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# Revision of Waste legislation in Europe: Waste Framework and Packaging and Packaging Waste Directives

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## Step toe & Johnson LLP in Brussels

- Washington DC based law firm, **largest dedicated environmental practice in Europe** (8 full time and 3 part time professionals in the Brussels office).
- We help clients with **regulatory and corporate-commercial questions and litigation** arising from the implementation of EU chemicals law.
- The majority of our EU Environment & Life Sciences team's work is focused principally on **REACH, CLP, agrochemicals, biocides, food and feed, food contact materials, cosmetics and medical devices**.
- Our multidisciplinary teams (lawyers, scientists, and policy advisors), collaborate closely with colleagues in the US and China (Beijing) to create efficiencies for clients through **cross-jurisdictional** work.
- We help to prevent, identify and solve regulatory problems through legal **advise** and in **Court**.
- Our practice is consistently ranked by legal directories in the top tier for Chemicals and Environment, such as Chambers & Partners Europe, which has reported that Steptoe has ***“stellar environmental capabilities.”***

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# Background – Revision of WFD and PPWD

- Packaging and Packaging Waste Directive **94/62/EC** (PPWD) – applies since 1994
- Waste Framework Directive **2008/98/EC** (WFD) - applies since 2008
- **Need for a comprehensive revision** as significant loss of secondary raw materials – only 36% of total waste is recycled, rest landfilled or incinerated
- **Review clause:** new targets, as EU-wide targets for waste management have been a key driver for better waste management in (most!) Member States
- **EU ambitious Circular Economy Package** – December 2015
  - COM: **Linear 'take-make-dispose' model** of economic growth is no longer suited
  - COM: Natural resources are finite
  - COM: will boost the EU's competitiveness
  - Public Pressure: Plastic pollution

# WFD – Current status

- Comprehensive waste policy
- Main provisions:
  - **Definitions** of waste, re-use, recycling, end-of waste criteria (secondary raw material)
  - Article 4: **Waste hierarchy**
  - Extended producer Responsibility (**EPR**) schemes
- **Current targets:** by 2020
  - 50% preparing for re-use and recycling of certain waste materials from households, AND
  - 70% preparing for re-use, recycling and other recovery of construction and demolition waste



# WFD as amended – Main changes by Directive 2018/851

- Implementation by 5 July 2020
- **Definitions**
  - Improvement of **end-of waste criteria** (still for MS to adopt, but foresees Union-wide criteria in case of divergence)
    - Priority: textiles, tyres, paper and aggregates
  - Improvement of recovery, recycling, re-use definitions
- **New Targets:** by 2025
  - 55% preparing for re-use and recycling of certain waste materials from households (to be increased to 65% by 2035), AND
  - for different materials (paper, metal, plastic and glass) minimum of overall 50%
  - New rules on calculation of attainment of targets (similar to PPWD)

# WFD as amended – Main changes by Directive 2018/851 (cont.)

- By end of 2024: COM to present legislative proposal for
  - re-use and recycling targets for construction and demolition waste and its material-specific fractions, textile waste, commercial waste, non-hazardous industrial waste and other waste streams,
  - re-use targets for municipal waste and recycling targets for municipal bio-waste
- **ECHA database: link SVHC in articles to waste treatment operators**
  - Article 33 of REACH Regulation: communication of SVHCs in articles
- **EPR schemes – link to product design requirements**
  - Design for recyclability (colored, multi-layer plastic)
  - *e.g.* lightweight carrier plastic bags AND single-use plastic (SUP)
  - Demand for rplastic (today only 4-6%) – FCM

## WFD as amended – Main changes by Directive 2018/851 (cont.)

- **Member States** shall bring into force their laws necessary to comply with the Directive. Article 9(i) which requires that Member States take measures which shall, at least:
  - *“promote the reduction of the content of hazardous substances in materials and products, without prejudice to harmonised legal requirements concerning those materials and products laid down at Union level, and ensure that any supplier of an article as defined in point 33 of Article 3 of Regulation (EC) No 1907/2006 (...) provides the information pursuant to Article 33(1) of that Regulation to the European Chemicals Agency as from 5 January 2021;”* (emphasis added)
- Member States have thus been given until 5 January 2021, to transpose this requirement into their national law. However, nothing prevents eager Member States to do so earlier.

