STAKEHOLDER SUGGESTIONS - PART 2

IX- ENVIRONMENT

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The Commission services have complemented relevant quotes from each suggestion with a short factual explanation of the state of play of any recent, relevant ongoing or planned work of relevance by the EU institutions.

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# Table of Contents

**INDUSTRIAL EMISSION DIRECTIVE**
Submission IX.6a by the Finnish Government stakeholder Survey on EU legislation ................................................. 3  
Policy Context ......................................................................................................................................................... 3

**REPORTING OBLIGATIONS**
Submission IX.7a by the House of Dutch Provinces for better regulation ............................................................... 5  
Policy Context ......................................................................................................................................................... 5

**PACKAGING MATERIAL IDENTIFICATION SYSTEM (DIRECTIVE 98/34/EC)**
Submission IX.8a by REFIT Platform Stakeholder Group member Peter Loosen .................................................... 7  
Policy Context ......................................................................................................................................................... 8

**URBAN WASTE DEFINITION (DIRECTIVE 2008/98/EC)**
Submission IX.9a. by Confcommercio .................................................................................................................... 9  
Policy Context ......................................................................................................................................................... 11

**PERSISTENT ORGANIC POLLUTANTS (POP REGULATION)**
Submission IX.10.a by a Business organisation Euroleather (LTL 589) ................................................................. 12  
Policy Context ......................................................................................................................................................... 12

**REDUCING THE CONSUMPTION OF LIGHTWEIGHT PLASTIC CARRIER BAGS**
Submission IX.11a by Confcommercio .................................................................................................................... 13  
Policy Context ......................................................................................................................................................... 13
INDUSTRIAL EMISSION DIRECTIVE

Submission IX.6a by the Finnish Government stakeholder Survey on EU legislation

FI authorities have conducted a survey on how EU legislation is perceived amongst public administration, business and stakeholders. Based on the feedback (over 50 organisations), a summary of forty examples of EU legislation rising certain concerns was compiled.

The list of facilities required to have a permit under the industrial emissions directive (IED 2010/75/EU) includes fields of activity that are not highly significant in terms of environmental impacts. At the same time, a number of functions with considerable environmental impact are lacking. The timetable for the renewal of environmental permits is too tight. Problems are also posed by the aggregation rules in the case of a single stack. In Finland, there is large number of small plants where the flue gases are discharged through a common stack. The rules may result in random allocation of the emission reduction requirements, which may erode the cost-efficiency of the measures to reduce emissions.

Policy Context

Industrial production processes account for a considerable share of the overall pollution in Europe due to their emissions of air pollutants, discharges of waste water and the generation of waste.

Directive 2010/75/EU of the European Parliament and the Council on industrial emissions (the Industrial Emissions Directive or IED) is the main EU instrument regulating pollutant emissions from industrial installations. The IED was adopted on 24 November 2010. It is based on a Commission proposal recasting 7 previously existing directives (including in particular the IPPC Directive) following an extensive review of the policy (see here). The IED entered into force on 6 January 2011 and had to be transposed by Member States by 7 January 2013.

Overall Objective

The IED aims to achieve a high level of protection of human health and the environment taken as a whole by reducing harmful industrial emissions across the EU, in particular through better application of Best Available Techniques (BAT). Around 50,000 installations undertaking the industrial activities listed in Annex I of the IED are required to operate in accordance with a permit (granted by the authorities in the Member States). This permit should contain conditions set in accordance with the principles and provisions of the IED.

Specific Provisions

- Article 10 of the IED establishes the scope of the requirement for activities carried out as listed in Annex 1, and where applicable reaching the capacity thresholds set in that annex, to be required to apply for a permit. The scope was established on the basis of an assessment of which major industrial activities contribute most to air and water pollution and use most resources.
• Conditions relating to the reconsideration and updating of permits are set in Article 21 of the Directive. This allows a period of 4 years to reconsider permits after publication of BAT Conclusions. This publication is the result of several years of an inclusive technical working group with shadow networks within Member States. This allows for the concerned sectors to see what is coming well before it is published. Specific provisions are available to address exceptional circumstances.

