

# AmCham EU's reaction to the European Parliament's draft reports on the waste legislative package

## *A functioning internal market is key to delivering circular economy objectives*

### Executive summary

The American Chamber of Commerce to the European Union (AmCham EU) is a strong and long-standing supporter of efforts to transition towards a circular economy. AmCham EU considers the consistent interpretation and implementation of both existing and future waste policy legislation essential to preventing the fragmentation of the Single Market – crucial to the success of the circular economy – and the development and uptake of new markets and products. Due to the complexity and differences across industries, AmCham EU believes that sectoral and product-specific legislation, rather than a one-size-fits-all approach is a more effective way of transitioning to a circular economy.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.*

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## **Introduction**

The American Chamber of Commerce to the European Union (AmCham EU) is a firm advocate of the further development of the circular economy. Its members have continuously worked towards implementing cost-effective and resource-efficient measures and have a proven track record of developing innovative solutions. AmCham EU has been a committed and constructive stakeholder in the discussions on the circular economy in the EU<sup>1</sup> and wishes to continue to contribute by providing remarks on the European Parliament's draft reports on the waste legislative package.

## **General comments**

While the circular economy's philosophy and objectives are already present in many sectoral legislative frameworks, important obstacles remain in the EU. These include inconsistent implementation and lack of infrastructure, as well as varying interpretations by Member States of EU-wide definitions and the subsequent fragmentation of the Single Market.

Therefore, AmCham EU would like to reiterate that within this debate, the emphasis should be placed **on the consistent interpretation and implementation** of EU waste policy and objectives across Member States. This means not only that existing laws should be enforced, but also that in the future it should not be possible for individual Member States to set definitions and/or criteria at the national level. Divergent national interpretations of what is waste and how to manage it fragment the EU market thereby preventing the uptake and development of new markets, like for secondary raw materials, for instance. Economies of scale across the EU market are needed to deploy truly ambitious circular economy business models.

AmCham EU also believes that sectorial legislation, rather than a 'one-size-fits-all' approach would be more effective in transitioning to a circular economy. Differences in products (eg, consumers vs industrial products), their value chains, life cycles and waste streams must be taken into account to identify synergies and capitalise on what is already in place. AmCham EU also believes that a single Life Cycle Assessment (LCA) methodology cannot be applied uniformly to all sectors and/or products, due to the complexities and differences of each industry.

## **Draft report on the proposal for a directive amending the Waste Framework Directive (WFD)**

### *On definitions*

AmCham EU members are concerned with the **definition of municipal waste** as put forward in the European Commission's proposal as it does not exclude electrical and electronic equipment (EEE) which is already covered by the Waste Electrical and Electronic Equipment (WEEE) Directive. This could lead to overlap and inconsistencies among waste reduction target for instance. Furthermore, the

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<sup>1</sup> Read our response to the public consultation in July 2015 [here](#) and our position paper on the waste legislative package [here](#).

draft report inserts a definition of **industrial waste**<sup>2</sup> in the directive but it remains unclear at this stage what this new definition will entail for industry, and in particular, how this new definition will apply when calculating the preparation for reuse targets.

AmCham EU members also believe that **backfilling** should be retained as a recycling process without further restriction and should not be considered as a recovery process. Recycling wastes for backfilling in mines has provided an excellent opportunity for mines to protect resources, reduce expenses and fulfil the objective of completely or partially substituting natural resources (eg, gravel, sand and binders) as required by the mines inspectorates. In terms of waste management, backfilling is an environmentally friendly measure which allows wastes that are not allowed to be dumped on the surface (or only after an appropriate pre-treatment such as immobilisation) to be recycled as building material.

#### *On the key elements of the draft report*

AmCham EU welcomes the reference to developing a **common methodology to measure progress** towards the targets. However, AmCham EU believes that any changes to the targets proposed by the Commission should be accompanied by an impact assessment.

With regards to **end-of-waste criteria**, the draft report encourages the Commission to be more forceful and to start proposing criteria once again. AmCham EU agrees is necessary. However, it is important to stress that the existing end-of-waste criteria must be implemented consistently across Member States. By the same logic, AmCham EU believes that national end-of-waste criteria are not meaningful enablers of the circular economy, as they fragment the EU's market for secondary raw materials. In addition, **remanufacturing and re-use** are already common practice in some industries and should be further incentivised and supported by Member States. However, before any additional, potentially counterproductive, actions are taken, an in-depth assessment of the potential impact of new measures on these existing schemes and business models should be undertaken<sup>3</sup>.

