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Proposal for a

## **COUNCIL REGULATION**

**on defining criteria determining when recovered paper ceases to be waste pursuant to  
Article 6 (1) of Directive 2008/98/EC on waste**

## **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. The chief concern raised by some Member States was the inclusion of multi-layered material under the scope of the Commission Regulation as this material containing up to 25% of non-paper material would represent a hazard to the environment if treated improperly. The Commission took note of this; however it maintains and refers the same legal proposal to the Council since by virtue of Article 3(5) and Section 3 of Annex I the non-paper fraction is subject to an obligation to be recovered and a traceability system, respectively.

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.

Proposal for a

## **COUNCIL REGULATION**

### **on defining criteria determining when recovered paper ceases to be waste pursuant to Article 6 (1) of Directive 2008/98/EC on waste**

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<sup>1</sup> 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 paper would benefit from the development of specific criteria determining when paper 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 paper 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 recovered paper to be used as feedstock in paper mills. Recovered paper should therefore be sufficiently pure and meet the relevant standards or specifications required by the paper producing industry.
- (3) The criteria determining when recovered paper ceases to be waste should ensure that paper resulting from a recovery operation meet the technical requirements of the paper 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 paper resulting from the recovery operation fulfil those objectives as they should result in the generation of paper devoid of hazardous properties and sufficiently free of non-paper components.
- (4) In order to ensure compliance with the criteria, it is appropriate that information on recovered paper which has ceased to be waste is issued and that a management system is implemented.
- (5) In order to allow operators to adapt to the criteria determining when recovered paper ceases to be waste, it is appropriate to provide for for a reasonable period to elapse before this Regulation applies.

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<sup>1</sup> OJ L 312, 22.11.2008, p. 3.

- (6) Specific end-of-waste criteria should be set up for multi-material paper with a high content of non-paper material in order to ensure that effectively the paper is recycled and the non-paper materials are recovered.
- (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 recovered paper destined for the use of paper fibres for paper manufacturing 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. 'recovered paper' means paper and cardboard generated from the recovery of waste;
2. 'recovered multi-material paper' means recovered paper, such as used beverage cartons and layered and coated packaging, containing more than 5% of air dry weight of non-paper materials that cannot be separated using dry sorting techniques.
3. 'holder' means the natural or legal person who is in possession of recovered paper;
4. 'producer' means the holder who transfers recovered paper to another holder for the first time as recovered paper which has ceased to be waste;
5. 'importer' means any natural or legal person established within the Union who introduces recovered paper which has ceased to be waste into the customs territory of the Union;
6. 'qualified staff' means staff which is qualified by experience or training to monitor and assess the properties of recovered paper;
7. 'visual inspection' means inspection of recovered paper covering all parts of a consignment and using human senses or any non-specialised equipment;
8. 'consignment' means a batch of recovered paper 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 recovered paper**

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

1. the paper 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 or importer has satisfied the requirements set out in Articles 4 and 5;
5. the recovered paper is destined for the use of paper fibres for paper manufacturing. In addition, the non-paper materials in consignments of multi-material paper are destined for recovery.

#### *Article 4*

##### **Statement of conformity**

1. The producer or the importer shall issue, for each consignment of recovered paper, 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 recovered paper 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 recovered paper resulting from the recovery operation as set out in Section 1 of Annex I (including sampling and analysis);
  - (b) acceptance control of waste used as input for the recovery operation as set out in Section 2 of Annex I;
  - (c) monitoring of the treatment processes and techniques described in Section 3 of Annex I;
  - (d) monitoring of the recovery operation of non-paper components of multi-material paper as set out in Section 3 of Annex I, where appropriate;
  - (e) feedback from customers concerning compliance with recovered paper 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. In particular as regards multi-material paper, the

producer shall keep records for at least three years, of the identification of next holders until the recovery of all the materials in the multi-material paper and of the amounts transferred, and shall make these records available to competent authorities upon request.

4. A conformity assessment body, as defined in Regulation (EC) No 765/2008<sup>2</sup> of the European Parliament and of the Council, which has obtained accreditation in accordance with that Regulation, or an environmental verifier, as defined in Art 2 (20) (b) of Regulation (EC) No 1221/2009<sup>3</sup> of the European Parliament and of the Council, 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 scopes of accreditation or licence based on the NACE Codes as specified in Regulation (EC) No 1893/2006<sup>4</sup> of the European Parliament and of the Council are regarded to have sufficient specific experience to perform the verification mentioned in this Regulation:

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

\* NACE Code 17 (Manufacture of paper and paper products).

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

The management system of the supplier shall be certified by a conformity assessment body which is accredited by an accreditation body successfully peer evaluated for this activity by the body recognised in Article 14 of Regulation (EC) 765/2008; or by 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, respectively.

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<sup>5</sup>.

6. 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 from 1 January 2014.

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<sup>2</sup> OJ L 218, 13.8.2008, p. 30.

<sup>3</sup> OJ L 342, 22.12.2009, p. 1.

<sup>4</sup> OJ L 393, 30.12.2006, p. 1.

<sup>5</sup> OJ L 330, 14.12.2011, p. 25.

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*

## ANNEX I

### Criteria for recovered paper

| Criteria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Self-monitoring requirements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <b>Section 1. Quality of paper resulting from the recovery operation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1.1 The paper resulting from the recovery operation <b>shall be graded</b> according to the European standard EN 643.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Qualified staff shall grade each consignment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 1.2 The <b>non-paper component</b> content shall be less than or equal to 1.5 % of air dry weight.<br><br>A <b>non-paper component</b> is any material different from paper, which is present in recovered paper, and can be separated using dry sorting techniques. Examples of non-paper components are metals, plastic, glass, textiles, earth, sand, ash, dust, wax, bitumen, ceramics, rubber, fabric, wood, and synthetic organic substances.<br><br>Mineral fillers bound to paper fibres such as clay, calcium carbonate, and starch are considered as part of paper and do not count as non-paper components.<br><br>Multi-material paper with a content of non-paper materials of more than 30% of air dry weight shall count in its totality as non-paper component. | Qualified staff shall carry out visual inspection of each consignment.<br><br>At appropriate intervals and subject to review if significant changes in the operating process are made, representative samples of each grade of recovered paper shall be analysed gravimetrically to measure the content of non-paper components. The non-paper components content shall be analysed by weighing after mechanical or manual (as appropriate) separation of materials under careful visual inspection.<br><br>The appropriate frequencies of monitoring by sampling shall be established taking into account the following factors:<br><br>the expected pattern of variability (for example as shown by historical results);<br><br>the inherent risk of variability in the quality of the waste used as input for the recovery operation and any subsequent processing, for instance the higher average content of plastics or glass in sorted paper from multi-material collection systems;<br><br>the inherent precision of the monitoring method; and<br><br>the proximity of results of the non-paper components content to the maximum limitation of 1.5 % of air dry weight. |



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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | The process of determining monitoring frequencies should be documented as part of the management system and should be available for auditing.                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 1.3 The recovered paper, including its constituents and in particular ink and dyes, shall not display any of the hazardous properties listed in Annex III to Directive 2008/98/EC. The recovered paper shall comply with the concentration limits laid down in Commission Decision 2000/532/EC <sup>6</sup> , and not exceed the concentration limits laid down in Annex IV of Regulation 850/2004/EC <sup>7</sup> of the European Parliament and of the Council. | <p>Qualified staff shall carry out a visual inspection of each consignment. Where visual inspection reveals any indications for possible hazardous properties, further appropriate monitoring measures shall be taken, such as sampling and testing, where appropriate.</p> <p>The staff shall be trained on potential hazardous properties that may be associated with recovered paper and on material components or features that allow hazardous properties to be recognised.</p> <p>The procedure of recognising hazardous materials shall be documented under the management system.</p> |
| 1.4 Recovered paper must not contain absorbed oil, solvents, paint, aqueous and/or fatty foodstuffs that can be detected by visual inspection.                                                                                                                                                                                                                                                                                                                    | <p>Qualified staff shall carry out a visual inspection of each consignment. Where visual inspection reveals signs of fluid absorption except water that may result in e.g. mould growth or odours, and these signs are non-negligible, the consignment shall remain waste.</p> <p>The staff shall be trained on potential types of contamination that may be associated with recovered paper and on material components or features that allow recognising the contaminants.</p> <p>The procedure of recognising contamination shall be documented under the management system.</p>           |
| <b>Section 2. Waste used as input for the recovery operation</b>                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2.1 Hazardous waste, bio-waste, mixed municipal waste, health care waste, and used products of personal hygiene shall not be used                                                                                                                                                                                                                                                                                                                                 | Acceptance control of all paper-containing waste received (by visual inspection) and of the accompanying documentation shall be carried out                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