# WFD as amended – Possible impact

Increase pressure and incentives to substitute hazardous substances, as evident from the following recitals:

- “(29) Member States should facilitate innovative production, business and consumption models that reduce the presence of hazardous substances in materials and products,” (emphasis added), and
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- “(38) When products, materials and substances become waste, the presence of hazardous substances may render that waste unsuitable for recycling or the production of secondary raw materials of high quality. Therefore, in line with the 7th Environment Action Programme, which calls for the development of non-toxic material cycles, it is necessary to promote measures to reduce the content of hazardous substances in materials and products, including recycled materials, and to ensure that sufficient information about the presence of hazardous substances and especially substances of very high concern is communicated throughout the whole life cycle of products and materials. In order to achieve those objectives, it is necessary to improve the coherence among the law of the Union on waste, on chemicals and on products and to provide a role for the European Chemicals Agency to ensure that the information about the presence of substances of very high concern is available throughout the whole life cycle of products and materials, including at the waste stage.”

## WFD as amended – Possible impact (cont.)

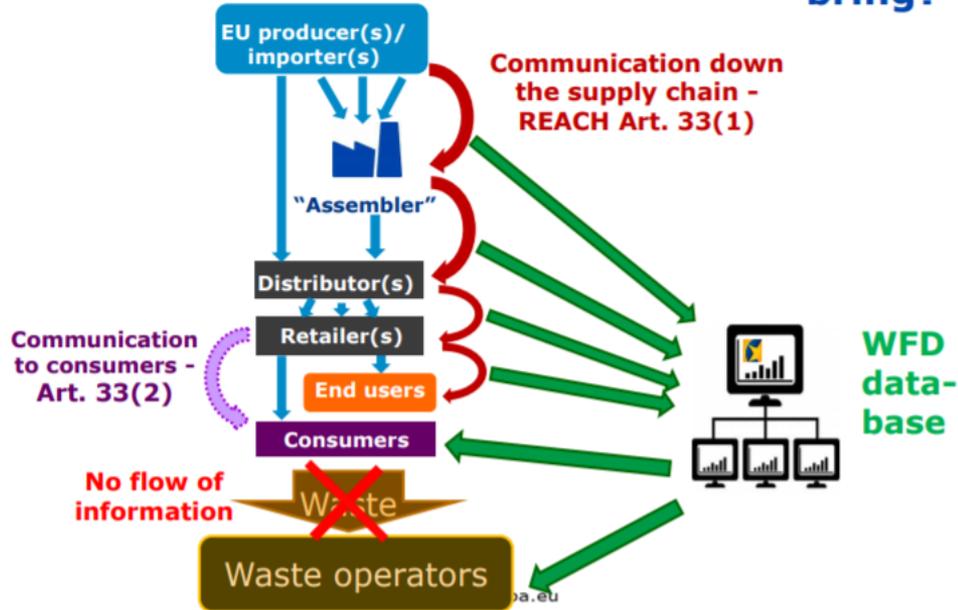
### Public consultation on ECHA's WFD database - proposed way forward:

- ECHA's draft scenario:
  1. Article-centric approach;
  2. Any suppliers of articles are duty holders;
  3. Use of a unique identifier;
  4. Information requirements;
  5. All the data received should be publicly available;
  6. Streamlined data submission and format