On the important issue of **littering**, AmCham EU members agree there is a need to change the negative behaviour of consumers. However, the wording of amendment 31 is very broad and could have unintended consequences in practice: any products can be discarded, and it remains unclear to what extent the cost of education programmes to prevent unlawful littering by consumers can be fully attributed to producers. Besides, in many cases producers already voluntarily support such educational measures. AmCham EU members also believe that the issue of marine littering needs to be addressed by an appropriate framework. It also requires further impact assessment on how it should be tackled. Therefore, AmCham EU recommends addressing the issue in the circular economy action plan (particularly the plastics strategy, as the Commission already announced) rather than in the WFD.

AmCham EU welcomes the draft report's positive additions on **transparency**, better law-making as well as the **exchange of best practices**. These are critical to further progress. However, AmCham EU is concerned that some dispositions<sup>4</sup> include anti-trust and liability risks. If they allow anyone to have access to repair and maintenance information, this could pose an issue, as some of it is commercially sensitive. Additionally, amendment 37 introducing wording on the need to take 'additional measures

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<sup>2</sup> Industrial waste is mentioned in the WFD in amendments 4, 16 and 42.

<sup>3</sup> See amendment 103 in the WFD.

<sup>4</sup> See amendment 103 (paragraph 3) in the WFD.

focusing on the whole life cycle of products' is very broad. AmCham EU would therefore welcome more clarity, notably on how the EU plans to incentivise the use of renewable materials, the design for disassembly and reuse, as well as how to facilitate the cost of transportation and consolidation of recycled materials to enable economies of scale.

On **critical raw materials**, AmCham EU believes this is a global issue that should be addressed at the EU and global levels, through trade agreements and EU measures for instance, rather than through national plans.

Additionally, multiple amendments in the draft report refer to the **presence of hazardous substances**<sup>5</sup>. AmCham EU believes that the interface between chemicals and waste legislations needs to be discussed thoroughly and looks forward to engaging in the regulatory discussions planned on this topic in the circular economy action plan. AmCham EU cautions against addressing such a complex matter in the WFD, and stresses that existing chemicals legislation already addresses the concerns expressed in the draft report. This is the case with product specific legislation, the Restriction of Hazardous Substances (RoHS) Directive for EEE, as well as with information obligations under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation.

#### *Extended Producers Responsibility (EPR)*

With regards to **EPR schemes**, AmCham EU notes that the draft report does not address the issue of unlimited obligations deriving from the coverage of the 'entire cost of waste management of the products'.

In the framework of EPR schemes, the producers' financial obligations should be proportionate to their role and responsibilities<sup>6</sup> and not extend beyond that. Obligations need to be explicitly differentiated. The Commission proposes that for the recycling targets to be attained, producers should pay for the 'entire' waste management, including undefined 'treatment operations'. The words 'entire', as well as the ill-defined term 'treatment operations' should be removed as they can create distortions on respective responsibilities of each actor and consequently the calculation of costs related to those roles and responsibilities.

Similarly, AmCham EU cannot support the inclusion of waste prevention targets under the EPR minimum requirements<sup>7</sup> as this goes beyond EPR schemes' end-of-life role and does not take into account the functionality of packaging. The design of a product or choice of packaging materials is within the remit of the producer, who is best able to judge the role and needs for any given product. Such choices cannot be dictated via EPR schemes.

In amendment 10, AmCham EU supports the mention of non-profit services while recognising that both non-profit and for-profit EPR schemes exist. Amendment 11 supports the establishment of EPR schemes for 'all other relevant waste streams'. This broad formulation remains unclear, might lead to fragmented and potentially conflicting national measures and can be misleading as EPR schemes cannot be identified as an overarching solution. Furthermore, industries which are already covered by sector-specific EPR schemes, such as batteries under the Batteries and End-of-Life Vehicles (ELV)

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<sup>5</sup> See amendments 12, XX, XX and XX in the WFD.

<sup>6</sup> Article 8a paragraph 4 of the Commission's proposal.

<sup>7</sup> See amendments 74 and 80 in the WFD and amendments 6 and 23 in the PPWD.

directives, should not be regulated twice, and in an inconsistent manner. It should be made clear that these sectors are not covered by the EPR provisions under the WFD. Notwithstanding this, Member States should not be able to opt for other schemes to deal with wastes from obligated sectors that fall outside the scope of the definition of EPR. To do so would undermine the objectives of accountability, transparency and enforceability.

