus on:</p> <ul style="list-style-type: none">• initiatives to promote the re-use, recycling and recovery of material waste and energy, including the recovery and disposal of resulting waste;• the rules on the prevention and management of packaging and waste packaging set down in

Article 2(6) of decree 152/2006;

- the programme to reduce biodegradable waste to be disposed of in landfills referred to in Article 5 of decree 367/2003 (implementing Directive 1999/31/EC on landfilling of waste);
- a prevention programme on the production of waste, drawn up on the basis of the national prevention programme.

The regions must also inform the Ministry of the Environment, the Protection of Natural Resources and the Sea of the adoption or revision of waste management plans and prevention programmes, with a view to their subsequent forwarding to the European Commission (Article 199(11) of Decree 152/2006).

The Region of Abruzzo adopted **regional law No 45/2007** on waste (rules on integrated waste management), to which is appended the regional waste management plan. In 2011, with European regional law No 44, the region brought regional law No 45/2007 into line with EU Directive 2008/98/EC. In 2013, regional law No 36/2013 was approved (attribution of functions relating to the integrated management of urban waste and amending regional law No 45/2007). This sets out the new governance for the sector, with a single optimal territorial area and the establishment of an integrated waste management authority which is currently being set up.

As regards the issuing of permits for setting up and operating facilities, Article 5 of regional law 45/07 has delegated powers to the provinces. To date, the delegation applies to only a few types of facilities (e.g. landfills for inert waste, platforms for processing packaging), further to the signing of a memorandum of understanding between the region and the provinces. It has not been possible to fully enact the delegation provided for in Article 5 of regional law 45/07, owing to lack of resources and staff, as requested by the provinces. Furthermore, under Article 5(1)(b) of regional law 45/07, the provinces are responsible for overseeing and monitoring all waste management activities.

SUBSIDIARITY³⁰⁸

Waste prevention

*Draft Directive COM(2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention*³⁰⁹, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention"³¹⁰. *There is just a non-binding objective concerning the prevention of food waste*³¹¹.

*During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets*³¹².

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

³⁰⁸ Art.5(3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

³⁰⁹ Art. 9(c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

³¹⁰ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49.

³¹¹ Art. 1(7) of draft Directive COM(2014) 397.

³¹² See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report-Available.aspx>.

Yes / No

2b. Please specify briefly your answer.

We believe that legally binding waste prevention and reduction targets are needed, providing for tariff reduction measures where such targets are met (e.g. structuring tariffs for landfilling waste, structuring special fees, regional ecotaxes, etc.). Declining material and energy resources mean that we must focus on reducing waste as far as possible, as wasting resources hinders economic growth.

The Abruzzo Region's regional waste management plan referred to in regional law 45/07 has laid down targets for reducing waste production (-5% in 2011 compared to 2005 figures). Specifically, pursuant to Articles 22 and 22a of regional law 45/07, under **regional decision No 1012 of 29 October 2008**, the Abruzzo Region adopted a programme for the prevention and reduction of waste production, entitled "**Reducing and recycling for a better life**" (Official Newsletter of the Abruzzo Region, Special environment issue, No 85 of 28 November 2008). This sets out 12 ideas that can be implemented on the ground by municipalities, associations, etc. Many voluntary agreements have been signed (e.g. memoranda of understanding, conventions) with authorities and environmental and consumer associations, and many formal letters issued. Furthermore, **regional decision No 66 of 13 February 2012** on Guidelines for setting up recycling facilities (Official Newsletter of the Abruzzo Region, Special environment issue, No 19 of 9 March 2012) approved regional directives for setting up recycling facilities.

Under **regional decision No 418 of 4 June 2013** (Official Newsletter of the Abruzzo Region, Special environment issue, No 69 of 19 July 2013), within the **PAR FSC 2007-2013 programme, Strand IV.1.2.a** "Implementing extraordinary programmes for developing differentiated collection, recovery and recycling and the extraordinary waste prevention and reduction programme", Action 3 – programme for the prevention and reduction of waste production, **EUR 660 000** was earmarked for co-financing projects for the prevention and reduction of waste production. Around **70** initiatives by municipalities and associations have been granted funding.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70% for municipal waste in 2030³¹³ and 80% for packaging waste in 2030³¹⁴)³¹⁵.

3a. Do you consider these new targets to be a cause for concern in terms of subsidiarity?

Yes / No

3b. Do you consider that the need for such new EU targets has been sufficiently justified by the Commission³¹⁶?

Yes / No

3c. Please specify briefly your answers.

We do not consider that the new targets are cause for concern in terms of subsidiarity and believe that it is fair to increase them. The need for new targets must be better justified, particularly with a view to making stakeholders (public and private operators) more aware of their responsibilities. Positive results that may be achieved must be illustrated, such as:

- further energy savings;
- reducing the carbon footprint;
- increased revenue (e.g. from environmental contributions).

