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2012/0365 (NLE)

Proposal for a

COUNCIL REGULATION

establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

Pursuant to Article 6 (1) of Directive 2008/98/EC on waste certain specified waste shall cease to be waste when it has undergone a recovery operation and complies with specific criteria to be developed in line with the legal conditions laid down in this provision. In accordance with Article 6(2) of this directive such criteria should be set for specific materials by the Commission and be adopted in the regulatory procedure with scrutiny referred to in Article 39(2) of the directive.

Accordingly, the Commission submitted a draft Regulation for vote in the Committee established under Article 39 of the directive. The Committee did not give a favourable opinion on the draft Regulation in its meeting on 9 July 2012 mainly due to a high number of abstentions (109). The chief concern raised by some Member States was that the quality criterion of less than 2% of total amount of foreign materials in copper scrap resulting from the recovery operation was too stringent. The Commission took note of this; however it maintains and refers the same legal proposal to the Council on the basis of the Joint Research Centre's (JRC) technical report which, in consultation with stakeholders, concluded that 2% represents a safe environmental limit value on foreign materials for copper scrap to cease to be waste in line with condition d) in Article 6.1 of Directive 2008/98/EC.

Thus, in accordance with the procedure set out in Article 5(a) of Decision 1999/468/EC a Proposal for a Council Regulation is submitted to Council and forwarded to the European Parliament.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[1] and in particular Article 6(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) It results from an evaluation of several waste streams that recycling markets for copper scrap would benefit from the development of specific criteria determining when copper scrap obtained from waste ceases to be waste. Those criteria should ensure a high level of environmental protection. They should be without prejudice to the classification of recovered copper scrap as waste by third countries.

(2) Reports of the Joint Research Centre of the European Commission have shown that a market and demand exist for copper scrap to be used as feedstock in the non-ferrous metal producing industry. Copper scrap should therefore be sufficiently pure and meet the relevant standards or specifications required by the non-ferrous metal producing industry.

(3) The criteria determining when copper scrap ceases to be waste should ensure that copper scrap resulting from a recovery operation meets the technical requirements of the non-ferrous metal producing industry, comply with existing legislation and standards applicable to products and do not lead to overall adverse environmental or human health impacts. Reports of the Joint Research Centre of the European Commission have shown that the proposed criteria on the waste used as input in the recovery operation, on the treatment processes and techniques, as well as on the copper scrap resulting from the recovery operation fulfil those objectives as they should result in the generation of copper scrap devoid of hazardous properties and sufficiently free of metals other than copper and non-metallic compounds.

[1] OJ L 312, 22.11.2008, p. 3.

(4) In order to ensure compliance with the criteria, it is appropriate to provide that information on copper scrap which has ceased to be waste is issued and that a management system is implemented.

(5) A review of the criteria may prove necessary if, on the basis of a monitoring for the development of market conditions for copper scrap, adverse effects on recycling markets for copper scrap are noted, in particular with regard to the availability of, and access to, such scrap.

(6) In order to allow operators to adapt to the criteria determining when copper scrap ceases to be waste, it is appropriate to provide for a reasonable period to elapse before this Regulation applies.

(7) The committee established by Article 39 of Directive 2008/98/EC has not delivered an opinion on the measures provided for in this Regulation, the Commission therefore submitted to the Council a proposal relating to those measures and forwarded it to the European Parliament,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes criteria determining when copper scrap ceases to be waste.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Directive 2008/98/EC shall apply.

In addition, the following definitions shall apply:

1. 'copper scrap' means scrap metal which consists mainly of copper and copper alloys;

2. 'holder' means the natural or legal person who is in possession of copper scrap;

3. 'producer' means the holder who transfers copper scrap to another holder for the first time as copper scrap which has ceased to be waste;

4. 'importer' means any natural or legal person established within the Union who introduces copper scrap which has ceased to be waste into the customs territory of the Union;

5. 'qualified staff' means staff which is qualified by experience or training to monitor and assess the properties of copper scrap;

6. 'visual inspection' means inspection of copper scrap covering all parts of a consignment and using human senses or any non-specialised equipment;

7. 'consignment' means a batch of copper scrap which is intended for delivery from a producer to another holder and may be contained in either one or several transport units, such as containers.

Article 3

Criteria for copper scrap

Copper scrap shall cease to be waste where, upon transfer from the producer to another holder, all of the following conditions are fulfilled:

(1) the copper scrap resulting from the recovery operation complies with the criteria set out in Section 1 of Annex I;

(2) the waste used as input for the recovery operation complies with the criteria set out in Section 2 of Annex I;

(3) the waste used as input for the recovery operation has been treated in accordance with the criteria set out in Section 3 of Annex I;

(4) the producer has satisfied the requirements set out in Articles 4 and 5.

Article 4

Statement of conformity

1. The producer or the importer shall issue, for each consignment of copper scrap, a statement of conformity conforming to the model set out in Annex II.

2. The producer or the importer shall transmit the statement of conformity to the next holder of the copper scrap consignment. The producer or the importer shall retain a copy of the statement of conformity for at least one year after its date of issue and shall make it available to competent authorities upon request.