Finally, in the packaging sector, calling Member States to set up additional systems to promote reuse activities and EU wide deposits<sup>8</sup> on top of existing EPR systems, will undermine the cost-efficiency of EPR and recycling efforts and will further distort the internal market.

### **Draft report on the proposal for a directive amending the Packaging and Packaging Waste Directive (PPWD)**

AmCham EU would like to call to attention that the legal basis for the PPWD is the **internal market**. Therefore, it is crucial to avoid the fragmentation and multiplication of national systems or measures. Diverging national packaging design requirements tend to create barriers for all packaged goods, undermining the competitiveness of a wide range of sectors.

Overall, AmCham EU members see the proposed amendments as overly prescriptive and favouring certain market solutions over others. For instance, single use is discouraged or even restricted, and precedence is given to bio-based packaging. Good policy defines the goals, rather than prescribes the means to achieve them. Simply introducing such restrictions in a legislative text reduces flexibility to respond to challenges in the most resource-efficient manner. AmCham EU is also concerned about the inconsistencies with existing standards issued by the European Committee on Standardisation (CEN).

### **Draft report on the proposal for a directive amending the directives on end-of-life vehicles, batteries and accumulators and waste batteries and accumulators, and waste electrical and electronic equipment**

The draft report aims to establish a common methodology for data collection and processing for all the three directives (ELV, WEEE and batteries and accumulators). The substantial differences in waste streams, handling and flows of materials, and economic value flows for each waste stream makes harmonising data collection and reporting for product-related waste directives too difficult and unnecessary.

More efforts are needed to enhance proper implementation. As stated in the Fitness Check in 2014, Member States are experiencing difficulties in implementing the Directive on ELVs. The Commission should first assess the difficulties being experienced, and focus on improving the implementation of the existing ELV Directive.

AmCham EU members are concerned that amendments 5 and 6 would lead to a proposal for revision of the ELV Directive every three years. Such a proposal would be unnecessarily burdensome and ineffective. Not only would this be a drag on EU and national administrative resources, it would also make it impossible for industry to plan for effective compliance. It also seems that creating and implementing new EU legislation every three years is unlikely to solve the national implementation

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<sup>8</sup> See amendment 103 in the WFD and amendments 2, 7, 23, and 27-31 in the PPWD.

problems currently encountered with the ELV Directive. Amendments 14 and 15 would lead to the same problems for the WEEE Directive.

AmCham EU believes that any decision leading to a legislative review should be based on an impact assessment. Only after a thorough investigation can a decision on a revision be made. In the case of the WEEE Directive, the last review was finalised as recently as 2012 and Member States are still in the process of implementing it. Therefore a review as early as 2018 would only harm proper implementation across the Member States.

**ANNEX – Voting list**

<b>Amendment</b>	<b>+/-</b>	<b>Justification</b>
<b>Draft report on the proposal for a directive amending the WFD</b>		
7	-	Measures should be set at the EU level as opposed to the national level to leverage the potential of the Single Market. This amendment removes the call for EU level harmonisation, as well as the reference to the Single Market.
9	-	End-of-waste criteria should be defined at the EU level, as opposed to the national level. Giving the opportunity to Member States to set national criteria generates confusion and distortion within the Single Market.
10	+	Support to non-profit services is welcomed.
11	-	The formulation remains unclear, might lead to fragmented national measures and can be misleading as EPR schemes cannot be identified as an overarching solution.
12	-	The interface between chemicals and waste legislation is a complex matter and therefore should be addressed as outlined in the circular economy action plan. The second part of the amendment on hazardous substances should be rejected.
16	-	There is some confusion here as industrial/commercial packaging is already covered by targets.
17	-	The circular economy action plan, and particularly the plastics strategy, seems more appropriate to address the issue of marine litter.
21	+	The reference to a common methodology to measure progress towards the targets is welcome.
22	+	The reference to a common methodology to measure progress towards the targets is welcome.
31	-	It remains unclear to what extent the cost of education programmes to prevent unlawful littering by consumers can be fully attributed to producers. Besides, the circular economy action plan, and particularly the plastics strategy, seems more appropriate to address the issue of marine litter.
33	+	The reference to a common methodology to measure progress towards the targets is welcome.
34	+	The emphasis should be placed on the consistent interpretation and implementation of EU waste policy and objectives across Member States. We therefore support the Commission reporting on the implementation of the WFD to encourage further harmonisation.
35	+	Horizon 2020 should provide support for innovation.
36	0	The correct date is 2/12/15, not 2/12/16
37	0	The wording is very broad and further clarity is needed.
38	-	There should be a global level playing field and the EU should ensure access to raw material in third countries. Additionally, resource efficiency should be better defined before indicators are developed.
54	-	The circular economy action plan, and particularly the plastics strategy, seems more appropriate to address the issue of marine litter.
55	-	The circular economy action plan, and particularly the plastics strategy, seems