Specific measures have been taken to boost recovery of recyclable waste. This includes **regional decision No 318 of 29 June 2009** (Official Newsletter of the Abruzzo Region, Special environment issue, No 34 of 26 August 2009), which approved the ECOCARD directive introducing tax incentives for users for the disposal of waste in collection facilities, and **regional decision No 474 of 26 May 2009** (Official Newsletter of the Abruzzo Region, Special issue, No 54 of 4 July 2008), approving the standard regional method for calculating the percentage of differentiated collection.

Many other voluntary agreements have been approved with authorities, educational establishments, environmental and consumer associations, etc. to implement specific experiences locally with a view to rolling out good environmental practices in the area of differentiated collection and the effective recovery of waste (recycling). These acts are published in the Official Newsletter of the Abruzzo Region, Special environment issues.

³¹³ While maintaining the existing target (50% for 2020).

³¹⁴ With interim targets of 60% by 2020 and 70% by 2025.

³¹⁵ Art. 1(8)(a) of draft Directive COM(2014) 397 concerning municipal waste and Art. 2(3) b) for packaging waste.

³¹⁶ See Art. 5 Prot. No 2 on the application of the principles of subsidiarity and proportionality.

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste³¹⁷. Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

Yes / No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?³¹⁸*

Yes / No

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

Yes / No

4d. *Please specify briefly your answers.*

Phasing out landfilling to achieve a maximum landfilling rate of 25% is binding for regions which are lagging behind as regards the implementation of an efficient waste collection system and whose integrated system is inadequate.

The Abruzzo Region has reached a landfilling rate of under 35% (2014 ISPRA report). We consider that the 2025 target is not cause for concern in terms of subsidiarity, but that it should be better justified, highlighting how such activities can have a positive influence on:

- the consumption of natural resources and energy savings;
- a reduced carbon footprint;
- reduced service costs.

The virtual elimination of landfilling by 2030, including the possibility of reviewing this target by 2025 and submitting a legislative proposal for a legally binding 2030 landfill diversion target must be upheld if the European waste management system is to be implemented coherently and in line with the communication "Towards a Circular Economy: A zero waste programme for Europe".

The potential binding target for 2030 could be cause for concern in terms of subsidiarity.

³¹⁷ Art. 3(2)(a) of draft Directive COM(2014) 397.

³¹⁸ See footnote 11.

PROPORTIONALITY³¹⁹

New targets - different implementation of existing targets/Early Warning System

*The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States*³²⁰.

*The majority of respondents participating in the targeted consultation at the pre-legislative stage*³²¹ *were opposed to upgraded recycling targets*³²² *and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.*

5a. *Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?*

*The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties*³²³.

5b. *Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?*

Yes / No

5c. *Please specify briefly your answers.*

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

We consider that an Early Warning System to monitor the achievement of targets by Member States is fair and useful. Furthermore, this system enables Member States to act in good time by presenting a plan based on the European Commission's recommendations.

The introduction of annual – rather than three-yearly – reporting obligations for Member States is also beneficial for the Early Warning System.

The setting of new recycling and/or landfill diversion targets is a suitable, appropriate and proportionate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy).

³¹⁹ Art. 5(4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

³²⁰ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM(2014) 398 final, pt. 3.1.

³²¹ See footnote 7.

³²² However, the majority of respondents opted for new landfill diversion targets.

³²³ Art. 1(9) and Art. 2(4) of draft Directive COM(2014) 397 concerning recycling targets, Art. 3(3) concerning landfill diversion targets.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste³²⁴, targets for packaging waste³²⁵ as well as landfill diversion targets³²⁶. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. *Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?*

Yes / No

6b. *Please specify briefly your answer.*

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objective?

The proposed modified reporting obligations are a suitable and appropriate way to achieve the intended objectives (achieving reliable information on the implementation of relevant EU waste legislation by Member States). The regions have identified effective methods for collecting data on urban waste and for communicating/validating such data to the overseeing and/or planning authorities (e.g. ISPRA). Under regional law No 45/07, the region of Abruzzo set up a data collection and management system known as CARIREAB, established by No DN3/334 of 10 December 2008 (Official Newsletter of the Abruzzo Region, Special issue, No 45 of 14 January 2009).

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts³²⁷.

Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility³²⁸.

7a. *Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?*

Yes / No

7b. *Please specify briefly your answer.*

³²⁴ Art. 1(20) of draft Directive COM(2014) 397.

³²⁵ Art. 2(6) (c) of draft Directive COM(2014) 397.

³²⁶ Art. 3(6) of draft Directive COM(2014) 397.

³²⁷ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290(1) TFEU; see Art. 291 TFEU for implementing acts.

³²⁸ Art. 1(21) (c) of draft Directive COM(2014) 397.

Generally speaking, we do not believe that the delegated and implementing powers contained in the draft directive are cause for concern.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM(2014) 397 gives rise to in your view.

