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**REGULATIONS TO TRANSPOSE DIRECTIVE
(EU) 2018/851 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL OF 30
MAY 2018 AMENDING DIRECTIVE 2008/98/EC
ON WASTE INTO MALTESE LAW**

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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EXPLANATORY NOTE

Regulations to transpose Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste into Maltese law.

1. Purpose behind this Legislative Proposal

The basis for this proposal stems from the adoption of European Union (EU) Directive 2018/851¹ that affects waste management within the EU Member States. This Directive came into force on 4 July 2018, and each Member State was bound to transpose it into domestic law by 5 July 2020.

Directive 2018/851 stems from Directive 2008/98/EC² which repealed Directives 75/439/EEC,³ 91/689/EEC⁴ and 2006/12/EC.⁵ Directive 2008/98/EC is already transposed into Maltese law through four Subsidiary Legislations (hereinafter “S.L.s”).⁶

Directive 2008/98/EC imposed an obligation on the European Commission (hereinafter “Commission”) to review the EU’s waste management goals.⁷ In its 2015 proposal for an amendment of Directive 2008/98/EC, the Commission noted that in 2013 the aggregate waste generation among the EU Member States totalled “approximately 2.5 billion tons of which 1.6 billion tons were not reused or recycled and therefore lost for the European economy.”⁸ It thereafter determined that the European economy lost the benefit of an estimated 600 million tons of secondary raw materials in waste streams. The proposal was set up in accordance with the objectives of the Resource Efficiency Roadmap and the 7th Environment Action

¹ Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

² Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

³ Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils.

⁴ Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

⁵ Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.

⁶ S.L. 473.05 - Eco-Contribution (Exemptions) Regulations, S.L. 545.11 - Promotion of Energy from Renewable Sources Regulations, S.L. 549.46 - Environmental Impact Assessment Regulations, and S.L. 549.77 - Industrial Emissions (Integrated Pollution Prevention and Control) Regulations.

⁷ See Article 37(4) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

⁸ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, paragraph 1.1.

Programme, which include a thorough implementation by all the Member States of the waste hierarchy, a decrease in limitless and per capita waste generation, the safeguarding of high quality recycling, and the usage of recycled waste as a crucial and “reliable source of raw materials for the Union.”⁹

Thus the Commission proposed that an amendment to Directive 2008/98/EC was required to enhance the waste policy so that it “can bring significant benefits: sustainable growth and job creation, reduced greenhouse gas emissions, direct savings linked with better waste management practices, and a better environment.”¹⁰

The amending Directive - Directive 2018/851 - is an enhancement of the provisions of Directive 2008/98/EC, and necessitates the drafting of national legislation which will transpose and give effect to its provisions. The environment, especially the marine environment, is an important asset and vital resource for Malta as an island State. Directive 2018/851 acknowledges the significance of the ocean, and refers to one of the goals of the 2030 Agenda for Sustainable Development adopted by the UN General Assembly on 25 September 2015 to preserve and exploit the oceans, seas and marine resources sustainably to hinder and considerably diminish all kinds of marine pollution by 2025 especially from activities, including marine debris and nutrient pollution.¹¹

In order to ensure that the deteriorating state of the environment is halted, Malta is required to carry out the necessary legislative changes in order to comply with the advanced legal position vis-a-vis waste. Such changes will be implemented by means of Legal Notices (hereinafter “L.N.s”) which will amend S.L. 549.63 (the Waste Regulations), and revise any references to the outdated Directive in other S.L.s in order to bring Maltese legislation in line with Directive 2018/851.

Prior to detailing the amendments that Directive 2018/851 will bring about, an overview of the Directive 2008/98/EC, which is currently transposed into Maltese law, is provided below.

⁹ Ibid.

¹⁰ Ibid, paragraph 1.2.

¹¹ Directive (EU) 2018/851, paragraph 35 of the preamble.

2. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

The main objective of Directive 2008/98/EC was the continued protection of human health and the environment. It aimed to achieve such objective by (1) refining crucial definitions included in Directive 2006/12/EC; (2) reinforcing the course of actions which should be taken to counteract waste; (3) establishing a procedure which considers the waste process of products and materials and also takes into account their entire life-cycle; (4) focusing more on curtailing the environmental effects of waste production and waste administration, possibly resulting in the amelioration of the monetary worth of waste; and (5) boosting the conservation of natural resources by salvaging waste and re-using the salvaged material. Directive 2006/12/EC was repealed *in toto* and succeeded by Directive 2008/98/EC “in the interests of clarity and readability.”¹²

Definitions such as “prevention”, “re-use”, “preparing for re-use”, “treatment” and “recycling”¹³ were introduced in the Directive and the definitions of “recovery” and “disposal” were modified so that a precise discernment between the two could be provided for.¹⁴ When still in force, in support of a harmonised categorisation of waste in the Member States, the Directive sought to retain the classification procedure of waste and hazardous waste as previously set down by Commission Decision 2000/532/EC¹⁵ although it noted that it must be regulated under precise specifications to counter or limit its inherent harmful effects on human health and the environment.¹⁶ Emphasis was placed on the proper labelling and packaging of hazardous waste and the Member States were bound to diminish the mixture of hazardous waste with other waste, although waste collected from households was exempted.

The waste hierarchy established a priority order of the most environmentally friendly option with prevention as the starting point leading up to disposal. Even though disposal procedures which “release[d waste] to seas and oceans including sea bed insertion” were also regulated by international instruments,¹⁷ the Directive bound the Member States to consider “the general

¹² Directive 2008/98/EC, paragraph 8 of the preamble.