		more appropriate to address the issue of marine litter.
57	-	The interface between chemicals and waste legislation is a complex matter and therefore should be addressed as outlined in the circular economy action plan.
58	-	The interface between chemicals and waste legislation is a complex matter and therefore should be addressed as outlined in the circular economy action plan.
62	+	Industrial symbiosis should be encouraged.
63	+	Measures should be set at the EU level, as opposed to the national level, to leverage the potential of the Single Market. This amendment gives primacy to EU level measures and asks Member States to notify national measures.
65	+	Measures should be set at the EU level as opposed to the national level to leverage the potential of the Single Market. This amendment gives primacy to EU level measures and asks Member States to notify national measures.
69	-	Measures should be set at the EU level as opposed to the national level to leverage the potential of the Single Market. This amendment risks creating disparate national measures that will distort the internal market.
70	-	Measures should be set at the EU level as opposed to the national level to leverage the potential of the Single Market. This amendment risks creating disparate national measures that will distort the internal market.
73	+	The addition of distributors is welcome.
74	-	Waste prevention goes beyond the scope of EPR schemes.
77	+	There should be no geographical 'cherry picking'.
78	+	Only aggregated financial information should be disclosed.
79	+	AmCham EU welcomes the positive addition on transparency.
80	-	Waste prevention targets go beyond the scope of EPR schemes.
81	-	EPR costs should not be modulated based on the presence of 'hazardous' materials. The interface between chemicals and waste legislation is a complex matter and therefore should be addressed as outlined in the circular economy action plan. Furthermore, existing chemicals legislation already addresses the concerns expressed in the draft report.
82	+	AmCham EU welcomes the positive addition on transparency of optimised cost.
83	+	AmCham EU welcomes the oversight of national EPR schemes.
84	+	The addition of distributors to dialogue forum is welcome, but other actors such as producers are still missing.
89	-	This is not for WFD; furthermore it ignores the functionality of packaging.
92	-	The interface between chemicals and waste legislation is a complex matter and therefore should be addressed as outlined in the circular economy action plan. Furthermore, existing chemicals legislation already addresses the concerns expressed in the draft report.
93	-	The interface between chemicals and waste legislation is a complex matter and therefore should be addressed as outlined in the circular economy action plan. Furthermore, existing chemicals legislation already addresses the concerns expressed in the draft report. Information requirements are dealt with under the REACH regulation.
94	-	Discouraging single use equates to restricting freedom to choose optimum packaging solution to best protect product resources.
95	-	The circular economy action plan, and particularly the plastics strategy, seems



		more appropriate to address the issue of marine litter. Any new targets should be based on an impact assessment.
100	-	The circular economy action plan, and particularly the plastics strategy, seems more appropriate to address the issue of marine litter.
103	-	Member States should be allowed to choose the scheme they want. Remanufacturing and re-use are already common practices in some industries and should be further incentivised and supported by Member States. However, before any additional, potentially counterproductive actions are taken, an in-depth assessment of the potential impact of new measures should be undertaken. Additionally, paragraph three includes anti-trust and liability risks, should anybody have access to repair and maintenance information.
104	-	The Commission's provision, which includes technical, environmental and economic feasibility caveats, should be retained.
109	-	The Commission's provision, which includes technical, environmental and economic feasibility caveats, should be retained.
111	-	Measures should be set at the EU level as opposed to the national level to leverage the potential of the Single Market. Economic incentives are acceptable at the national level but regulatory measures would lead to fragmentation.
137	-	The Commission's provision, which includes technical, environmental and economic feasibility caveats, should be retained.
145	-	Substitution of hazardous substances is already covered by REACH and chemical legislation broadly speaking.
155	+	AmCham EU supports a common methodology for data collection in the WFD.
156	-	This addition is relevant for a work programme but not for this directive.
158	+	AmCham EU welcomes the positive additions with regards to exchange of best practices between Member States.
162	+	AmCham EU welcomes the reference to the better law making agreement.
<b>Draft report on the proposal for a directive amending the PPWD</b>		
2	-	There should be no separate targets for re-use for packaging.
4	-	Changes to targets should be supported by an impact assessment.
5	-	National measures can fragment the Single Market.
6	-	Waste prevention is beyond the scope of EPR schemes.
7	-	The amendment gives preference to reusable packaging over other forms and it can impact the Single Market through disparate national measures.
11	-	The Commission's provision, which includes technical, environmental and economic feasibility caveats, should be retained. These considerations may still make energy recovery the most appropriate option. Packaging case law suggests that there is no difference in hierarchy for reuse, recycling or energy recovery.
13	+	Support for traceability, verification and harmonisation of methodologies should be enhanced.
14	+	Support for traceability, verification and harmonisation of methodologies