The region of Abruzzo points out that the transposition of the various European directives in this area must be carefully assessed and verified by the Commission, particularly to ensure that there are no transposition disparities which could distort market rules (e.g. diversity in management of organic waste, home composting, municipal composting).

We believe that a new system of tax incentives and disincentives should be introduced uniformly across the EU, in the context of provisions for the harmonisation of legislation referred to in Article 113 of the TFEU. The new system would aim to make prevention and recycling more convenient and financially advantageous than energy recovery and landfilling (e.g. reduced VAT for items produced using recycled materials, eliminating incentives for energy recovery, incentives for recycling, penalties for landfilling).

12. Association of Netherlands Municipalities (VNG)

IMPLEMENTATION OF EU WASTE LEGISLATION BY LOCAL AND REGIONAL AUTHORITIES
<p><i>Ia. Is your local/regional authority involved in:</i></p> <p><i>aa) The transposition of EU waste legislation into national law?</i></p> <p>No</p> <p><i>bb) The application of transposed EU waste legislation (e.g. issuing permits, setting up waste management plans)?</i></p> <p>Yes</p> <p><i>cc) Its enforcement (e.g. surveillance, inspections)?</i></p> <p>Yes / No</p>
<p><i>Ib. As relevant, please specify briefly your answer.</i></p>
<p>Cc: The enforcement by municipalities is limited to issued permits and general administrative orders.</p>

SUBSIDIARITY³²⁹
<p>Waste prevention</p> <p><i>Draft Directive COM (2014) 397 does not contain an overall waste prevention target and/or a target for packaging prevention³³⁰, because the Commission considers that "at this stage, it does not seem appropriate to define a legally binding weight-based target for prevention."³³¹ There is just a non-binding objective concerning the prevention of food waste.³³²</i></p> <p><i>During the targeted consultation carried out in 2013 at the pre-legislative stage, most respondents saw a need for binding EU waste prevention targets³³³.</i></p>

³²⁹ Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

³³⁰ Art. 9 (c) of the Waste Framework Directive provides that the Commission could propose to set waste prevention and decoupling objectives for 2020.

³³¹ Impact assessment accompanying the Commission proposal, pt. 4.3, p. 49

³³² Art. 1 (7) of draft Directive COM (2014) 397

³³³ See the consultation report on: <http://portal.cor.europa.eu/subsidiarity/news/Pages/Waste-Consultation-Report->

2a. Do you still see a need for the introduction of legally binding EU waste prevention targets?

Yes

2b. Please specify briefly your answer.

There is certainly a case for prevention targets. However, it's a complex issue that requires more research before actual legally binding targets can be introduced.

Setting of new waste recycling targets with new deadlines

The Commission proposes to increase the recycling rates for municipal and packaging waste by setting new targets (70 % for municipal waste in 2030³³⁴ and 80 % for packaging waste in 2030³³⁵)³³⁶.

3a. Do you consider these new targets to be a cause for concern in terms of subsidiarity?

No

3b. Do you consider that the need for such new EU targets has been sufficiently justified by the Commission³³⁷?

Yes

3c. Please specify briefly your answers.

The transition towards a circular economy should be facilitated at EU level. It's a global challenge that cannot be addressed by individual member states. A level playing field with common targets and harmonisation of definitions is therefore a necessity.

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³³⁴ While maintaining the existing target (50 % for 2020).

³³⁵ With interim targets of 60 % by 2020 and 70 % by 2025.

³³⁶ Art. 1 (8) a) of draft Directive COM (2014) 397 concerning municipal waste and Art. 2 (3) b) for packaging waste.

³³⁷ See Art. 5 Prot No 2 on the application of the principles of subsidiarity and proportionality

Phasing out landfilling

The Commission proposes to phase out landfilling by 2025 for recyclable waste (including plastics, paper, metals, glass and bio-waste) in non-hazardous waste landfills – corresponding to a maximum landfilling rate of 25% for municipal waste.³³⁸ Moreover, the Commission proposes a non-binding objective for Member States to virtually eliminate landfill by 2030, including the possibility to review this objective by 2025 and to submit a legislative proposal for a legally binding 2030 landfill diversion target.

4a. *Do you see a cause for concern in terms of subsidiarity in relation to the target for 2025?*

No

4b. *Do you consider that the need for this new EU target has been sufficiently justified by the Commission?³³⁹*

Yes

4c. *Do you see a cause for concern in terms of subsidiarity in relation to a possibly binding target for 2030?*

No

4d. *Please specify briefly your answers.*

PROPORTIONALITY³⁴⁰

New targets - different implementation of existing targets/Early Warning System

The Commission proposes new recycling and landfill diversion targets, whereas the implementation of the current legislation varies considerably between EU Member States³⁴¹.

The majority of respondents participating in the targeted consultation at the pre-legislative stage³⁴² were opposed to upgraded recycling targets³⁴³ and argued that there should first be compliance with the existing targets throughout the EU before considering such reinforcement.

³³⁸ Art. 3 (2) (a) of draft Directive COM (2014) 397

³³⁹ See footnote 11.