3. The statement of conformity may be in electronic form.

Article 5

Management system

1. The producer shall implement a management system suitable to demonstrate compliance with the criteria referred to in Article 3.

2. The management system shall include a set of documented procedures concerning each of the following aspects:

(a) monitoring of the quality of copper scrap resulting from the recovery operation as set out in Section 1 of Annex I (including sampling and analysis);

(b) effectiveness of radiation monitoring as set out in Section 1.5 of Annex I;

(c) acceptance control of waste used as input for the recovery operation as set out in Section 2 of Annex I;

(d) monitoring of the treatment processes and techniques described in Section 3.3 of Annex I;

(e) feedback from customers concerning compliance with copper scrap quality;

(f) record keeping of the results of monitoring conducted under points (a) to (d);

(g) review and improvement of the management system;

(h) training of staff.

3. The management system shall also prescribe the specific monitoring requirements set out in Annex I for each criterion.

4. Where any of the treatments referred to in Section 3.3 of Annex I is carried out by a prior holder, the producer shall ensure that the supplier implements a management system which complies with the requirements of this Article.

5. A conformity assessment body, as defined in Regulation (EC) No 765/2008 of the European Parliament and of the Council[2], which has obtained accreditation in accordance with that Regulation, or an environmental verifier, as defined in point 20(b) of Article 2 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council[3], which is accredited or licensed in accordance with that Regulation, shall verify that the management system complies with the requirements of this Article. The verification shall be carried out every three years.

Only verifiers with the following scope of accreditation or licence based on the NACE Codes as specified in Regulation (EC) No 1893/2006 of the European Parliament and of the Council[4] shall be regarded as having sufficient specific experience to perform the verification mentioned in this Regulation:

(a) * NACE Code 38 (Waste collection, treatment and disposal activities; material recovery); or

(b) * NACE Code 24 (Manufacture of basic metals) especially including the sub-code 24.44 (Copper production).

6. The importer shall require his suppliers to implement a management system which complies with the requirements of paragraphs 1, 2 and 3 and has been verified by an independent external verifier.

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2 OJ L 218, 13.8.2008, p. 30.
3 OJ L 342, 22.12.2009, p. 1
4 OJ L 393, 30.12.2006, p. 1.

The management system of the supplier shall be certified by a conformity assessment body which is accredited by one of the following:

(a) an accreditation body successfully peer evaluated for this activity by the body recognised in Article 14 of Regulation (EC) 765/2008;

(b) an environmental verifier which is accredited or licensed by an accreditation or licensing body according to Regulation (EC) No 1221/2009 which is also subject to peer evaluation according to Article 31 of that Regulation.

Verifiers who want to operate in third countries must obtain a specific accreditation or licence, in accordance with the specifications laid down in Regulation (EC) No 765/2008 or Regulation (EC) No 1221/2009 together with Commission Decision 2011/832/EU[5].

7. The producer shall give competent authorities access to the management system upon request.

Article 6

Entry into force

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

It shall apply [six months after the day of the adoption].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Council
The President

[5] OJ L 330, 14.12.2011, p. 25.

ANNEX I

Criteria for copper scrap

Criteria		Self-monitoring requirements
Section 1. Quality of copper scrap resulting from the recovery operation		
1.1	The scrap shall be graded according to a customer specification or an industry specification or a standard for direct use in the production of metal substances or objects by smelters, refiners, re-melters or other metals producers.	Qualified staff shall grade each consignment.
1.2	The total amount of foreign materials shall be < 2 % by weight; Foreign materials are: (a) metals other than copper and copper alloys; (b) non-metallic materials such as earth, dust, insulation and glass; (c) combustible non-metallic materials such as rubber, plastic, fabric, wood and other chemical or organic substances; (d) slag, dross, skimming, baghouse dust, grinder dust, sludge.	Qualified staff shall carry out visual inspection of each consignment. At appropriate intervals (at least every 6 months) representative samples of each grade of copper scrap shall be analysed to measure the total amount of foreign materials. The total amount of foreign materials shall be measured by weighing after separating copper/copper alloy metallic particles and objects from particles and objects consisting foreign materials by hand sorting or other means of separation (e.g. by magnet or based on the density). The appropriate frequencies of analysing representative samples shall be established taking into account the following factors: (a) the expected pattern of variability (for example as shown by historical results); (b) the inherent risk of variability in the quality of the waste used as input for the recovery operation and in the performance of the treatment process;