• Aggregation rules where waste gases of separate combustion plants are discharged through a common stack are set in Article 29. This rule aims at avoiding that cost-effective requirements for large plants are artificially circumvented by declaring a large plant to be several small plants to which less stringent requirements apply.

State of Play

The legislation was relatively recently agreed and involves the publication of a series of BAT conclusions, which will not be completed before 2020. A revision is currently therefore not foreseen.

The first report on the preparatory work for implementation undertaken by the Member States in the first year of application of the Directive will be produced by the Commission end 2016. This will followed by reports every three years assessing the effective implementation of the Directive.
Reporting Obligations

Submission IX.7a by the House of Dutch Provinces for better regulation

Legislation:
- Birds and Habitats Directives:
- Convention on Biological Diversity
- Bern Convention
- Ramsar (Wetlands Treaty)
- Convention on Migratory Species

Problem description/burden on citizens and business:
The reporting obligations from the various EU Directives and international conventions often overlap. Because the reports are designed differently, similar information has to be transmitted in different ways, for different reports.
The below shows the frequency in reporting and the type of reporting asked for by different legal acts relating to the same policy area.
- Bird and Habitat Directives: every six years;
- Derogations from the Bird Directive: every year;
- Derogations from the Habitat Directive: every two years;
- Convention on Biological Diversity: every four years;
- Bern Convention (conservation of wild animals and plants and their natural environment in Europe): incidental, every six years and every ten years;
- Ramsar (Wetlands Treaty): every three and every six years;
- Convention on Migratory Species: every three years (e.g. AEWA, Raptors MoU have their own every three years reporting but they use the same on-line reporting system developed to the whole CMS family).

Simplification measure/suggestion:
Streamline, simplify, allign reporting obligations.

Policy Context

The suggestion refers to two different types of reporting: reporting under the two pieces of EU nature legislation (Birds (BD) and Habitats (HD) Directive) and under a range of international conventions. The progress reporting under the BD and HD has been streamlined in content and timing to a great extent over the last years. Also the derogation reporting goes hand in hand under both directives: the same formats, IT-tools, rules and ways of analysing information apply to derogation reporting under the two directives. The fact that one reporting is annual and the other biennial (based on the legal text) has not been identified as a problem so far by the committees we are working with. In this context one needs to note that
Derogations are typically single events that are continuously recorded and dealt with by Member States and the new IT reporting system makes the reporting almost automatic.

On the relation with relevant international conventions:

- Bern Convention: The convention (secretariat) is an official member of the EU Expert Group on Reporting and therefore involved in and informed about all reporting matters under the nature directives. Derogation reporting has been streamlined with Bern, the new Habides+ IT-tool is available to be used for derogation reporting under both, the nature directives and the Bern convention. Similarly the Natura 2000 software and process have been adapted to the use under the Emerald network of sites under the Bern Convention. There are no other reports the Commission is aware of under Bern. Therefore the same information and tools are used to report under the EU nature directives and the Bern Convention.

- CMS (Convention of Migratory Species) – AEWA agreement: In relation to the conservation status assessments of migrating waterbirds – the collect once and use often approach has been applied – i.e. the data collected on birds by Member States for the latest assessment under the Birds Directive has been provided to AEWA for their assessment.

- In relation to species action plans we have agreed a common format and unified approach for action plans with Bern, AEWA and CMS.

- CBD (Convention on Biological Diversity): The EU has been working on reporting synergies for several years. The mid-term review of the EU 2020 Biodiversity Strategy has compiled information provided by Member States in their 5th national reports to CBD to decrease the reporting burden. The EU and the CBD secretariat are collaborating on the development of an online reporting tool that should facilitate reporting by Parties to different biodiversity-related agreements (e.g. CBD, CMS, CITES, Ramsar, UNCCD, FAO, etc.) and bodies (e.g. EC) thanks to the connection to a biodiversity targets cross-linking tool developed by the European Environment Agency. Member States are closely involved in these developments.

