

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive <a href="#">2003/0283(COD)</a>	Procedure completed
Waste (repeal. Directive 75/442/EEC). Codification Repealed by <a href="#">2005/0281(COD)</a> Amended by <a href="#">2008/0015(COD)</a>	
Subject 3.70.12 Waste management, domestic waste, packaging, light industrial waste 3.70.13 Dangerous substances, toxic and radioactive wastes (storage, transport)	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<a href="#">JURI</a> Legal Affairs and Internal Market	PPE-DE <a href="#">GARGANI Giuseppe</a>	22/01/2004
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	<a href="#">ENVI</a> Environment, Public Health, Consumer Policy	The committee decided not to give an opinion.	
European Commission	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">2705</a>	30/01/2006
	Commission DG	Commissioner	
	<a href="#">Legal Service</a>		

Key events			
27/11/2003	Legislative proposal published	<a href="#">COM(2003)0731</a>	Summary
03/12/2003	Committee referral announced in Parliament, 1st reading		
24/02/2004	Vote in committee, 1st reading		Summary
24/02/2004	Committee report tabled for plenary, 1st reading	<a href="#">A5-0117/2004</a>	
09/03/2004	Decision by Parliament, 1st reading	<a href="#">T5-0123/2004</a>	Summary
30/01/2006	Act adopted by Council after Parliament's 1st reading		
05/04/2006	Final act signed		
05/04/2006	End of procedure in Parliament		

## Technical information

Procedure reference	2003/0283(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Codification
Legislative instrument	Directive
	Repealed by <a href="#">2005/0281(COD)</a> Amended by <a href="#">2008/0015(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 175
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/20432

## Documentation gateway

Legislative proposal	<a href="#">COM(2003)0731</a>	27/11/2003	EC	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0117/2004</a>	24/02/2004	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0123/2004</a> <a href="#">OJ C 102 28.04.2004, p. 0025-0106 E</a>	09/03/2004	EP	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0210/2004</a> <a href="#">OJ C 112 30.04.2004, p. 0046-0046</a>	31/03/2004	ESC	
Economic and Social Committee: opinion, report	<a href="#">CES0513/2004</a>	31/03/2004	ESC	
Draft final act	<a href="#">03652/1/2005</a>	05/04/2006	CSL	
Follow-up document	<a href="#">COM(2007)0059</a>	21/02/2007	EC	Summary
Follow-up document	<a href="#">SEC(2009)1586</a>	20/11/2009	EC	Summary
Follow-up document	<a href="#">COM(2009)0633</a>	20/11/2009	EC	Summary
Follow-up document	<a href="#">COM(2013)0006</a>	17/01/2013	EC	Summary

## Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Final act

[Directive 2006/12](#)  
[OJ L 114 27.04.2006, p. 0009-0021](#) Summary

## Waste (repeal. Directive 75/442/EEC). Codification

PURPOSE : codification of the legislation on waste. CONTENT : the purpose of this proposal is to undertake a codification of Council Directive 75/442/EEC of 15 July 1975 on waste (Carried out pursuant to the Communication from the Commission to the European Parliament and the Council - Codification of the Acquis communautaire, COM(2001) 645 final). The new Directive will supersede the various acts incorporated in it; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.?

## Waste (repeal. Directive 75/442/EEC). Codification

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The committee adopted the report by its chairman, Giuseppe GARGANI (EPP-ED, I), approving the proposal unamended under the 1st reading of the codecision procedure. ?

## Waste (repeal. Directive 75/442/EEC). Codification

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The European Parliament adopted a resolution drafted by Giuseppe GARGANI (EPP-ED, Italy) and approved the Commission's proposal.?

## Waste (repeal. Directive 75/442/EEC). Codification

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PURPOSE: codification of EU legislation on waste.

LEGISLATIVE ACT: Directive 2006/12/EC of the European Parliament and of the Council on waste.

CONTENT: the purpose of this Directive is to codify Council Directive 75/442/EEC on waste, which has been significantly amended on several occasions. The new Directive supersedes the various acts incorporated in it and fully preserves the content of the acts being codified. Hence, it does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

To recall, EU waste legislation, in summary, is as follows:

- ?Waste? is defined as any substance or object in Annex I of the Directive, which the holder discards or intends or is required to discard.
- The following are excluded from the scope of the Directive: gaseous effluents emitted into the atmosphere; radioactive waste; waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries; animal carcasses, non-dangerous substances used in farming; waste waters (with the exception of liquid form); decommissioned explosives.
- Member States are obliged to encourage measures that prevent or reduce waste production, the recovery of waste by means of recycling, re-use or reclamation and the use of waste as a source of energy.
- Member States are obliged to take measures to ensure that waste is recovered or disposed of without endangering human health or the environment, without risk to water, air or soil, plants or animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest.
- Member States must take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.
- The Directive requires Member States to set up a network of co-operation with other Member States to establish an integrated and adequate network of disposal installations. The network must enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies.
- Competent authorities, responsible for implementing this Directive, are established. They will be tasked with, inter alia, waste management plans.
- Provisions are spelt out regarding the issuing of permits for the disposal of waste.
- The cost of disposal is based on the ?polluter pays? principle. Thus, the cost of disposing of waste will be borne by the holder who has waste handled by a waste collector or by an undertaking as well as the previous holders or the producer of the product from which the waste came.
- Every three years the Member States are obliged to send information to the Commission on the implementation of this Directive. Within nine months of receiving this Report, the Commission will prepare its own Report.