¹³ Ibid, paragraph 18 of the preamble.

¹⁴ Ibid, Article 3.

¹⁵ Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.

¹⁶ Directive 2008/98/EC, Article 7.

¹⁷ Ibid, paragraph 20 of the preamble.

environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts”¹⁸ when developing legislation and policies on waste.

The Directive delineated the circumstances which triggered the conversion of the incineration of municipal solid waste into a recovery process, and the applicable procedures to be followed subsequent to the classification of substances or objects as by-products or waste which fulfils the end-of-waste criteria. In an attempt to veer the European Community closer towards a recycling society, the Directive promoted high-quality recycling via the arrangement of specialised, environmental, reasonable and convenient separate collections of waste, and backed the re-use of products. The Member States were bound to ensure the separate collection, treatment, re-use and inhibition of mixture of waste oils and bio-waste.

The Member States were responsible to take measures to guarantee the treatment of waste by the original waste producer or a dealer or establishment/undertaking which executes waste treatment operations. The establishment/undertaking could not carry out waste treatment operations without a permit issued by the Member State’s competent authority.

The Member States were also obliged to take the required measures providing for waste recovery operations, and in default of the latter, safe disposal procedures which do not cause harm to the environment and imperil human health. Thus, Annexes I and II set out non-exhaustive lists of disposal and recovery operations which included release to seas/oceans and incineration at sea as disposal operations. Cooperation between the Member States to set up waste disposal and recovery installations was also encouraged.

Periodic inspections were to be carried out by the competent authorities on the establishments/undertakings which performed waste treatment, collection, or transportation operations, and those which produced hazardous waste. The Directive empowered the Member States to take the necessary measures to impede the jettison, abandonment, or unconstrained administration of waste, which measures included penalties which were adequate, equitable and dissuasive.

The Member States and their competent authorities had to set up waste prevention programmes by 12 December 2013 and enact waste management plans while providing the opportunity to relevant stakeholders, authorities and the general public to participate and have access to such

¹⁸ Ibid, Article 4(2).

programmes and plans. The Commission was to be informed of the programmes and plans upon their adoption, and an evaluation was to be carried out at State level at least every sixth year.

Basing on the principle of “the polluter-pays” principle, whereby the waste manufacturer and holder should administer the waste in a manner which ensures a high level of protection of human health and the environment, the Directive allowed the Member States to introduce measures to extend manufacturer responsibility to “any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product).”¹⁹

2.1. Shortcomings of Directive 2008/98/EC

In spite of the obligations laid down in Directive 2008/98/EC, the Commission noted certain shortcomings in that, for example, less than 50% of the municipal waste generated in the EU was recycled in 2013, and there was a significant divergence between the low amount of municipal waste which was landfilled in the Member States which had set up an adequate waste management infrastructure as opposed to the higher amount in those Member States which lacked such effective system.²⁰

Following an examination of the reports sent to the Commission by the Member States over the years, it was deemed that an adjustment of the definitions and alteration of the targets set down in Directive 2008/98/EC was required.²¹ Moreover, increased harmonisation and clarification of the legal framework, including reporting obligations, and novel measures to boost prevention and re-use and to extend producer responsibility were also deemed necessary.²² Such prevention incentives had to include the prevention of litter in the natural and marine environment, the latter of which was and still is conceived by the EU as a very serious issue. Marine litter, principally plastic waste, is mainly derived from inadequate solid waste management practices and infrastructure, littering by man, and a deficiency in public

¹⁹ Ibid, Article 8.

²⁰ Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste, paragraph 1.1.

²¹ Ibid, paragraph 3.1.

²² Ibid.

awareness. Solid measures which commit to the achievement of favourable environmental status in the marine environment by 2020 should be implemented by the Member States.²³

3. Changes to Directive 2008/98/EC via Directive 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste

Against the above background, a Directive amending Directive 2008/98/EC was considered beneficial to the EU and reflects its aspiration to strive towards a circular economy. The provisions are addressed below and necessitate their transposition into Maltese law via a series of L.N.s amending extant S.L.s.

3.1. Amendment of Article 1

Article 1 has been amended to note that its aim is not limited to countering and hindering the detrimental effects of the production and administration of waste but also to countering its production in order for the EU to assure its long-term competitiveness and move towards a circular economy.

3.2. Amendment of Article 2

The substances intended for use as feed materials as provided for in point (g) of Article 3(2) of Regulation (EC) No 767/2009²⁴ and which do not comprise or involve animal by-products are thereby exempted from the scope of the Directive.

3.3. Amendment of Article 3

Definitions of non-hazardous waste, municipal waste, construction and demolition waste, food waste, material recovery, backfilling and extended producer responsibility scheme are introduced in the Directive whilst the following definitions have been amended: (a) bio-waste thereby includes waste from offices, wholesale and canteens, (b) waste management thereby

²³ Directive (EU) 2018/851, paragraph 35 of the preamble.

²⁴ Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC.

includes sorting as a means of recovery of waste, and (c) 'harmful substances' in point 12 (c) should now read 'hazardous substances'.

3.4. Amendment of Article 4

In Article 4, a paragraph is added which allows the Member States to utilise measures, including economic instruments, as incentives for the functioning of the waste hierarchy such as those provided for in the new Annex IVa.

3.5. Amendment of Article 5

Article 5 is repealed *in toto* and now comprises 3 sub-Articles. The Member States are now bound to take adequate measures to distinguish between waste and a by-product in accordance with the criteria laid down by the Commission in implementing acts. In default of such adoption of implementing acts, the Member States are free to enact their own criteria, although they are to notify the Commission of such enactment.