- The EU is not a party to the Ramsar convention.
PACKAGING MATERIAL IDENTIFICATION SYSTEM (DIRECTIVE 98/34/EC)

Submission IX.8a by REFIT Platform Stakeholder Group member Peter Loosen

Use of the EU packaging material identification system (symbols)

Most EU Member States have correctly implemented the use of the EU packaging material symbols into their national legislation. They keep such use voluntary but stipulate that no system shall be used to identify packaging materials other than the EU system.

However, in recent years some EU Member States (e.g. Romania, Lithuania, etc.) have foreseen in their national legislation an obligation to use the EU packaging material symbols, although the use of the respective packaging material identification system is regulated in a voluntary way by harmonised EU legislation.

There is no legal basis for such national legislation in areas of harmonized EU legislation and hence there is also no justification to implement legislation enforcing the use of packaging material symbols. The use of the EU material symbols on pack for the recovery of used packaging would not even be justified for environment reasons because:

1) sorting into the different material fractions is in most cases possible without it,
2) no effective systems exist where consumers are supposed to manually sort used packaging or manual sorting is done after collection and
3) sorting based on the EU material symbols would have severe limitations anyway (e.g. due to legibility problems or with composite packaging).

2. Suggestion for simplification

The Commission should continue to make proper use of the notification procedure according to Directive 98/34/EC to avoid unjustified national draft technical regulations.

If Member States do not notify national laws to the Commission that are in conflict with harmonised EU legislation the Commission should intervene and in case of need even initiate an infringement procedure.

3. Policy context

Article 8 of Directive 94/62/EC on packaging and packaging waste provides a marking system for packaging and an identification system for packaging materials. Article 8 (2) of this Directive provides that “[...] packaging shall indicate [...] the nature of the packaging material(s) used on the basis of Commission Decision 97/129/EC”. The material identification system pursuant to Article 8 paragraph 2 of Directive 94/62/EC has a fully harmonising nature.

The identification system itself is established in Commission Decision 97/129/EC and contains numbers and abbreviations (symbols). Article 3 stipulates that the use of the numbering and abbreviations of the identification system shall be voluntary for the packaging materials mentioned. It is further stipulated that “a decision whether to introduce on a
The introduction of mandatory use of the EU packaging material symbols at Member State level is in conflict with fully harmonised EU legislation and not justified by environmental reasons. The Commission should take immediate action in this respect to avoid unnecessary burden to the industry and obstacles to the internal trade within the EU.

Policy Context


To address the environmental aspects of packaging and packaging waste, some Member States started introducing their own measures in this area. As a consequence, diverging national legislation appeared a situation that called for harmonization at European level. To harmonize national measures concerning the management of packaging and packaging waste and to prevent or reduce its impact on the environment Directive 94/62/EC was adopted. The Directive aims at providing a high level of environmental protection and ensuring the functioning of the internal market by avoiding obstacles to trade and distortion and restriction of competition.

In 2004, the Directive was amended to provide criteria clarifying the definition of the term ‘packaging’ and increase the targets for recovery and recycling of packaging waste. In 2005, the Directive was revised again to grant new Member States transitional periods for attaining the recovery and recycling targets. In 2013 Annex I of the Directive containing the list of illustrative examples of items that are or are not to be considered as packaging was revised in order to provide more clarity by adding a number of examples to the list.


**Commission Decision 97/129/EC**

Commission Decision 97/129/EC establishes the initial numbering and abbreviation system for specifying the different packaging materials on which the identification system is to be based.

The system for marking and identification defined in Commission Decision 97/129/EC is a voluntary system.
In Judgement C-463/01 the European Court of Justice has indicated that it considers the material identification system pursuant to article 8 paragraph 2 of Directive 94/62/EC has a fully harmonising nature.

The apparent contradiction between the Decision and the Directive must be clarified/understood as meaning that

- Member States may not introduce an obligatory system even if this is the same system as the one defined in the Decision
- Member States shall not allow the use of any other system to identify packaging materials than the one defined in the Decision. In case an identification system is used, then this must be the one defined in the Decision

This ensures that there are no divergences in national legislation to ensure the free circulation of packaged goods within the Internal Market.

Some Member States have rendered the identification system of Decision 97/129/EC obligatory with respect to certain or all packaging materials. So far, the problems with respect to the internal market seem to be limited as none of the concerned countries seemed to enforce their legislation.