		should be enhanced.
23	-	Measures should be set at the EU level as opposed to the national level to leverage the potential of the Single Market.
24	-	This amendment does not take into account existing CEN standards.
25	-	Discouraging single use equates to restricting freedom to choose optimum packaging solution to best protect product resources.
26	-	This amendment gives precedence to bio-based materials, which can lead to unforeseen consequences.
27	-	Additional systems to promote reuse activities on top of existing EPR systems, will undermine the cost-efficiency of EPR and recycling efforts and will further distort the internal market.
28	-	Additional systems to promote reuse activities on top of existing EPR systems, will undermine the cost-efficiency of EPR and recycling efforts and will further distort the internal market.
29	-	There should be no separate targets for re-use for packaging. Additional systems to promote reuse activities and EU-wide deposits on top of existing EPR systems, will undermine the cost-efficiency of EPR and recycling efforts and will further distort the internal market.
30	-	The amendment gives preference to reusable packaging over other forms and it can negatively impact the Single Market through disparate national measures.
31	-	Additional systems to promote reuse activities and EU wide deposits <sup>9</sup> on top of existing EPR systems, will undermine the cost-efficiency of EPR and recycling efforts and will further distort the internal market.
49	-	This amendment promotes bio-based materials and recycled materials over other options in a generally prescriptive manner.
53	-	This is not consistent with CEN standards.
57	-	Waste prevention is beyond the scope of EPR schemes.
58	+	A common methodology for data collection and processing in packaging will be beneficial.
59	+	A common methodology for data collection and processing in packaging will be beneficial.
60	+	A common methodology for data collection and processing in packaging will be beneficial.
62	-	Annex IV calculation needs to be amended instead of deleted.
63	-	Annex IV calculation needs to be amended instead of deleted.
<b>Draft report on the proposal for a directive amending the directives on ELV, batteries and accumulators and waste batteries and accumulators, and WEEE</b>		
1	-	The substantial differences in waste streams, handling and flows of materials, and economic value flows for each waste stream makes harmonising data collection and reporting for product-related waste directives too difficult and unnecessary.
2	-	The substantial differences in waste streams, handling and flows of materials, and economic value flows for each waste stream makes harmonising data

<sup>9</sup> See amendment 103 in the WFD and amendments 2, 7, 23, and 27-31 in the PPWD.

		collection and reporting for product-related waste directives too difficult and unnecessary.
5	-	Amendments 5 and 6 would lead to a proposal for revision of the ELV Directive every three years. Such a proposal would be unnecessarily burdensome and ineffective.
6	-	Amendments 5 and 6 would lead to a proposal for revision of the ELV Directive every three years. Such a proposal would be unnecessarily burdensome and ineffective.
7	-	The substantial differences in waste streams, handling and flows of materials, and economic value flows for each waste stream makes harmonising data collection and reporting for product-related waste directives too difficult and unnecessary.
8	-	Any decision for a review should be based on an impact assessment. It is our understanding that the Commission intends to perform such an assessment by the end of 2017. A decision should be made only after a thorough investigation.
13	-	The substantial differences in waste streams, handling and flows of materials, and economic value flows for each waste stream makes harmonising data collection and reporting for product-related waste directives too difficult and unnecessary.
14	-	Amendments 5 and 6 would lead to a proposal for revision of the WEEE Directive every three years. Such a proposal would be unnecessarily burdensome and ineffective.
15	-	Amendments 5 and 6 would lead to a proposal for revision of the WEEE Directive every three years. Such a proposal would be unnecessarily burdensome and ineffective.
16	-	The substantial differences in waste streams, handling and flows of materials, and economic value flows for each waste stream makes harmonising data collection and reporting for product-related waste directives too difficult and unnecessary.
17	-	The last review of the WEEE Directive was finalised as recently as 2012 and Member States are still in the process of implementing it. Therefore a review already in 2018 would only harm proper implementation across the Member States.