# WFD as amended – Possible impact (cont.)



## What will the WFD database bring?



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## PPWD – Brief history

- **Danish** Government's decision to introduce legislation establishing a mandatory return and refilling scheme for beverage containers- 1981
- Litigation COM-Denmark (*Danish Bottle case*- Case 302/86): return not disproportionate but prior approval of bottle design and restrictions for imported non-approved containers were found illegal
- German Ordinance on the Avoidance of Packaging Waste (*Verpackungsverordnung*) – *Grüne Punkt* recycling (return and deposit) system: advanced → pressure on COM
- 1985 - **Directive 85/339/EEC**
  - Limited objective: compliance through voluntary measures
  - European Parliament's limited capacity in co-decision
- **Currently in force**: Directive 94/62/EC

# PPWD – State of play before 2018

| Targets     | Recovered/incinerated | Glass                     | Paper and board | Metal | Plastic |
|-------------|-----------------------|---------------------------|-----------------|-------|---------|
| June 2001   | 50-65%                | Min 15% for each material |                 |       |         |
| End of 2018 | 55-80%                | 60%                       | 60%             | 50%   | 22.5%   |

- National derogations also due to relatively low initial targets (NL, BE, AT)
- **Significant Divergence** in compliance between Member States → Litigation between COM and MS
  - Non-compliance with targets ☹️
  - Compliance of mandatory return and deposit systems 😊
- Amendment in **2015: Lightweight plastic carrier bags** - sustained reduced in consumption

# PPWD – Revision in 2018 (Directive 2018/852)

| Targets     | Recovered Incinerated | Glass                     | Paper and board | Metal                          | Plastic |        |
|-------------|-----------------------|---------------------------|-----------------|--------------------------------|---------|--------|
| June 2001   | 50-65%                | Min 15% for each material |                 |                                |         |        |
| End of 2018 | 55-80%                | 60%                       | 60%             | 50%                            | 22.5%   |        |
| Targets     | Recycled              | Glass                     | Paper and board | Metal                          | Plastic | + Wood |
| End of 2025 | Min 65%               | 70%                       | 75%             | 70% ferrous metals;<br>50% Al; | 50%     | 25%    |
| End of 2030 | Min. 70%              | 75%                       | 85%             | 80% ferrous metals;<br>60% Al; | 55%     | 30%    |

- New rules on the calculation of the attainment of the targets – Article 6a
  - Export counted for recycling only IF *the exporter can prove the treatment of packaging waste outside the Union took place in conditions that are broadly equivalent to the requirements of the relevant Union environmental law*
- Amended Article 5 – Reuse
  - Minimum % of reusable packaging placed on the market for each packaging stream

# Potential impact of recent changes

- **Cornerstone of the Circular Economy Package**
  - **Boost** for secondary raw materials
  - Improvement of **end-of waste criteria**
- **Higher Targets** for recycling
  - Not too significant impact for certain materials (already meeting the targets)
  - Higher targets for Plastics (also because of rules for attainment of these targets)
- EPR schemes – link to **product design requirements**
- **Implementation by MS** – both Directives (to follow)
  - **Public Pressure**
- **Additional developments (Plastics Strategy Package)**
  - Enforcement for revised Waste Shipment Regulation 1013/2006
  - Restriction of Microplastics and Oxo-plastic via REACH Regulation
  - SUP Directive – Proposed separate collection objective (for beverage bottles set at 90 %)
  - Clear regulatory framework for biodegradable plastic

# Microplastics

- Proposed REACH restriction (Articles 68 and Annex XVII) of **intentionally added** microplastics and oxo-plastics
- ECHA's [Note on substance identification and the potential scope of a restriction on uses of 'microplastics'](#) (Version 1.1 of 16 October 2018).
- ECHA's concludes, among others, that **polymers *per se* are an appropriate starting point for substance identification** for this restriction.
- Annex XV dossier is expected to be published by ECHA by January 2019.
- Annex XV dossier for the restriction of oxo plastics is also expected within the same timeframe.

# Single Use Plastics

- To curb plastic waste and littering: the Commission proposed the Single use Plastics Directive ([SUP Directive](#) and [Annex](#))
- 24 October 2018: has passed the European Parliament's first reading ([procedure file](#)).
- The SUP Directive contains measures for market bans and reduction in consumption for various products, mainly Food Contact Materials.