3.6. Amendment of Article 6

The Member States are now bound to take adequate measures to guarantee that waste which has gone through a recycling or other recovery operation is not classified as waste if it fulfils certain criteria. The second paragraph of sub-Article 6 which noted that the criteria is to include limit values for pollutants where necessary is to be deleted.

Sub-Articles 2, 3 and 4 are repealed and replaced with new sub-Articles which provide for the monitoring and assessment by the Commission and the possibility of the adoption of implementing acts where the Commission deems it pertinent to establish criteria as provided for in sub-Article 1. Where no implementing acts are adopted, the Member States may enact national criteria, and where neither of the above have been adopted, the Member States may decide on a case-by-case basis.

A new sub-Article 5 is introduced, which provides that whosoever uses or places a material on the market that has ceased to be waste is to establish that such material meets the applicable requirements under the relevant chemical and product related legislation.

3.7. Amendment of Article 7

The amended sub-Article 1 now permits the Commission to adopt delegated acts to set up and revise a list of waste as a supplement of the Directive. Sub-Article 2 merely removes the reference to a report provided for in sub-Article 37(1), whilst sub-Article 5 which established the measures of revision of the list of waste is to be deleted.

3.8. Amendment of Article 8

Two sub-paragraphs are to be added to sub-Article 1 to include a reference to the general minimum requirements for the creation of extended producer responsibility schemes laid down in Article 8a, and a leeway for the Member States to decide whether the general minimum requirements should be applied by certain specific producers of products.

Sub-Article 2 is amended to extend the measures which may be introduced by the Member States to include measures on the components of products as such may also contribute to the reduction of a product's environmental impact, products which are made from recycled material and products which are easily repairable.

The Commission is now obliged to organise an exchange of information between the Member States and stakeholders involved in the extended producer responsibility schemes on the practical implementation of the general minimum requirements laid down in Article 8a, and publish guidelines on cross-border collaboration, whilst also adopting implementing acts where such are necessary to circumvent the distortion of the internal market.

3.9. Addition of Article 8a

Article 8a is to be inserted which includes the general minimum requirements for extended producer responsibility schemes where such schemes are established in pursuant of sub-Article 8(1).

3.10. Amendment of Article 9

The previous Article 9 merely contained obligations of the Commission for the drawing up of reports and proposals for measures to prevent waste, which Article has now been repealed and replaced by commitments to be undertaken by the Member States to introduce measures to prevent the creation of waste. Article 9 contains a list of the minimum measures which the

Member States must undertake, which include the identification of products which are the principal source of littering particularly in natural and marine environments, and the establishment of measures to counter and diminish litter from such products with the aim to stop the creation of marine litter as a contribution to the United Nations Sustainable Development Goal to hinder and considerably decrease marine pollution of all kinds. As per sub-Articles 3, 4 and 5 the Member States are to oversee and determine the implementation of waste prevention measures, their measures on re-use and food prevention measures.

3.11. Amendment of Article 10

Article 10 has been replaced and now includes provisions on the derogations from the separate collection and mixture of waste subject to certain conditions. It also places an undertaking on the Member States to introduce measures to establish that the waste collected separately and intended for recycling or re-used is not incinerated, and to eliminate hazardous substances, mixtures and components from hazardous waste in order for such to be treated.

A report is to be submitted to the Commission by the end of December 2021, on the operation of this Article as regards municipal waste and bio-waste, including on the material and territorial coverage of separate collection and any derogations allowed.

3.12. Amendment of Article 11

The title of Article 11 is to read ‘Preparation for re-use and recycling’ and sub-Article 1 is to be replaced by provisions which provide that the Member States are to take measures to boost such preparation. The Member States are to provide for the separate collection of textiles by 1 January 2025. An additional paragraph places a requirement on the Member States to take measures to bolster selective destruction to facilitate removal and safe handling of hazardous substances and establish sorting systems for construction and destruction of certain types of materials.

In sub-Article 2, the term ‘European recycling society’ is to be replaced with ‘European circular economy’, whilst three further sub-paragraphs are introduced to set out additional targets. Sub-Articles 3, 4 and 5 are to be supplanted by provisions which provide for the postponement of the deadlines set in sub-Article 2 provided that the Commission is informed of such postponement 24 months beforehand with an implementation plan, the freedom of the Commission to request

a Member State to revise its implementation plan, and a set of new targets in the event of a postponement.

Two further sub-Articles are introduced which place an obligation on the Commission to deliberate on the preparation of re-use and recycling targets for construction and demolition waste, municipal waste and municipal bio-waste.

3.13. Addition of Article 11a

Article 11a is to be inserted which provides for the rules to be followed by the Member States for the calculation of the targets laid down in the previous Article. By way of example, the Article provides that the weight of municipal waste produced and processed for re-use and recycling, and the weight of the actual municipal waste recycled is to be counted and appraised. The Member States are to introduce an adequate mechanism of quality supervision and traceability of municipal waste.

3.14. Addition of Article 11b

Article 11b in turn provides for an early warning report to be drawn up by the Commission which includes a guiding list of examples of the best practices used within the EU.

3.15. Amendment of Article 12

A sub-Article is to be added to Article 12 to obligate the Commission to carry out an appraisal of the destruction operations listed in Annex I. No further responsibilities are placed on the Member States.

3.16. No Amendment of Article 13

3.17. Amendment of Article 14

Whilst the original manufacturers of products or the current or prior waste holders are still bound to cover the costs to meet the required targets, the amended Article 14 now provides for strict conditions under which those costs can be shared without prejudice to Articles 8 and 8a.