		(c) the inherent precision of the monitoring method; and (d) the proximity of results to the limit values for the total amount of foreign materials. The process of determining monitoring frequencies shall be documented as part of the management system and shall be available for auditing.
1.3	The scrap shall not contain excessive metal oxide in any form, except for typical amounts arising from outside storage of prepared scrap under normal atmospheric conditions.	Qualified staff shall carry out a visual inspection of each consignment.
1.4	The scrap shall be free of visible oil, oily emulsions, lubricants or grease except negligible amounts that will not lead to any dripping.	Qualified staff shall carry out a visual inspection of each consignment, paying particular attention to those parts where oil is most likely to drip.
1.5	There is no need for response action according to national or international rules on monitoring and response procedures for radioactive scrap metal. This requirement is without prejudice to the legislation on the health protection of workers and members of the public adopted in Chapter III of the Euratom Treaty, in particular Council Directive 96/29/Euratom.	Qualified staff shall monitor the radioactivity of each consignment. Each consignment of scrap shall be accompanied by a certificate established in accordance with national or international rules on monitoring and response procedures for radioactive scrap metal. The certificate may be included in other documentation accompanying the consignment.
1.6	The scrap shall not display any of the hazardous properties listed in Annex III to Directive 2008/98/EC of the European Parliament and the Council. The scrap shall comply with the	Qualified staff shall investigate each consignment by visual inspection. Where visual inspection raises any suspicious of possible hazardous properties, further appropriate monitoring measures shall be taken, such

	concentration limits laid down in Commission Decision 2000/532/EC[1] and not exceed the concentration limits laid down in Annex IV to Regulation (EC) No 850/2004 of the European Parliament and the Council[2]. Properties of alloy metals included in copper alloys are not relevant for this requirement.	as sampling and testing where appropriate. The staff shall be trained on potential hazardous properties that may be associated with copper scrap and on material components or features that allow recognising the hazardous properties. The procedure of recognising hazardous materials shall be documented under the management system.
1.7	The scrap does not contain any pressurised, closed or insufficiently open containers that could cause explosions in a metal work furnace.	Qualified staff shall investigate each consignment by visual inspection.
1.8	The scrap shall not contain PVC in form of coatings, paints, or residual plastics.	Qualified staff shall investigate each consignment by visual inspection.
Section 2. Waste used as input for the recovery operation		
2.1 2.2 2.3	Only waste that contained recoverable copper or copper alloys may be used as input. Hazardous waste shall not be used as an input except where proof is provided that the processes and techniques specified under 'criteria on treatment and techniques' to remove all hazardous properties have been applied. The following wastes shall not be used as an input: (a) filings and turnings that contain fluids such as oil or	Acceptance control of all waste received (by visual inspection) and of the accompanying documentation shall be carried out by qualified staff which is trained on how to recognise waste that does not fulfil the criteria set out in this Section.

[1] OJ L 226, 6.9.2000, p. 3.
[2] OJ L 158, 30.4.2004, p. 7.

oily emulsions and (b) barrels and containers, except equipment from end-of-life vehicles, which contain or have contained oil or paints.	
Setion 3. Treatment processes and techniques	
3.1 The copper scrap shall have been segregated at source or while collecting or the input wastes shall have been treated to separate the copper scrap from the non-metal and non-copper metal components. The copper scrap resulting from these operations shall be kept separate from any other waste. 3.2 All mechanical treatments (like cutting, shearing, shredding or granulating; sorting, separation, cleaning, de-polluting, emptying) needed to prepare the metal scrap for direct input into final use shall have been completed. 3.3 For waste containing hazardous components the following specific requirements shall apply: (a) Input materials that originate from waste electrical or electronic equipment or from end-of-life vehicles shall have undergone all treatments required by Article 6 of Directive 2002/96/EC[3] of the European	

[3] OJ L 37, 13.02.2003, p.24.

	Parliament and of the Council and by Article 6 of Directive 2000/53/EC[4] of the European Parliament and of the Council; (b) Chlorofluorocarbons in discarded equipment shall have been captured in a process approved by the competent authorities; (c) Cables shall have been chopped or stripped. If a cable contains organic coatings (plastics), the organic coatings shall have been removed in accordance with best available techniques; (d) Barrels and containers shall have been emptied and cleaned; (e) Hazardous substances in waste not mentioned in point (1) shall have been efficiently removed in a process which is approved by the competent authority.	

[4] OJ L 269, 21.10.2000, p.34.

Annex II

Statement of Conformity with the end-of-waste criteria referred to in Article 4(1)

1. Producer/importer of the copper scrap:

   Name:

   Address:

   Contact person:

   Tel:

   Fax:

   E-mail:

2. a) Name or code of the scrap metal category, in accordance with an industry specification or standard:

   b)Where relevant, main technical provisions of a customer specification, such as composition, size, type and properties:

3. The scrap metal consignment complies with the industry specification or standard referred to in point 2 (a) or with the customer specification to in point 2 (b).

4. Quantity of the consignment in kg:

5. A radioactivity test certificate has been established in accordance with national or international rules on monitoring and response procedures for radioactive scrap metal.

6. The producer of scrap metal applies a management system complying with the requiremets of Regulation (EU) No*…[will be inserted once this regulation adopted]*, which has been verified by an accredited conformity assessment body or by an environmental verifier or, where scrap metal which has ceased to be waste is imported into the customs territory of the Union, by an independent external verifier.

7. The scrap metal consignment meets the criteria referred to in Article 3(1), (2) and (3) of Regulation (EU) No*…[will be inserted once this regulation adopted]*.

8. Declaration of the producer/importer of scrap metal : I certify that the above information is complete and correct to the best of my knowledge:

   Name:

   Date:

Signature: