



13.12.2017

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: Proposal for a directive of the European Parliament and of the Council amending Directive 87/217/EEC of the Council, Directive 2003/87/EC of the European Parliament and of the Council, Directive 2009/31/EC of the European Parliament and of the Council, Regulation (EU) No 1257/2013 of the European Parliament and of the Council, Council Directive 86/278/EEC and Council Directive 94/63/EC as regards procedural rules in the field of environmental reporting and repealing Council Directive 91/692/EEC (COM(2016)0789 – C8-0526/2016 – 2016/0394(COD))

The interinstitutional negotiations on the aforementioned proposal for a directive have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on the Environment, Public Health and Food Safety for decision by way of a single vote.

DECISION (EU) 2017/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Council Directive 87/217/EEC, Directive 2009/31/EC of the European Parliament and of the Council, Regulation (EU) No 1257/2013 of the European Parliament and of the Council, Council Directive 86/278/EEC and Council Directive 94/63/EC as regards procedural rules in the field of environmental reporting and repealing Council Directive 91/692/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 173, 31.5.2017, p. 82.

² OJ C [...], [...], p. [...].

³ Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) Council Directives 86/278/EEC¹ and 87/217/EEC² are based on Articles 100 and 235 of the Treaty establishing the European Economic Community, now Articles 115 and 352 of the Treaty on the Functioning of the European Union (TFEU). Amendments to those Directives are related to Union policy on the environment and are a direct consequence of the repeal of Council Directive 91/692/EEC³ on the basis of Article 192(1) TFEU. It is therefore appropriate to amend Directives 86/278/EEC and 87/217/EEC on the basis of Article 192(1) TFEU.
- (2) European Parliament and Council Directive 94/63/EC⁴ is based on Article 100a of the Treaty establishing the European Community, now Article 114 TFEU. Amendments to that Directive are related to Union policy on the environment and are a direct consequence of the repeal of Directive 91/692/EEC on the basis of Article 192(1) TFEU. It is therefore appropriate to amend Directive 94/63/EC on the basis of Article 192(1) TFEU.

¹ Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJ L 181, 4.7.1986, p. 6).

² Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos (OJ L 85, 28.3.1987, p. 40).

³ Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (OJ L 377, 31.12.1991, p. 48).

⁴ European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations (OJ L 365, 31.12.1994, p. 24).

- (3) Directive 91/692/EEC was adopted to rationalise and improve on a sectoral basis the provisions on the transmission of information and the publication of reports concerning certain Directives on the protection of the environment. To achieve that objective, Directive 91/692/EEC amended several Directives to introduce uniform reporting requirements.
- (4) The implementation of the reporting requirements introduced by Directive 91/692/EEC is burdensome and ineffective. Many Union acts amended by Directive 91/692/EEC have been replaced and no longer contain the reporting requirements as introduced by Directive 91/692/EEC. For example, Directive 2000/60/EC of the European Parliament and of the Council¹ repealed seven Union acts in the field of water policy and did not take over the reporting system introduced by Directive 91/692/EEC. Directive 2010/75/EU of the European Parliament and of the Council² contains no reference to Directive 91/692/EEC and provides for a separate system of reporting.

¹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

- (5) Directive 91/692/EEC also does not provide for use of electronic tools. With the successful development of the European Environmental Agency's Reportnet and sectoral initiatives on streamlining of reporting, for example, the Water Information System for Europe, the need and effectiveness of a horizontal instrument on reporting has increasingly been put into question. Finally, the adoption of Directive 2007/2/EC of the European Parliament and of the Council¹ and the related development of the Shared Environment Information System, introduced a more modern and effective, horizontal approach on information management and reporting related to Union environmental policy.
- (6) Directive 91/692/EEC should therefore be repealed.

¹ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

- (7) Most of the Directives amended by Directive 91/692/EEC are no longer in force. However, Directives 86/278/EEC and 87/217/EEC are still in force.
- (8) Directive 86/278/EEC requires Member States to provide a report on the implementation of that Directive on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Directive 91/692/EEC. In order to avoid legal vacuum due to the repeal of Directive 91/692/EEC, it is necessary to replace the reference to Directive 91/692/EEC with a reference to the procedure referred to in Directive 86/278/EEC.
- (9) Reporting under Directive 87/217/EEC is no longer necessary. In Member States following adoption of Regulation (EC) No 1907/2006 of the European Parliament and of the Council¹, which provides for the phasing out of the production and use of raw asbestos and of products containing asbestos in the Union. It is therefore appropriate to delete the reporting requirements set out in Directive 87/217/EEC.

¹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

- (10) After the adoption of Directive 91/692/EEC, the following Regulations and Directives included a reference to Directive 91/692/EEC: European Parliament and Council Directive 94/62/EC¹, Directive 94/63/EC, Council Directive 1999/31/EC², Directive 2000/53/EC of the European Parliament and of the Council³, Directive 2003/87/EC of the European Parliament and of the Council⁴, Directive 2008/98/EC of the European Parliament and of the Council⁵, Directive 2009/31/EC of the European Parliament and of the Council⁶ and Regulation (EU) No 1257/2013 of the European Parliament and of the Council⁷.
- (11) As part of an EU action plan for the Circular Economy, the Commission proposed to amend Directives 2008/98/EC, 94/62/EC, 1999/31/EC and 2000/53/EC in order to replace the reference to Directive 91/692/EEC. In order to ensure that there is no legal vacuum due to the repeal of Directive 91/692/EEC, this Decision should apply from the same date as the acts proposed in the framework of the circular economy package.

¹ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

² Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

³ Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34).

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁵ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

⁶ Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

⁷ Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).

- (12) In order to ensure that certain provisions of Annexes to Directive 86/278/EEC are up to date, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of adaptation of those provisions to technical and scientific progress. In order to ensure that the Annexes to Directive 2009/31/EC are up to date, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of adaptation of those Annexes to technical and scientific progress. ***The adaptation of the Annexes to Directive 2009/31/EC should not result in a lowering of the level of safety, or in a weakening of the monitoring principles, provided by the criteria contained in those Annexes.*** It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

¹ OJ L 123, 12.5.2016, p. 1.

- (13) ***The second subparagraph of Article 21(2) of Regulation (EU) No 1257/2013 refers to Directive 91/692/EEC, which is to be repealed. Pursuant to that provision, the first reporting exercise is due to start on the date of application of Regulation (EU) No 1257/2013. On 19 December 2016, by means of Implementing Decision (EU) 2016/2323¹, the Commission established the first version of the European List of ship recycling facilities ('the European List'). In accordance with Article 26 of Regulation (EU) No 1257/2013, Member States are able to authorise the recycling of ships in ship recycling facilities included in the European List prior to the date of application of that Regulation. In such circumstances, Regulation (EC) No 1013/2006 of the European Parliament and of the Council² does not apply. In order to avoid a gap during which time information is collected under neither Regulation (EC) No 1013/2006 nor Regulation (EU) No 1257/2013, it is appropriate to introduce a transitional reporting period between the date of the first anticipated authorisation under Article 26 of Regulation (EU) No 1257/2013 in a given Member State and the date of application of that Regulation for each Member State that decides to use the transitional period provided for in that Article. To limit the related administrative burden for each such Member State, it is not necessary that the information collected during that transitional period form the basis of a separate report. Instead, it should be sufficient that such information be incorporated or form part of the first regular report covering the three-year period from the date of application of Regulation (EU) No 1257/2013.***

¹ ***Commission Implementing Decision (EU) 2016/2323 of 19 December 2016 establishing the European List of ship recycling facilities pursuant to Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship recycling (OJ L 345, 20.12.2016, p. 119).***

² ***Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).***

- (14) The reporting requirement set out in Directive 94/63/EC is no longer necessary for the purposes of monitoring implementation of Directive 94/63/EC. The relevant provision should therefore be deleted.
- (15) *Since the objective of this Decision, namely to amend or repeal Union legal acts in the field of environmental reporting that are no longer applicable or relevant, cannot be sufficiently achieved by the Member States but can rather, by reason of its nature, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.*
- (16) Directives 87/217/EEC **■** and 2009/31/EC, Regulation (EU) No 1257/2013 and Directives 86/278/EEC and 94/63/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:



Article 1
Amendments to Directive 2009/31/EC

Directive 2009/31/EC is amended as follows:

(1) in Article 27(1), the third sentence is replaced by the following:

"The report shall be drawn up on the basis of a questionnaire or outline adopted by the Commission in the form of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 30(2).";

(2) Article 29 is replaced by the following:

"Article 29
Amendments to Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 29a *to amend the Annexes in order to adapt them* to technical and scientific progress. *The amendments may not result in a lowering of the level of safety provided by the criteria contained in Annex I or in a weakening of the monitoring principles contained in Annex II.*";

(3) the following Article is inserted:

"Article 29a
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 29 shall be conferred on the Commission for *a* period of *five years* from ... [the date of entry into force of this Decision]. *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The report shall be submitted to the European Parliament and Council. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*

3. The delegation of power referred to in Article 29 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 29 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

* OJ L 123, 12.5.2016, p. 1 ";

(4) Article 30 is replaced by the following:

“Article 30

Committee procedure

1. The Commission shall be assisted by the Climate Change Committee established by Article 26 of Regulation (EU) No 525/2013 of the European Parliament and of the Council*. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council**.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

* Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

** Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).".

Article 2
Amendments to Directive 86/278/EEC

Directive 86/278/EEC is amended as follows:

- (1) Article 13 is replaced by the following:

"Article 13

The Commission is empowered to adopt delegated acts in accordance with Article 15a to ***amend the Annexes in order to*** adapt ***them*** to technical and scientific progress **■** .

The first paragraph shall not apply to the parameters and values listed in Annexes I A, I B and I C, any factors likely to affect the evaluation of those values, and the parameters for analysis referred to in Annexes II A and II B.";

- (2) Article 14 is deleted;
- (3) Article 15 is replaced by the following:

"Article 15

1. The Commission shall be assisted by the Committee established by Article 39 of Directive 2008/98/EC of the European Parliament and of the Council*. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council**.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

* Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

** Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).";

(4) the following Article is inserted:

"Article 15a

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission for *a* period of **five years** from ... [the date of entry into force of this *Decision*]. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The report shall be submitted to the European Parliament and Council. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***
3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

* OJ L 123, 12.5.2016, p. 1.";

- (5) in the first paragraph of Article 17, the second sentence is replaced by the following:
"The sectoral reports shall be drawn up on the basis of a questionnaire or outline adopted by the Commission in the form of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2)."

Article 3
Amendment to Directive 87/217/EEC

Paragraph 1 of Article 13 of Directive 87/217/EEC is deleted.

Article 4
Amendment to Regulation (EU) No 1257/2013

In Article 21(2) of Regulation (EU) No 1257/2013, *the first and second subparagraphs are* replaced by the following:

- "2. Each report shall cover three years and shall be electronically transmitted to the Commission no later than nine months after the end of the three-year period covered by it.

The first electronic report shall cover the *three-year* period *starting on* the date of *application of this Regulation, in accordance with Article 32(1). Where a Member State authorises the recycling of ships in ship recycling facilities included in the European List prior to the date of application of this Regulation in accordance with Article 26, the first electronic report of that Member State shall also cover the period from the date of such authorisation to the date of application of this Regulation.*"

Article 5
Amendments to Directive 94/63/EC

Directive 94/63/EC is amended as follows:

- (1) in Article 4(4), the second subparagraph is replaced by the following:
"Member States shall inform the Commission of terminals concerned by such a derogation.";
- (2) in Article 6(4), the second subparagraph is replaced by the following:
"Member States shall inform the Commission of the details of the areas within which they intend to grant such derogation and subsequently of any changes to such areas.";
- (3) in Article 9, the first sentence is deleted;
- (4) ***in Article 9, the second sentence is replaced by the following:***
“The Commission is invited to accompany its reports where appropriate with proposals for the amendment of this Directive, including in particular the extension of the scope to include vapour control and recovery systems for loading installations and ships.”

Article 6
Repeal of Directive 91/692/EEC

Directive 91/692/EEC is repealed.

Article 7
Entry into force and application

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

■

Done at ...,

For the European Parliament
The President

For the Council
The President