³⁴⁰ Art. 5 (4) TEU: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

³⁴¹ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region "Towards a Circular Economy: A zero waste programme for Europe", COM (2014) 398 final, pt. 3.1.

³⁴² See footnote 7.

³⁴³ However, the majority of respondents opted for new landfill diversion targets.

5a. Do you believe that the setting of new recycling and/or landfill diversion targets is the suitable and appropriate way to achieve the intended objectives (better resource and waste management in line with the EU ambitions regarding resource efficiency and circular economy)?

Yes

The Commission proposes an Early Warning System in order to monitor the achievement of targets by Member States and to anticipate and avoid possible compliance difficulties³⁴⁴.

5b. Do you believe that this Early Warning System is the suitable and appropriate way in order to achieve the intended objectives?

No

5c. Please specify briefly your answers.

If you consider that setting new targets and/or introducing an Early Warning System go further than is necessary, what, in your opinion, would be a less restrictive, alternative way of achieving the intended objectives?

- a. It's a complex issue. In general our answer would be 'yes'. It stimulates MS to invest in programmes and infrastructure, waste management systems etc. However, the calculation methods for recycling and reuse the EC proposes are very ambitious and therefore somehow unrealistic.
- b. The Early Warning System will only lead to an extra administrative burden.

Reporting

The Commission proposes to increase the frequency of reporting by Member States – instead of every three years, Member States will have to transmit their data annually concerning the implementation of recycling targets for municipal waste³⁴⁵, targets for packaging waste³⁴⁶ as well as landfill diversion targets³⁴⁷. Moreover, the data should be accompanied by a quality check report and be verified by an independent third party.

6a. Do you believe that these modified reporting obligations are a suitable and appropriate way to achieve the intended objective (achieving reliable information on the implementation of relevant EU waste legislation by Member States)?

No

6b. Please specify briefly your answer.

If you consider that these reporting obligations go further than is necessary, what, in your opinion, would

³⁴⁴ Art. 1 (9) and Art. 2 (4) of draft Directive COM (2014) 397 concerning recycling targets, Art. 3 (3) concerning landfill diversion targets.

³⁴⁵ Art. 1 (20) of draft Directive COM (2014) 397

³⁴⁶ Art. 2 (6) (c) of draft Directive COM (2014) 397

³⁴⁷ Art. 3 (6) of draft Directive COM (2014) 397

be a less restrictive, alternative way of achieving the intended objective?

The deadlines for reporting would become too tight. Every two years would be a better option.

DELEGATED AND IMPLEMENTING ACTS

Provisions empowering the Commission to adopt delegated or implementing acts.³⁴⁸

*Draft Directive COM (2014) 397 contains several empowerment clauses which give the Commission the power to adopt delegated or implementing acts, e.g. delegated acts "necessary to amend Annex VII" of the Waste Framework Directive laying down the minimum requirements for extended producer responsibility*³⁴⁹.

7a. Do you believe that the delegated and implementing powers contained in the draft Directive are a cause for concern?

Yes

7b. Please specify briefly your answer.

The articles contain some essential provisions with a profound impact on (local) governments. For example in the field of harmonisation. It would be better to, for example, replace the delegated acts by implementing acts.

ADDITIONAL REMARKS

Please indicate briefly any other subsidiarity or proportionality concerns that draft Directive COM (2014) 397 gives rise to in your view.

The EC proposes certain measures that should be regulated at the national level, such as the separate collection of waste at source (for example bio-waste). The EC should set targets, but how they are being met should be left to MS.

³⁴⁸ For delegated acts, such empowerments shall concern non-essential elements of the legislative proposal and the relevant empowerment clause included in the proposal shall explicitly define the objectives, content, scope and duration of the delegation of power, Art. 290 (1) TFEU; see Art. 291 TFEU for implementing acts.

³⁴⁹ Art. 1 (21) (c) of draft Directive COM (2014)397.

13. Serafin Pazos-Vidal, SEG member for COSLA

Circular Economy and Zero Waste Task Force

Purpose

1. This paper provides members with an initial assessment on the impact on Scottish Councils of the EU Circular Economy Package, including a subsidiarity assessment.