3.17. No Amendment of Articles 15, 16 and 17

3.18. Amendment of Article 18

A new paragraph in Sub-Article 3 imposes an obligation on the Member States to guarantee that mixed waste which need not be separated is treated in a facility which has attained a permit.

3.19. No Amendment of Article 19

3.20. Amendment of Article 20

Although the Directive seemingly replaces Article 20, it only adds two sub-Articles - one of which imposed an obligation on the Commission to draw up guidelines by 5 January 2020. The other sub-Article bind the Member States to create separate collection for hazardous waste fractions originating from households by 1 January 2025.

3.21. Amendment of Article 21

Paragraphs a, b and c of sub-Article 1 are to be replaced by provisions which provide for improved separate collection of waste oils, the prevention of its mixture and its treatment. With a view to bettering the management of waste oils, a new sub-Article 4 provides that the Commission is to deliberate on and (if possible) recommend measures to improve the treatment of waste oils.

3.22. Amendment of Article 22

Article 22 on bio-waste is to be replaced *in toto*. By 31 December 2023 the Member States are to make sure that bio-waste is either separated and recycled at source, or is collected separately and is not mixed with other types of waste subject to the conditions in sub-Articles 10(2) and (3), although they may allow for it to be collected with other waste under certain conditions.

3.23. No Amendment of Articles 23, 24, 25 and 26

3.24. Amendment of Article 27

The amended sub-Articles 1 and 4 place obligations on the Commission to adopt delegated acts as supplements to the Directive which set out technical minimum standards for treatment

exercises and activities which require registration. No further obligations are set on the Member States.

3.25. Amendment of Article 28

The minimum requirements of the waste management plan in sub-Article 3 have been amended. Existing major disposal and recovery installations (such as special arrangements for certain categories of waste) or waste streams addressed by specialised EU legislation replace the outdated sub-Article 3(b). Sub-Article 3(c) now includes an appraisal of the need to shut down existing waste installations and set up a waste installation structure in accordance with Article 16. An appraisal of the investments and other financial means required to discharge the needs is to be carried out by the Member States, who are also to include the appraisal in the relevant management plans or other strategic documents covering the whole territory of the Member State concerned.

Sub-Articles 3(ca) and (cb) are added so that information of measures to meet the objectives of Article 5(3a) of Directive 1993/31/EC²⁵ or of other strategic documents covering the whole territory of the concerned Member State; and an appraisal of extant waste collection schemes including the material and territorial coverage of separate collection and measures to develop its operation, any derogation authorised as per Article 10(3), and the requirement for new collection schemes are now included in the waste management plan.

Two further minimum requirements are to be added to the waste management plan as sub-Articles 3(f) and (g) to provide for measures to combat, prevent, and clean up all forms of littering; and to allocate qualitative or quantitative indicators and objectives, including on the amount of generated waste and its treatment, and the disposal of municipal waste subject to energy recover.

Sub-Article 5 is repealed, so that henceforward the waste management plans are to comply with the waste planning requirements provided for in Article 14 of Directive 94/62/EC²⁶, with the targets laid down in Article 11(2) and (3) of this Directive, and with the requirements laid down in Article 5 of Directive 1999/31/EC²⁷, and for the purposes of litter prevention, with the

²⁵ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.

²⁶ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.

²⁷ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.

requirements laid down in Article 13 of Directive 2008/56/EC²⁸ and Article 11 of Directive 2000/60/EC.²⁹

3.26. Amendment of Article 29

Although the Member States were already obliged to set up waste prevention programmes by 12 December 2013, the newly drafted sub-Article 1 necessitates that the set up waste prevention programmes include, as a minimum, the waste prevention measures in Article 9(1) as well as those in Articles 1 and 4. The proviso to sub-Article 1 remains unchanged.

The Member States are to detail the contribution of extant waste prevention measures, and, where relevant, the instruments and measures listed in Annex IVa to waste prevention and examine the usefulness of such measures or other measures adopted when establishing the waste prevention programmes.

Sub-Article 2(a), which provides that specific food waste prevention must be inserted in the Member States' waste prevention programmes, is to be added, while sub-Articles 3 and 4 are to be deleted.

3.27. Amendment of Article 30

By virtue of the amended sub-Article 2, the European Environment Agency is bound to publish a report reviewing the progress made in the conclusion and application of waste prevention programmes on a bi-annual basis.

3.28. No Amendment of Articles 31 and 32

3.29. Amendment of Article 33

The updated sub-Article 2 now includes an obligation on the Commission to adopt implementing acts to constitute the format for declaring the information on the adoption and

²⁸ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).

²⁹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

considerable modifications of the waste management plans and the waste prevention programmes.

3.30. No Amendment of Article 34

3.31. Amendment of Article 35

The amended sub-Article 1 places an obligation on the producers, dealers and brokers of hazardous waste, and the establishments and undertakings which professionally collect or transport hazardous or which have a permit to treat waste to keep a chronological record. Such record should note (a) the amount, nature and inception of the waste, and the amount of products and materials which result from the preparation for re-use, recycle or other recovery operations, and (b) where relevant, the destination, regularity of collection, method of transport and treatment mode foreseen in respect of the waste. Such data is to be made available to the competent authorities via electronic registration established in accordance with sub-Article 4.