<sup>6</sup> OJ L 226, 6.9.2000, p. 3.  
<sup>7</sup> OJ L 229, 30.4.2004, p. 1.

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| as input.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | by qualified staff which is trained on how to recognise paper-containing input that does not fulfil the criteria set out in this Section.                                                                                                                                                                    |
| <b>Section 3. Treatment processes and techniques</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                              |
| <p>3.1 The waste paper shall have been segregated at source or while collecting, or the input wastes shall have been treated to separate the paper from the non-paper components. The paper resulting from these operations shall be kept separate from any other waste.</p> <p>3.2 All treatments needed to prepare the paper for direct input to pulping in the manufacture of paper products, such as sorting, separating, cleaning, or grading, and except de-baling, shall have been completed.</p> <p>3.3 The non-paper materials held in consignments that contain more than 1.5% of air dry weight of multi-material paper shall undergo a dedicated treatment process. The different materials in multi-material paper shall be effectively separated from each other. The separated paper fibres from the multi-material paper shall be used for paper manufacturing. The non-paper materials separated from the multi-material paper shall be recovered.</p> | <p>As regards multi-material paper consignments, the producer/importer shall identify the next holders of the consignment as well as the amounts transferred until the recovery of all the materials in the multi-material paper. Such identification can be undertaken by use of a traceability system.</p> |

## Annex II

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

|    |                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| 1. | Producer/importer of the recovered paper:<br>Name:<br>Address:<br>Contact person:<br>Telephone:<br>Fax:<br>E-mail:                                                                                                                                                                                                                                                                                                          |
| 2. | a) Grade of waste paper in accordance with standard EN-643:<br>b) Content of non-paper components, in percentage points of air dry weight:<br>c) Origin of the material (tick where appropriate).<br>c.1) multi-material origin, such as from comingled collection.<br>c.2) mono-material origin, such as from source-separated collection.                                                                                 |
| 3. | The consignment complies with the specifications of standard EN-643.                                                                                                                                                                                                                                                                                                                                                        |
| 4. | Quantity of the consignment in kg.                                                                                                                                                                                                                                                                                                                                                                                          |
| 5. | This consignment meets the criteria referred to in paragraphs (1) to (3) of Article 3 of (Regulation).                                                                                                                                                                                                                                                                                                                      |
| 6. | The producer of the recovered paper applies a management system complying with the requirements of Regulation No... [ <i>will be inserted once the regulation adopted</i> ], and which has been verified by an accredited conformity assessment body or by an environmental verifier or, where paper which has ceased to be waste is imported into the customs territory of the Union, by an independent external verifier. |
| 7. | The material in this consignment is intended exclusively for the use of paper-fibres for paper manufacturing, and where applicable, also for the recovery of the non-paper materials contained in multi-material paper.                                                                                                                                                                                                     |
| 8. | Declaration of the producer/importer of the recovered paper:<br>I certify that the above information is complete and correct and to my best knowledge:<br>Name:<br>Date:<br>Signature:                                                                                                                                                                                                                                      |