TRANSPOSITION: Directive 75/442/EEC is repealed without prejudice to Member States' obligation concerning the time-limits for transposition into national law. The time-limits are set out in Annex III, part B.

ENTRY INTO FORCE: 17 May 2006.

## Waste (repeal. Directive 75/442/EEC). Codification

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The definition of waste has been a key part of protecting the European environment from the impacts of waste generation and management over the past thirty years. The definition of waste is applied by the competent authorities specified by Directive 2006/12/EC (the Waste Framework Directive), on a case by case basis, when making waste shipment or permit decisions. In general it is clear what is or is not waste. However, a number of issues have arisen in relation to the interpretation of this definition.

In order to improve the legal certainty of waste legislation, and to make the definition of waste easier to understand and apply, this **Interpretative Communication** seeks to guide competent authorities in making case by case judgements on whether a given material is a waste or not, and to give economic operators information on how these decisions should be taken. The Communication will also help to smooth out differences in the interpretation of these provisions throughout the EU.

The Communication aims to explain the definition of waste set down in Article 1 of the Waste Framework Directive, as interpreted by the European Court of Justice, in order to ensure that the Directive is properly implemented.

The scope of this Communication is **the distinction between waste and non-waste in a production process context**. It is not relevant to other waste such as municipal waste or other similar waste streams, or to consumption residues. It does not deal with the issue of when a product may become a waste, or when a waste ceases to be a waste. It does not deal with waste that is excluded from the scope of the Waste Framework Directive.

The Commission gives guidelines on this matter, based on the jurisprudence of the European Court of Justice and addressing the issues of by-products in relevant industry sectors, on when by products should or should not be considered as waste in order to clarify the legal situation for economic operators and competent authorities. It feels that guidelines are better suited to delivering legal clarity than a definition of by-products in the Waste Framework Directive. Notably, a distinction between

waste and by-product that is based on whether the material is destined for recovery or disposal, or based on whether or not the material has a positive economic value, would not seem to offer the necessary guarantees for the protection of the environment.

With regard to the application of the Court of Justice's case-law, the Communication discusses the following points:

- **general notions around the definition of waste:** The ECJ has consistently stated that the definition of waste must be interpreted widely, in order to be consistent with the aim of Directive 2006/12/EC. It has stressed on several occasions that whether a material is a waste or not depends on the specific factual circumstances, and that therefore the decision must be taken by the competent authority on a case by case basis. It is important to note that even where a particular material satisfies the tests set out

by the ECJ in order to be considered as a non-waste, if it is in practice discarded, it must clearly be considered and treated as a waste;

- **whether the material concerned a production residue or a product:** In *Palin Granit case*, the ECJ stated that a production residue is something that is not the end product that the manufacturing process directly seeks to produce. In *Saetti*, the ECJ noted that where the production of the material concerned was 'the result of a technical choice' (to deliberately produce such a material) it could not be a production residue. Therefore, the first question to be asked when determining whether a material is waste or not is whether the manufacturer deliberately choose to produce the material in question. If the manufacturer could have produced the primary product without producing the material concerned but chose to do so, then this is evidence that the material concerned is not a production residue. Other evidence that the production of the material concerned was a technical choice could include a modification of the production process in order to give the material concerned specific technical characteristics;

- **conditions where a production residue would not be waste:** even where a material is considered to be a production residue, the Court has indicated that it is not necessarily a waste. The characteristics of the material in terms of its readiness for further use in the economy can mean that it should not be considered to be a waste. In recent jurisprudence, (*Palin Granit* and following cases) the ECJ has set out a three part test that a production residue must meet in order to be considered as a by-product. The court stated that where the further use of the material was not a mere possibility but a certainty, without any further processing prior to reuse and as part of a continuing process of production, then the material would not be a waste. This test is cumulative ? all three parts must be met. In addition to this test, the ECJ has noted that the use for which the by-product is destined must also be lawful - in other words that the by-product is not something that the manufacturer is obliged to discard or for which the intended use is forbidden under EU or national law;

- **other factors used by the court to distinguish between waste and by-product:** in the *Arco Chemie* case and in other similar jurisprudence, the ECJ lists a whole range of factors that may indicate that a material is a waste. None of these elements are necessarily conclusive, but some may be helpful in some circumstances:

- no other use than disposal can be envisaged, or the use has a high environmental impact or requires special protection measures;

- the treatment method for the material in question is a standard waste treatment method;

- the undertaking perceives the material as waste;

- the undertaking seeks to limit the quantity of material produced.