Sub-Article 4 is a new Article which provides that electronic or coordinated registries are to be set up by the Member States to save data on hazardous waste covering the whole geographical territory of the State concerned as per sub-Article 1. Such registries may also be set up for other waste streams especially those for which targets are set in legislative acts of the EU. Member States are to use the data on waste reported by industrial operators in Regulation (EC) 166/2006.³⁰

In accordance with the new sub-Article 5, the Commission may adopt implementing acts to set up minimum conditions for the operation of the above registries, which acts are to be adopted in line with the examination procedure set out in Article 39(2).

3.32. Amendment of Article 36

Sub-Article 1 has been amended to include littering as one of the activities which hindering measures should be taken against.

³⁰ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC.

3.33. Amendment of Article 37

Article 37 is to be replaced *in toto*. As per sub-Article 1, the Member States are bound to annually report to the Commission the data in relation to the implementation of points (a) to (e) of Article 11(2), and Article 11(3). Such data is to be reported electronically in the format established in sub-Article 7 within 18 months of the end of the reporting year. The first reporting period will commence a year after the enactment of the implementing act setting up the format for reporting established in sub-Article 7. As per sub-Articles 3 and 4, the data in relation to the implementation of Article 9(4) and (5) and on mineral or synthetic lubrication or industrial oils placed on the market and waste oils separately collected and treated shall be similarly reported to the Commission every year.

Sub-Article 2 provides that the Member States are to report the quantity of waste utilised for backfilling and other material recovery activities independently from the quantity of waste prepared for re-use or recycled. The reprocessing of waste into materials used for backfilling operations is to be reported as backfilling. Moreover, the quantity of waste prepared for re-use is to be reported independently from the quantity of waste recycled.

A quality check report and a report on the measures taken in line with sub-Articles 11a(3) and (8), including detailed data about the average loss rates, where applicable, are to be included as per sub-Article 5 and reported in accordance with the format in sub-Article 7.

The Commission is bound by sub-Article 6 to analyse the data reported and publish a review report on the results after the first reporting of the data and every 4 years thereafter. Such report is to assess the management of the data collection, the origin of the data, and the method used in the Member States. The integrity, accuracy, timeliness and coherence of the data is also to be analysed, and specific recommendations for improvement may be included.

Sub-Article 7 obliged the Commission to adopt implementing acts laying down the reporting format referred to in this Article by 31 March 2019 in accordance with the examination procedure in sub-Article 39(2). The Member States are to utilise the format established in Commission Implementing Decision of 18 April 2012³¹ to report on points in Article 11(2)(a)

³¹ Commission Implementing Decision of 18 April 2012 establishing a questionnaire for Member States reports on the implementation of Directive 2008/98/EC of the European Parliament and of the Council on waste.

and (b). The method developed under Article 9(8) is to be considered when developing the format for reporting on food waste.

3.34. Amendment of Article 38

The scope of Article 38 has been changed from ‘Interpretation and adaptation to technical progress’ to ‘Exchange of information and sharing of best practices, interpretation and adaptation to technical progress’, and replaced *in toto*.

Sub-Article 1 provides that the Commission is to organise a routine exchange of information and sharing of best processes among the Member States and their regional and local authorities, where appropriate, on the practical application and enforcement of the requirements of the Directive in a number of relevant areas which are listed from (a) to (i). The results of the exchange and sharing exercise are to be made available publicly.

As per sub-Article 2, the Commission is bound to draft guides on the definitions of “municipal waste” and “backfilling”, and it may also develop interpretational guides of the requirements provided for in this Directive which may include definitions of “waste”, “prevention”, “re-use”, “preparing for re-use”, “recovery”, “recycling”, “disposal”, and on the application of the calculation rules in Article 11a. The Commission may also adopt delegated acts in line with the new Article 38a to modify the Directive by designating the operation of the formula for incineration facilities referred to in point R1 of Annex II, and take into account domestic climatic conditions.

Delegated acts in line with the new Article 38a may also be adopted to modify Annexes IV and V due to scientific and technical development, in accordance with sub-Article 3.

3.35. Addition of Article 38a

An original Article 38a is inserted after Article 38 on ‘Exercise of the delegation’ which authorises the Commission to adopt delegated acts subject to the conditions in Article 38a. By virtue of sub-Article 2, the Commission is authorised to adopt delegated acts as per Articles 7(1), 9(8), 11a(10), 27(1), 27(4), 38(2) and 38(3) for a period of 5 years from 4 July 2018, and bound to write up a report on the delegation of power at least 9 months before the end of the 5 year period. The delegation will be tacitly extended for identical periods of 5 years unless an

opposition is registered by the European Parliament or the Council at least 3 months before the end of each period.

The European Parliament or the Council may revoke the above delegation of power at any time as per sub-Article 3 via a decision. The revocation will take effect the day after the decision's publication in the *Official Journal of the European Union* or at a later date specified therein, but it would not affect the validity of any delegated acts already in force.

According to sub-Article 4, before a delegated act is adopted, the Commission is bound to consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.³² Moreover, the adopted delegated act is to be immediately notified to the European Parliament and to the Council as per sub-Article 5.

3.36. Amendment of Article 39

Article 39 is replaced *in toto*. As per sub-Article 1, the Commission is to be supported by a committee within the meaning of Regulation (EU) No 182/2011.³³ Sub-Article 2 also provides that the Commission is not obligated to adopt the draft implementing act where no opinion is provided by the committee.

3.37. Amendment of Annex II

Operations R 3, R 4 and R 5 are replaced by the following:

“R 3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)³⁴

R 4 Recycling/reclamation of metals and metal compounds³⁵

³² OJ L 123, 12.5.2016, p. 1.