Key Findings

2. In terms of Subsidiarity and Proportionality assessment:

- i. Clearly as the Waste Targets Directive does merely change the targets it is as compliant with subsidiarity as the existing 2009 Directive.
- ii. However there are issues on subsidiarity concerning excessive use of Delegated Act. This is unwarranted and against the Treaty definition of Delegated Acts. At Very least they should be replaced with Implementing Acts. However for legal certainty some of the provisions now proposed to be done as Delegated Act should be integrated in the Directive.
- iii. Concerning Extended Producer Responsibility there are questions about subsidiarity that may emerge from the way Delegated Act (not yet known) formulates the minimum EU wide standards that are proposed in the Directive to be dealt with by Delegated Act. If the DA is too detail there may be an issue with subsidiarity as it would impinge on existing EPR schemes. However without the DA being tabled it is impossible to know.
- iv. There are more obvious issues regarding proportionality. As our assessment below shows it is not entirely clear why assuming that by using the timescales that the best performing Member States have used in the past to reach current targets would automatically translate in improved performance of the worse performers.
- v. It is equally regrettable that there has been no prior Territorial Impact Assessment as the figures provided by the EC are EU wide, and not even a breakdown per Member State (which we had to retrofit and then down to Scottish level) thus the TIA carried out by CoR was a very much welcome exercise.
- vi. Concerning packaging legislation while subsidiarity issues are less relevant given the trans-European dimension of the packaging market there might be issues on proportionality as proposed rules might be too detailed to achieve the intended end, however this is an issue that involve producers and others and we are still looking at.
- vii. Finally it is to be welcome that the Resource Efficiency target remains an aspirational one. The case still needs to be made whether the EU Treaties confer the EU powers to legislate on this the same way as it already does on waste. There is an obvious transnational element but equally there is a subsidiarity issue as most policies dealing with resource efficiency are domestic not EU. Thus the bottom up approach of asking national statistics to come up with common indicators is a sensible one at this stage.

Detail:

EU Circular Economy Package

3. The European Commission is currently reviewing EU waste legislation with the aim of developing a Circular Economy Package, a consistent and coherent set of legislation driving a sustainable, resource-efficient approach. COSLA, with the support of waste managers, has been influencing this agenda ahead of the tabling of the proposal on 2nd July. The key points and issues to be noted are described below and summarised in the Annex.

4. The European Commission defines Circular Economy as follows;

“A circular economy preserves the value added in products for as long as possible and virtually eliminates waste. It retains the resources within the economy when a product has reached the end of its life, so that they remain in productive use and create further value.”

5. The Circular Economy Package is made up of the following legislative proposals and associated documents;

- Revision of the Waste Framework Directive
- Revised EU Landfill Directive
- Review of the Packing Directive
- Communication with regards to the impact of including a new biowaste target
- Description of the overall approach to the circular economy
- Paper on resource efficiency in the buildings section

Targets

6. The revised Waste Framework Directive largely alters existing targets upwards and incorporates biowaste and a total ban on landfill into waste regulation. In general, these targets are consistent with current Scottish Government objectives and in some cases are less stringent. However, European standards have a different legal status than Scottish Government objectives. There are also some revised definitions, most notably the inclusion of rural waste not collected by regular waste service in the definition of municipal waste.

7. The revised Waste Framework Directive is setting a target of 70% of municipal waste to be recycled by 2030. Scotland’s target is to achieve this level of recycling by 2025, although this is non-statutory. The revised Directive also sets a non-binding target of 30% reduction in food waste by 2025, compared to Scotland’s aim of mandatory recycling of food waste by end 2015.

8. With regards to landfill restrictions, the revised Directive contains a ban on all recyclable waste to landfill by 2025 and a limit of 25% of Municipal Solid Waste (MSW) to landfill by the same date. This

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then decreases to 5% of MSW by 2030 (non-binding) and a non-binding ban for non-residual waste by the same date. In comparison, Scotland is aiming for a maximum of 5% of total waste arisings to landfill by 2025, a ban on recyclables collected separately by 2014 and a ban on separately collected materials and biowaste by 2021.

9. The revised Directive also contains targets for the recycling of packaging – 60% by 2020, 70% by 2025 and 80% by 2030.

Costs

10. Financial analyses have only been calculated at an EU level, with an estimate of €26bn EU-wide benefits. A breakdown per Member State is not provided but the UK Government has calculated that the Commission is assuming around a €2.2bn saving UK wide. This could translate to around €220m worth of benefits to Scotland¹, and possibly more, given the advanced state of Scottish waste practices.

¹ Assuming that Scotland accounts for around 10% of total UK figures

11. It is likely that there will be additional compliance costs for individual sectors such as Local Authorities. For example, the costs of implementing the new food waste targets UK wide is expected to be in the region of low hundreds of million pounds. UK wide costs for implementing the EU recycling target and landfill bans would be in the low billions of pounds.

Subsidiarity

12. The amended Extended Producer Responsibility (EPR) requirements will oblige Member States to encourage the design of products to prevent waste. This is expected to be resisted by industry. Equally the new EPR will have minimum criteria uniform across the EU. It is likely that local government will welcome the fact that these criteria will affirm producer responsibility for all associated costs of collecting waste. However uniform EPR criteria across Europe may reduce flexibility for designing EPR schemes adapted to local circumstances.

13. There is a clear concern about the projected increased use of Delegated Acts to fully implement the legislation. This would allow the Commission to legislate on its own on a range of very detailed issues, thus risking tilting the balance of power excessively towards the EU level. However, this could also be beneficial in terms of moving forward legislation on which it is difficult to create cross-European support such as extending Producer Responsibility forward. Conversely, it could impact the principle of subsidiarity in other areas.