An obligatory material identification system is neither needed by consumers nor by recyclers and therefore the system was never made obligatory on EU level.

**URBAN WASTE DEFINITION (Directive 2008/98/EC)**

**Submission IX.9a. by Confcommercio**


The definition of municipal waste should be clarified.

In fact, while specifying that waste coming from other (non-domestic) sources may be considered municipal waste wherever comparable by nature, composition and quantity to household waste, it still leaves too much room for a misuse of the principle of assimilation, which Italian Municipalities have abused over the years.

The unfair practice to allow local authorities to manage also "hazardous waste" until now managed, with satisfactory results, by private companies operating on the free market should be avoided. This practice, in fact, is not consistent with EU principles, under which waste coming from economic activities must be managed according to a hierarchy that gives priority to the reuse, recycling, recovery and, only in the latter case, it involves the transfer to a landfill. The proper implementation of this principle brings the responsibility of waste to the waste producer, who should be able to opt for its management outside the exclusive public local authorities’ management.

We propose, therefore, to change the wording so to consider as municipal waste also waste produced by retailers and office buildings, as well as by government structures (such as
schools, hospitals, public buildings), which is similar in nature, quantity and composition to household waste, while the waste produced in productive areas shall be excluded by the municipal waste category and therefore by the scope of the public management.


Waste management hierarchy is particularly important, since it is at the basis of the circular economy principles. In this sense, it is necessary to identify and strengthen instruments in order to ensure its realization in practice.

In this regard, we welcome the provision that Member States adopt appropriate economic instruments to comply with this principle. It would be appropriate to recall that taxation is a practical tool to achieve this goal.

In addition, there should be a regular monitoring, more frequent and concrete than currently foreseen, to actually implement and respect the hierarchy.


The Directive should indicate to Member States, not only general principles, but also operational and concrete instruments measures, designed to promote effective prevention in waste production.

It provides that Member States, in order to avoid the production of waste, "reduce the generation of food waste in primary production, processing and manufacturing, sale and other forms of distribution of food, in restaurants and service catering, as well as in private households."

We know how food waste has not only ethical, economic, social and nutritional but also health and environmental consequences, since the enormous amount of not consumed food does contribute to climate change and environmental integrity. It's clear that we need to pay attention to future scenarios that consumption poses to our modern society. Among the causes of this massive waste there are, especially but not exclusively in developed countries, cultural and consumption patterns, public and private economic policies, as well as the bad habits of millions of people, who do not conserve the products properly. On the issue of waste, however, it is maturing a new public awareness.

We believe that, to address the problem on the long-term, educational and cultural actions should be taken, as the adoption of food education courses in the school curriculum, aimed to integrate the fight against food waste, with useful knowledge of nutritional information and enhancement of seasonal and territorial products, as well as production processes.


With reference to the principle of extended producer responsibility, it should be clear that this must not coincide with the assignment to the producer of a power of decision over the waste management, given that this interest conflicts with the EU waste hierarchy management.

We propose to insert the following principle: "The extended producer responsibility shall be combined with the principle of shared responsibility, referred to Article 15 of the Directive (Directive 2008/98/EC); the manufacturer of the goods should not in any case be exclusively charged with the management of the product’s end of life." Therefore, we positively consider those requirements that could provide a better and more transparent application of the
extended liability of the manufacturer.

In application to this principle, it should be requested an active role of all stakeholders involved in the whole chain of waste management. Member States are responsible for the implementation of specific measures, but there is no clear indication about which instruments, and in particular economic incentives, shall be used to support the recycled products and materials and to make effective the principle of extended producer responsibility.

It would be essential to consider the entire supply chain, not only to increase taxation, but also to involve all actors into the incentive system. Commercial distribution should be involved in managing new IT systems and awareness campaigns towards consumers (with operational and economic impact on the activity). It is appropriate that these entities can compete for the provided incentives with other players in the sector (producers and associations). If the value of these actors and their contribution in achieving ambitious objectives is recognized, it is correct that they can benefit from it.