³³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

³⁴ “This includes preparing for re-use, gasification and pyrolysis using the components as chemicals and recovery of organic materials in the form of backfilling.”

³⁵ “This includes preparing for re-use.”

3.38. Addition of Annexes IVa and IVb

Two Annexes are to be inserted between Annex IV and Annex V. Annex IVa lists the examples of economic instruments and other measures to provide incentives for the application of the waste hierarchy referred to in sub-Article 4(3). Annex IVb provides for the implementation plan which is to be submitted in line with sub-Article 11(3).

4. Malta's position in relation to Directive 2008/98/EC and Directive (EU) 2018/851

As aforementioned, Directive (EU) 2018/851 has amended Directive 2008/98/EC, and thus S.L. 549.63³⁷ which transposed the provisions of Directive 2008/98/EC into Maltese law has to be amended. Subsequently, the references to Directive 2008/98/EC in other Maltese legislation namely S.L. 473.05³⁸, S.L. 545.11³⁹, S.L. 549.46⁴⁰, and S.L. 549.77⁴¹ have to be amended.

Malta had to ensure that such changes are carried out within the period set out for transposition of this Directive. In fact, Directive 2018/851 states as follows: “Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 July 2020. They shall immediately inform the Commission thereof.”⁴² A copy of the text of the principal measures of domestic law which Malta adopts in the field covered by Directive 2018/851 are to be disclosed to the Commission which will thereafter notify the other Member States.⁴³

Although the objectives of Directive 2018/851 are the backbone of the amendment to Maltese law, a measure of discretion is allowed as to how the transposition of the provisions will take

³⁶ “This includes preparing for re-use, recycling of inorganic construction materials, recovery of inorganic materials in the form of backfilling, and soil cleaning resulting in recovery of the soil.”

³⁷ Waste Regulations.

³⁸ Eco-Contribution (Exemptions) Regulations.

³⁹ Promotion of Energy from Renewable Sources Regulations.

⁴⁰ Environmental Impact Assessment Regulations.

⁴¹ Industrial Emissions (Integrated Pollution Prevention and Control) Regulations.

⁴² Directive (EU) 2018/851, sub-Article 2(1).

⁴³ Ibid, sub-Article 2(2).

place. Thus, Malta is free to adopt more stringent national measures provided that the aim of the Directive is still attained. It is vital that Maltese law is updated to be brought in line with the Directive, which will have the force of law even if not transposed once it is adopted and passed into EU law. The transposition of the Directive will also ensure that one of the goals of the 2030 Agenda for Sustainable Development adopted by the UN General Assembly on 25 September 2015 to preserve and exploit the oceans, seas and marine resources sustainably to hinder and considerably diminish all kinds of marine pollution by 2025 is actioned upon through domestic legislation.

In the EU Environmental Implementation Review 2019 Country Report - MALTA⁴⁴ it was reported that the rate of recycling in Malta is exceedingly below the EU average and the landfill rate is over three times the EU average. Moreover, it was noted that “urgent reforms and enforcement actions are needed in important areas, notably on the functioning of the Extended Producer Responsibility Systems and on the separation of waste collection.” An update of the Maltese waste regulations will better safeguard human health and the Maltese environment, thereby enhancing our citizens’ way of life, boost Malta’s reputation as a sustainable tourism destination, and ensure that Malta complies with the waste objectives set by the EU.

5. Implementing amendments of Directive (EU) 2018/851 into Maltese legislation

The amendments brought about by Directive (EU) 2018/851 will be inserted into Maltese legislation by means of 5 L.N.s. The first L.N. will amend S.L. 549.63⁴⁵ in line with the applicable amendments of the Directive, whilst the other four will respectively amend S.L. 473.05,⁴⁶ S.L. 545.11,⁴⁷ S.L. 549.46,⁴⁸ and S.L. 549.77.⁴⁹ To ensure that the L.N.s which amend S.L. 549.63, S.L. 549.46 and S.L. 549.77 enter into force, the authorisation of the Minister responsible for the environment has to be attained due to the delegation of the relevant powers

⁴⁴ Commission Staff Working Document - The EU Environmental Implementation Review 2019 Country Report - MALTA Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Environmental Implementation Review 2019: A Europe that protects its citizens and enhances their quality of life.

⁴⁵ Waste Regulations.

⁴⁶ Eco-Contribution (Exemptions) Regulations.

⁴⁷ Promotion of Energy from Renewable Sources Regulations.

⁴⁸ Environmental Impact Assessment Regulations.

⁴⁹ Industrial Emissions (Integrated Pollution Prevention and Control) Regulations.

afforded to him by Chapter 549 of the Laws of Malta.⁵⁰ The Minister in turn has to consult the Environment and Resources Authority as per sub-Article 55(1) of Cap. 549. Due to Malta having missed the transposition deadline, the Minister may choose to revert to the provisions of sub-Article 55(2) and declare that the publication of the amendments is urgent and thus dispense with the public consultation provided for in sub-Article 55(1) of Cap. 549. If the Minister forgoes recourse to sub-Article 55(2), a public consultation has to be issued allowing representations to be made to the Minister and/or the Authority for a period of 4 weeks on how the proposed regulations could be improved to reach their eventual aim.

In order for the L.N. which amends S.L. 473.05 to enter into force, the authorisation of the Minister responsible for waste management has to be attained due to the delegation of the relevant powers afforded to him by Chapter 473 of the Laws of Malta.⁵¹ As per Article 13 of the latter, the Minister may only make regulations for the better carrying out of the provisions of Cap. 473 with the concurrence of the Minister of finance.