COSLA Response

1. COSLA welcomes the new EU Waste Package as it proposes a range of targets in recycling, biowaste, separate collection and landfill ban that are similar to the level of ambition of Scottish Zero Waste plans.
2. We equally welcome, as we urged ahead of the tabling of these proposals, that the timescales to reach these targets are in line or later than those in place in Scotland.
3. We welcome that the Commission has opted for reviewing targets only, and adding only a new biowaste target, whilst keeping the rest of existing EU legislation in place, as this will ensure more legal certainty.
4. Local Authorities are responsible for the collection and treatment of waste from households, and thus we are keen to ensure that the new rules are fit to purpose.
5. COSLA urges an approach that manages waste streams in their entirety, implements the waste hierarchy, ensures transparent operational management, financing, costs, tax measures, monitoring and traceability and gives consideration to the role played by Local Authorities as the statutory bodies ultimately responsible for waste collection.
6. Equally while there are net societal benefits to achieving the proposed targets, sufficient resources need to be provided to Councils to meet the initial compliance costs to meet these levels of ambition.
7. COSLA notes however that all new EU targets are legally mandatory and thus more difficult to renegotiate than the Scottish Government's own aspirational waste plans. Thus we urge the Scottish Government to work with Council waste managers to provide an careful assessment of implementation costs for these EU proposals.
8. Indeed we would urge that current rate of progress of individual Councils towards Scottish targets is looked at so as to ensure that there is a reliable degree of certainty of Council ability to reach the legally binding EU targets; it can be more costly and challenging moving from a 50% to a 70% recycling rate than reaching the 50% rate, and this can vary in different parts of the country.
9. It is also worth recalling that the timescales for an increased recycling rate will also need to be in sync with planning for the next 15 years of recycling and incineration infrastructure; therefore we urge that these costs are carefully factored in together with a robust forecast of waste arisings on a 2030 timescale.
10. We welcome the improvement of the consistency of the definitions used in the legislation and the steps to ensure proper monitoring by improved data collection and systematic reliability and validity checks of data reported.

11. We welcome more stringent rules of Extended Producer Responsibility (EPR) so as to ensure that the polluter pays. Waste under EPR schemes must be factored into the recycling rate and should include all related costs. Councils would otherwise find themselves having to meet the costs of collecting and recycling waste. We note that there are minimum criteria for such EPR schemes laid EU-wide, however we seek clarification on whether existing EPR schemes could continue. Equally the new Directive appears to confer on the Commission the ability to review the new EPR minimum criteria which may reduce over time the ability to develop EPR schemes that are suited to local circumstances.

12. On specific waste streams the introduction of food waste in the directive can be supported as it is in line with the plans in Scotland, however the impact of including agricultural food losses in the targets needs to be considered.

13. Equally the inclusion of rural waste outside municipal collection schemes within the scope of Municipal Waste in the directive may have an impact with regards to compliance of the Directive. More generally some of the new definitions of the Directive, particularly those of municipal waste, end of waste and biowaste, look likely to put additional pressure on reaching the Scottish targets which are already challenging progress towards under the terms of the current Directive.

14. We are also concerned about the excessive use of Delegated Acts whereby the Commission is empowered to legislate on its own, and with limited Member State and MEP scrutiny, vast aspects of the Directive including changes in crucial issues such as End of Waste Criteria, waste stream, waste prevention criteria, minimum compliance and reporting standards and other issues without having to table the Directives. This conferral of power to the Commission is unwarranted and we urge that only minor aspects of the directive could be done without legislation and instead via Implementing Acts drafted jointly between the Commission and input of national governments, and ideally local government.

15. COSLA request that the European Commission and Member States work with local government to:

- Develop guidance on the proper implementation of the waste hierarchy.
- Develop outcomes for municipalities to implement services mindful of a minimum standard

16. We note that there are provisions on Public Participation and a new Early Warning System so that countries lagging behind can work with the Commission to define specific programmes to suit their circumstances; however given that Waste is in a great part a municipal competence there should be an clear partnership arrangement between EU and national government with local government reflected in the Directive, in line with other pieces of EU law whose delivery involve several levels of governance.

17. Concerning the new **EU packaging waste** rules we note that the new proposals cover ‘re-use and recycling’ rather than ‘recycling and recovery’ and the changes in the scope of the waste streams included in the directive may significantly affect compliance in the UK. Further examination is therefore needed regarding compatibility with existing packaging waste prevention schemes being developed in Scotland.

18. Finally we welcome the scope and direction of travel of the **EU Zero Waste and Resource Efficiency** proposals that were also tabled.

19. In particular, we welcome that the 30% resource efficiency headline target by 2030 is, at least for the moment, an aspirational one, as there is considerable work to do in terms of defining a workable Resource efficient policy nationally let alone at EU level. This is consistent with the policy being developed in Scotland. In that respect it is welcome that as a first step the proposal includes work of the national statistical offices to work on common definitions and to develop a common Raw Material Consumption methodology.