An annex to the Communication gives examples designed to illustrate some cases in which materials may be classified as wastes or not: slags and dusts from iron and steel production; by products from the food and drink industry ? animal feed; by-products from combustion ? flue gas desulphurisation gypsum; and off-cuts and other similar material.

As announced in the Thematic Strategy on the prevention and recycling of waste, the effectiveness of the guidelines proposed in the Communication will be reviewed in 2010, in the context of the review of the strategy. At the same occasion, there will be a review whether further jurisprudence from the ECJ has made a revision of the guidelines necessary.

## Waste (repeal. Directive 75/442/EEC). Codification

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The Commission presents a report on the implementation of the EU legislation on waste over the period 2007 - 2009. It covers Directives 2006/12/EC on waste, 91/689/EC on hazardous waste, 75/439/EEC on waste oils, 86/278/EEC on sewage sludge, [94/62/EC on packaging and packaging waste](#), 1999/31/EC on the landfill of waste, [2002/96/EC on waste electrical and electronic equipment](#) (WEEE), and [2000/53/EC on end-of-life vehicles](#).

The Communication recalls that evidence shows that full implementation of EU waste legislation would save EUR 72 billion a year, increase the annual turnover of the EU waste management and recycling sector by EUR 42 billion and create over 400 000 jobs by 2020. However, the report states that illegal waste operations or missing infrastructure in Member States are causing missed opportunities for economic growth, which the EU cannot afford, and leading to environmental threats. It is therefore paramount to take decisive steps to bridge the implementation gap in waste management and move towards a resource efficient society.

The report notes that Member States reports for the period 2007 to 2009 indicate that EU legislation on waste is to a large extent properly transposed into national legislation.

However, Directive 2006/12/EC on waste (WFD 2006), along with the Hazardous Waste Directive, and the Landfill Directive, raise the biggest concerns in terms of implementation. The report recalls that the first Directive, now replaced by Directive 2008/98/EC on waste, established the basic requirements, definitions and principles regarding waste management in the EU.

All reporting Member States confirmed having incorporated the Directive into their national laws, and complying with its basic requirements, including establishing one or more Waste Management Plans and undertaking steps towards self-sufficiency in waste disposal. In addition, all

reporting Member States confirmed compliance with the provisions of the 2006 WFD on permit requirements and record keeping.

However, an important deficiency in the application of EU waste law could be identified in terms of waste treatment options chosen. Statistics showed that many Member States were still largely depending on landfilling of household waste, which was not in line with the concept of the waste hierarchy in the 2006 WFD, and will be in even starker contrast with the requirements of the revised WFD which introduces a five-step waste management hierarchy. In 2009, the treatment methods for municipal waste varied significantly between Member States, ranging from extremely high reliance on landfilling (Bulgaria, Romania, Malta, Lithuania, and Latvia landfilling over 90% of their waste) to below 5% of landfilling (Belgium, Denmark, Germany, the Netherlands, Austria, and Sweden). The highest recycling (including composting) rate was achieved in Austria (70%), followed by Germany (66%), Belgium and the Netherlands (60%), and Sweden (55%).

Sweden, Denmark, the Netherlands, Luxembourg, Belgium, Germany and France had the highest incineration rates (no distinction between incineration with and without energy recovery at the time). These large discrepancies were, to a certain extent, a result of the late implementation of waste legislation in the Member States that joined the EU after 2004. Progress in those countries will therefore have to be carefully monitored. However, some older Member States have demonstrated consistently low levels of performance (e.g. Greece with 82% of landfilling, Portugal with only 20% of recycling). Progress should be encouraged in these countries through targeted advice and use of Structural and Cohesion funding.

Some progress in municipal waste management could be observed in comparison with the previous reporting period, which is probably to be explained by improved waste management infrastructure established over the past few years. The implementation of waste-stream specific EU Directives (such as the Packaging Directive, the WEEE Directive or the [Batteries Directive](#)) and measures aiming at fulfilling the targets contained therein were driving factors, too, since infrastructure, collection schemes, and information campaigns introduced to comply with this legislation would have contributed to an overall improvement of waste management.

However, overall figures on waste management in general, and on municipal waste management in particular, remain unsatisfactory. The most important barriers to better implementation include the lack of commitment and resources for implementation control and enforcement, in combination with structural, institutional and constitutional constraints.

Tackling these obstacles, as well as adding stronger national inspections and better knowledge about waste management would bring major improvements.