To ensure that the L.N. which amends S.L. 545.11 enters into force, the authorisation of the Minister responsible for energy and water services has to be attained due to the delegation of the relevant powers afforded to him by Chapter 545 of the Laws of Malta.⁵² As per sub-Article 37(1) of the latter, the Minister may seek to consult the Regulator for Energy and Water Services.

The final step will be the publication of the L.N.s in the Government Gazette so that they may thereby form part of Maltese law.

5.1. Legal Notice XX of 2020 - Waste (Amendment) Regulations, 2020

S.L. 549.63 was first enacted in 2011 via L.N. 184 of 2011 to bring into effect Directive 2008/98/EC on waste. It was thereafter subject to amendments in 2011, 2012, 2014, 2015 and 2017.

The proposed L.N. will transpose the relevant Articles of Directive 2018/851 and will constitute an all-encompassing update of S.L.549.63 from the scope of the S.L. to the Schedules. The most significant changes in the S.L. will be the amendments to the definitions of “municipal waste”, “bio-waste”, “waste management”, “prevention”; and the inclusion of

⁵⁰ Environment Protection Act.

⁵¹ Eco-Contribution Act.

⁵² Regulator for Energy and Water Services Act.

the definitions of “non-hazardous waste”, “construction and demolition waste”, “extended producer responsibility scheme”, “food waste”, “material recovery” and “backfilling”.

A sub-regulation was inserted in Regulations 5 and 6 which provides that where criteria on the uniform application of the conditions laid down in sub-Regulation 5(1) and 6(1) have not been respectively set at Union, the competent authority may itself establish the detailed criteria, even though in the case of criteria in pursuant of sub-Regulation 6(1) it has to include certain specific requirements.

Regulation 8A on extended producer responsibility schemes has been introduced with a set of general minimum requirements which are to be included by the competent authority in the schemes, where such are established. The competent authority is bound to provide specific information to the waste holders targeted by the scheme, where established, including on waste prevention measures, and ensure that the financial contributions paid by the producer of the product in line with the schemes cover certain costs. Moreover, an adequate monitoring and enforcement system is to be set up to ensure that the relevant persons comply with their extended producer responsibility obligations.

The L.N. also introduces a novel sub-regulation 8B on prevention of waste and the measures to be taken by the competent authority to prevent waste generation. The competent authority is also bound to monitor and assess the implementation of waste prevention measures, measures on re-use and food waste prevention measures.

Regulation 9, which only provided for the prohibition of mixing separately collected waste has been expanded to incorporate recovery operations. Thus, whilst the abovementioned prohibition is still included in the regulation, the incineration of waste separately collected is banned unless certain conditions are met. Moreover, those in charge of recovery operations are now bound to ensure that hazardous substances are removed before or during recovery operations with a view of their treatment.

As per the amended regulation 10, local councils are to set up the separate collection of textiles by 31 December 2024, and registered carriers who collect waste separately, including textiles, must keep all fractions collected separate. The competent authority is to ensure the establishment of sorting systems for construction and demolition waste at least for wood, mineral fractions (concrete, bricks, tiles and ceramics, stones), metal, glass, plastic and plaster.

A proviso is introduced in sub-regulation 16 to provide for treatment of mixed waste which doesn't require separation by a facility which has obtained a permit. The local councils are bound to provide for separate collection of hazardous waste fractions by 31 December 2024 in accordance with the novel sub-regulation 17(3).

Sub-paragraphs (a),(b) and (c) of sub-regulation 18 are amended to incorporate the updated management of waste oils. References to the strategy for the prevention of litter in the Marine Policy Framework Regulations⁵³ and the Water Policy Framework Regulations⁵⁴ are inserted in sub-regulation 28(4).

Regulation 29 has been substituted *in toto*, and now obliges the competent authority in the updated sub-regulation (3) to introduce specific food waste prevention programmes within the waste prevention programmes. Moreover, as per the new sub-regulation 33(5), the competent authority is to set up an electronic registry or coordinated registries to record the data on hazardous waste covering the Maltese territory. In sub-regulation 34(1) littering is included as a measure of management of waste.

Schedules 2 and 5 have been amended to incorporate the remaining provisions of Directive 2018/851, whilst two new Schedules have been introduced, with Schedule 12 incorporating examples of economics instruments and other measures to provide incentives for the application of the waste hierarchy referred to in Schedule 5, and Schedule 13 on the implementation plan to be submitted pursuant to the newly amended sub-paragraph 12(2)(b) of Schedule 5.

5.2. Legal Notice XX of 2020 - Eco-Contribution (Exemptions) (Amendment) Regulations, 2020

S.L. 473.05 was first enacted in 2010 and was thereafter subject to amendment in 2019 via L.N. 299 of 2019. Two relevant amendments to S.L. 473.05 were an inclusion of a reference to Directive 2008/98/EC, and the addition of a circular economy initiative whereby certain payments of eco-contribution due on products may be exempted where it is proved that there is or will be a direct investment in the transition to the circular economy that will directly contribute to achieve Malta's targets in line with Directive 2008/98/EC.

⁵³ S.L. 549.62.

⁵⁴ S.L. 549.100.

The proposed L.N. will amend the reference to Directive 2008/98/EC in regulation 2 to reflect its amendment by Directive 2018/851. No other regulations will be affected as the objective of Directive 2018/851 to promote the principles of a circular economy are already incorporated in the extant S.L. 473.05.