Detailed **Background Assessment** is provided as an annex

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ANNEX

EU Circular Economy Package

Overview

- Last July the European Commission tabled a large review of the EU Waste targets legislation and new proposals on Circular economy. COSLA, with the support of Council waste managers, has been preparing and engaging in the drafting of the new legislation so as to ensure that the new EU targets are in line with Zero Waste Plan.
- While we had originally expected, and campaigned against, EU targets that would be simply not workable for Councils both in size and timescales, the proposal while ambitious, has similar targets to that of the Scottish legislation but to be achieved at a later timescale than in Scotland.
- This is also welcome on a EU-wide scale as many countries are struggling with the current legislation, so too ambitious targets would simply be unworkable for most countries.

.../...

- It should be noted however that the EU targets are legally binding and much more difficult to review once they enter in force than those in Scotland, thus it is essential that they are fit for purpose as otherwise Councils could find themselves in a situation where they are being penalised for not meeting EU targets.
- Therefore, we have been continually seeking views from Waste Managers, as well as engaging with the UK and Scottish Governments. There are further details below of the initial assessment of the EU proposals and, where available, the initial reaction of the Scottish and UK Governments.
- So as to inform the Scottish and UK positions, and the CoR and European Parliament negotiations now starting, a number of key findings and messages are contained below.

Key Messages:

The following statements summarise the position of COSLA. These were reviewed by the COSLA DES Executive Group on 2nd October.

- The EU Waste package amends the targets of current Waste Framework Directive, Packaging Waste, Landfill Directive and harmonise definitions of those Directives as well as WEEE and other waste-related directives.

		EU Targets			Scotland
		2020	2025	2030	
Waste Framework Directive	Municipal Waste recycling	50% (existing target)	-	70% statutory	70% (2025) non statutory (41.2% in 2012)
	Food Waste reduction	-	Non-binding 30% reduction (2017 baseline)	-	Mandatory for households by end 2015
		2020	2025	2030	Scotland
Landfill Directive	Landfill restrictions	-	25% of MSW arisings total limit Ban for recyclable waste paper cardboard metal glass plastic and biowaste	Non-binding 5% MSW arisings total limit Non-binding ban for non-residual waste	Maximum 5% total Scottish waste arisings by 2025. 2021 Landfill ban separately collected materials & biowaste 2014 Landfill ban metal, plastic, glass, paper, card and food collected separately
		2020	2025	2030	Scotland
Packaging Directive	Total packaging recycling	60%	70%	80%	50% by 2020
	Plastics	45%	60%	None Stated	preparing for re-use and the recycling of plastic, metal, glass paper from household waste and similar.
	Aluminium	70%	80%	90%	
	Ferrous Metal	70%	80%	90%	
	Glass	70%	80%	90%	
	Paper & Cardboard	85%	90%	None Stated	
	Wood	50%	65%	80%	

- You will notice that some of the headline targets are larger than those foreseen in the Zero Waste Plan. Indeed it is a much more modest endeavour compared to the Commission initial plans (timescales of 2030 whereas in the draft circulated in November last year the same targets were to be met by 2020). On that basis we are anticipating that the Scottish Government would welcome the proposals as ZWP compares very positively.

- **New Definitions of ‘municipal waste’**, new definitions of ‘residual waste’, ‘food waste’, ‘backfilling’ and ‘extended producer responsibility’, and aligning definitions from the Packaging and Packaging Waste and Landfill Directives to the Waste Framework Directive
- A proposed **change from household waste to municipal waste** for the measurement and reporting of targets. It is not clear what impact this will have.
- **Clarification of the amount of recycling which should be reported** by explicitly stating that in-process losses over 2% of weight should be subtracted from the weight of material reported as ‘recycled’ for the Packaging and Waste Framework Directives
- A target to increase recycling and preparing for re-use of municipal waste to 70% by 2030;
- Revised calculation methods for reporting against the municipal waste recycling target for 2020 and reporting for the construction and demolition waste target;
- A requirement for the **separate collection of biowaste** by 2025
- More stringent **requirements for Extended Producer Responsibility schemes** to encourage the design of products in order to reduce their environmental impacts, and that requirements are specified for new EPR schemes
- Clarity that End of Waste materials used as fuels or for backfilling, and that material rejected from recycling processes, should not be counted towards a reuse or recycling target.
- A requirement to include “**measures to combat littering**” in Waste Management Plans
- A requirement to include **specific measures to reduce food waste** in Waste Prevention Plans
- A **derogation for SMEs** from certain waste permitting and/or registration requirements from registration for those collecting or transporting very small quantities of non-hazardous waste.
- The establishment of **electronic registries** for recording data on hazardous waste
- Setting of **enforcement and penalties** for littering
- A new annex setting out the potential measures involved in an **Early Warning System** for underperforming countries so that they can have special plan to reach the targets
- Packaging targets for “re-use and recycling” as opposed to “recycling and recovery” as previously
- Requirement to encourage the **design of packaging** in order to reduce waste and encourage multiple use
- Extended use of **delegated and implementing acts** to provide the Commission with the powers to take decisions on amending non-essential elements of the Directive by supplementing it with regards to for example: by-products; End-Of-Waste criteria; List Of Waste; revision of Extended Producer Responsibility requirements and others.
- **Impact:** the Directive will have a direct impact in Local Authorities due to their legal duty of collection and treatment, producers (more stringent producer responsibility), businesses, SMEs (exemptions from permits to carry small amount of waste)
- In terms of **cost**, as usual the Commission only provides EU wide cost/benefit assumptions of €26bn EU-wide of benefits (both financial and environmental). However the breakdown per