We stand for the structuring of criteria taking into account this need, which also begins to be recognized in the management of WEEE: the last program agreement between distributors and coordination centres has moved towards this direction, considerably increasing incentives (regarding WEEE, we consider the existing legislation not sufficient to ensure the achievement of the objectives and requires a concrete action in order to change the model in force today).

Policy Context

Confcommercio is commenting on a number of provisions contained in the Commission's December 2015 legislative proposals to update the EU Waste Framework Directive (Directive) 2008/98/EU.

The issues raised in the comments are currently subject to inter-institutional discussions in the context of the ordinary legislative procedure.
**PERSISTENT ORGANIC POLLUTANTS (POP Regulation)**

**Submission IX.10.a by a Business organisation Euroleather (LTL 589)**

Since 2010, with the Regulation 757/2010 EC the PFOS have been included in Annex I to the Regulation (EC) No. 850/2004 on persistent organic pollutants (POP Regulation). It bans the placing on the market of articles, in which the concentration of PFOS is higher than 0.1 % by weight calculated with reference to the mass of structurally or micro-structurally distinct parts that contain PFOS or, for textiles or other coated materials, if the amount of PFOS is higher than 1 μg/m2. The notion "other coated materials" is unfortunate and discriminatory, as it is unfair treating all coated materials like textiles (e.g. leather). Leather in particular is structurally & micro-structurally different to any eventual coating and can be separated from it very easily. Unintentionally contaminated leathers (e.g. through the medium "water") will pass or fail the area requirement depending on their thickness. This is not the intention of the law! For legal certainty the materials legally intended for the PFOS check over the surface area ought to be listed nominally, with a justification for the special area-rule!

**Policy Context**


The listing of PFOS in Annex I of the POPs Regulation has been in force since 26th August 2010.

Pursuant to Article 8(4) of the POPs Regulation, the first European Community Implementation Plan (CIP) was developed in 2007. This Plan was updated in 2014 (Union Implementation Plan, COM/2014/0306 final) to account for technical and legislative progress. The issue raised by this Business Association, Cotance, was not identified in the UIP.

Cotance first raised this issue with COM in December, 2015 and COM has had a number of different discussions with Cotance since then (through direct email, through an EDCC Query made by Cotance, through the Chemicals Fitness Check Platform). COM is currently in discussions with CEN in order to identify the exact nature of the problem and whether corrective action is necessary.

**Current state of play**

COM already responded to PFOS-related questions asked by Cotance in December 2015 to state that in calculating the PFOS content in a material (i.e. leather), it is the responsibility of the producer/importer of the leather to choose which of the two methods of calculating the PFOS concentration, that are specified in Annex I of the POPs Regulation, best suits his material and to be able to justify that choice.
REDUCING THE CONSUMPTION OF LIGHTWEIGHT PLASTIC CARRIER BAGS

Submission IX.11a by Confcommercio

After more than two decades of debate and regulations, Italian Law 116/2014 defined marketing and supply of plastic bags ("shoppers") to consumers, upon payment or free, with far greater rigidity on the distribution of plastic bags, compared to other European countries.

Anyway, we could still have a new directive (Directive n. 720 of 29 April 2015) to be transposed into national law, in Italy and into other EU Member States.

We call for a rapid harmonization of the criteria at EU level, following the European Directive, in order to avoid, in a single market for the exchange of goods, rules which may harm the environment on one hand and businesses on the other.

Policy Context

The suggestion relates to Directive 94/62/EC on packaging and packaging waste (further PPWD). Plastic carrier bags qualify as packaging under the PPWD.

Directive (EU) 2015/720, adopted on 29/04/2015 amends the PPWD as regards the reduction of consumption of lightweight plastic carrier bags.

Member States have to transpose the provisions into national legislation by 27 November 2016 at the latest.

"Criteria" is understood as criteria, such as thickness and material of the plastic carrier bag. The criterion defined in the PPWD as regards lightweight plastic carrier bags is based on wall thickness of these bags: lightweight plastic carrier bags are those bags that have a wall thickness below 50 microns.

In case the criteria meant in the suggestion would go further than this wall thickness, modification of the PPWD through the ordinary legislative procedure will be necessary.