Member State is not provided though initial calculations on the basis of the Commission EU wide figures seems to suggest a €2.2bn saving UK wide.

- Still there will be additional compliance costs for individual sectors such as Councils with costs in the low hundreds of millions pounds to implement the new food waste targets UK-wide. Costs (UK-wide) for the new EU recycling target and landfill bans would be in the low billions of pounds. The biggest problem with the Commission assumptions is that it does assume that it is possible to increase capacity (collection, waste treatment, recycling) in line with the successive targets between 2020 and 2030. However, there is no agreement on this as some of the advice we have gathered shows that the higher the recycling rate the more difficult and costly it is to increase the rate, as the “easier” waste streams get processed earlier.
- Equally it is quite difficult to forecast the evolution of waste arisings on a 2030 timescale, and the cost of building new infrastructure over the next 15 years to meet the targets needs to be factored in.
- While no separate cost assessment exist as yet for Scotland, and notwithstanding the political commitment at delivering similar targets in Scotland, Waste managers have been invited to highlight specific compliance costs of delivering these targets in Scotland and we are urging the Scottish Government to work with Councils to properly scope both benefits and the compliance costs of the new binding targets.
- Finally a 30% headline target the **Resource Efficiency by 2030** is proposed but it is a voluntary one (UK particularly opposed to mandatory ones) that is expected to be part of the annual economic and fiscal reporting that Member States are expected to provide, and whose methodology still needs to be worked out by national statistical offices.

ⁱ Use reasons listed inexhaustibly in IA Guidelines 15.01.2009, Chapter 5.1, page 21

ⁱⁱ See info boxes in IA Guidelines 15.01.2009, Chapter 6, page 26 and 27

ⁱⁱⁱ Use the clarification in IA Guidelines 15.01.2009, Chapter 5.2, page 22

^{iv} See info boxes and explanation in IA Guidelines 15.01.2009, Chapter 5.2, page 23f

^v See info boxes and explanation in IA Guidelines 15.01.2009, Chapter 5.2, page 23f

^{vi} Consider that action within ‘supporting competences’ of the EU are less capable to achieve benefits and effectiveness throughout the whole Union

^{vii} Consider particularly cost-effectiveness not only based on figures provided by the Commission

^{viii} Consider any doubts and counteracting effects perhaps not assessed/mentioned by the Commission in its IA particularly for LRAs

^{ix} Compare good examples mentioned in SWD(2014) 209 on Ex-post evaluation of Five Waste Stream Directives, table 2, page 20

^x Union Action should “leave as much scope for national decision as possible”, IA Guidelines 15.01.2009, Chapter 7.2, page 29; this means to take properly “into account existing or even planned Member States policies”, IA Guidelines 15.01.2009, Chapter 7.3, page 31

^{xi} As to the fact that the ECJ contests regularly procedural infringements of the principle of proportionality scrutinize if the EC has provided for appropriate information/explanation on the coherence on proportionality

^{xii} Amongst others objectives and proposed actions/options have to be directly linked and proportionate to the problem and its causes: Chapter 6.5 of IA Guidelines 15.01.2009, page 28 and Info box, Chapter 7, page 29

^{xiii} Unfortunately the questions contesting proportionality in the info box in IA Guidelines 15.01.2009 (Chapter 7.2, page 30) are not a real help due to their general character

^{xiv} Focus on the appropriate level of ambition of the proposed action regarding its ability to solve the problem in relation to compliance costs; IA Guidelines 15.01.2009, Chapter 7.1, page 29

^{xv} “*Community* action should be as simple as possible”, IA Guidelines 15.01.2009, Chapter 7.2, page 29

^{xvi} Compare being “SMART” in defining objectives in IA Guidelines 15.01.2009, Chapter 6.4, page 28, which should be applied amongst others to concrete proposed action primarily

^{xvii} Under the proportionality check the “the option of ‘no EU action’ must always be considered as a viable option” and “where legislation is already in place, better enforcement and implementation should always be considered” or “less can be more”, IA Guidelines 15.01.2009, Chapter 7.3, page 30

^{xviii} Compare Chapter 3 of IA Guidelines 15.01.2009, mentioning particularly “political importance”