5.3. Legal Notice XX of 2020 - Promotion of Energy from Renewable Sources (Amendment) Regulations, 2020

S.L. 545.11 was first enacted in 2010 via L.N. 538 of 2010 to bring into effect Directive 2009/28/EC on the promotion of the use of energy from renewable sources. It was thereafter subject to amendments in 2012, 2014, 2015 and 2017.

The proposed L.N. will amend the reference to Article 4 of Directive 2008/98/EC in subparagraph e (iii) of regulation 4. No other regulations will be affected as the waste hierarchy as provided for in Directive 2008/98/EC has not been amended by Directive 2018/851.

5.4. Legal Notice XX of 2020 - Environmental Impact Assessment (Amendment) Regulations, 2020

S.L. 549.46 came about by virtue of L.N. 412 of 2017 to transpose and implement the provisions of Directive 2011/92/EU as amended by Directive 2014/52/EU, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) of the United Nations Economic Commission for Europe, and its First and Second Amendments, and the provisions of Regulation (EU) No. 347/2013 on guidelines for trans-European energy infrastructure, with regard to the co-ordination of environmental assessment procedures arising from the requirements of Council Directives 2014/52/EU, 92/43/EEC and other related Union legislation.

The proposed L.N. will amend the references to Directive 2008/98/EC in Schedule I. No other regulations will be affected.

5.5. Legal Notice XX of 2020 - Industrial Emissions (Integrated Pollution Prevention and Control) (Amendment) Regulations, 2020

S.L. 549.77 was first enacted in 2013 via L.N. 10 of 2013 to provide for the implementation in part of Directive 2010/75/EU of the European Parliament and of the Council of 24 November

2010 on Industrial Emissions (Integrated Pollution Prevention and Control) (Recast). It was subsequently amended in 2015, and twice in 2017.

The proposed L.N. will amend the reference to Directive 2008/98/EC in Schedule 1 on categories of activities referred to in regulation 3 of S.L. 549.77. No other regulations will be affected.

ENVIRONMENT AND DEVELOPMENT PLANNING ACT

(CAP. 549)

Waste (Amendment) Regulations, 2020

IN exercise of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister for the Environment, Climate Change and Planning, after consultation with the Environment and Resources Authority, has made the following regulations:-

Citation.
S.L. 549.63

1. (1) The title of these regulations is the Waste (Amendment) Regulations, 2020 and they shall be read and construed as one with the Waste Regulations hereinafter referred to as "the principal regulations".

Entry into
force

(2) These regulations shall be deemed to come into force upon publication in the Government Gazette.

Amends
regulation 2 of
the principal
regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) Sub-regulation (1) shall be substituted by the following:

“(1) These regulations bring into effect the provisions of Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.”;

(b) Sub-regulation (2) shall be substituted by the following:

“(2) The objective of these regulations is to protect the environment and human health by preventing or reducing the generation of waste, the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.”

Amends
regulation 3 of
the principal
regulations.

3. In sub-regulation (2) of regulation 3 of the principal regulations immediately after paragraph (d) thereof there shall be added the following paragraph:

“(e) substances that are destined for use as feed materials as defined in point (g) of Article 3(2) of Regulation (EC) No 767/2009⁵⁵ and that do not consist of or contain animal by-products.”

Amends
regulation 4 of
the principal
regulations.

4. Regulation 4 of the principal regulations shall be amended as follows:

(a) The definition of “municipal solid waste” shall be substituted by the

⁵⁵ OJ L 229, 1.9.2009, p. 1.

following:

“ “municipal waste” means:

- (a) mixed waste and separately collected waste from households, including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators, and bulky waste, including mattresses and furniture;
- (b) mixed waste and separately collected waste from other sources, where such waste is similar in nature and composition to waste from households;

Municipal waste does not include waste from production, agriculture, forestry, fishing, septic tanks and sewage network and treatment, including sewage sludge, end-of-life vehicles or construction and demolition waste;”;

- (b) Immediately after the definition of "municipal waste" there shall be added the following definition:

“ “non-hazardous waste” means waste which is not hazardous waste;”;

- (c) Immediately after the definition of "consignor" there shall be added the following definition:

“ “construction and demolition waste” means waste generated by construction and demolition activities;”;

- (d) The definition of “bio-waste” shall be substituted by the following:

“ “bio-waste” means biodegradable garden and park waste, food and kitchen waste from households, offices, restaurants, wholesale, canteens, caterers and retail premises and comparable waste from food processing plants;”;

- (e) Immediately after the definition of "enforcement notice" there shall be added the following definitions:

“ “extended producer responsibility scheme” means a set of measures taken by the competent authority to ensure that producers of products bear financial responsibility or financial and organisational responsibility for the management of the waste stage of a product’s life cycle;”;

“food waste” means all food as defined in Article 2 of Regulation (EC)

No 178/2002 of the European Parliament and of the Council⁵⁶ that has become waste;”;

(f) The definition of “waste management” shall be substituted by the following:

“ “waste management” means the collection, transport, recovery (including sorting), and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;”;

(g) Sub-paragraph (c) of the definition of “prevention” shall be substituted by the following:

“ (c) the content of hazardous substances in materials and products;”;

(h) Immediately after the definition of "inert waste" there shall be added the following definition:

“ “material recovery” means any recovery operation, other than energy recovery and the reprocessing into materials that are to be used as fuels or other means to generate energy. It includes, inter alia, preparing for re-use, recycling and backfilling;”;

(i) Immediately after the definition of "applicant" there shall be added the following definition:

“ “backfilling” means any recovery operation where suitable non-hazardous waste is used for purposes of reclamation in excavated areas or for engineering purposes in landscaping. Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve those purposes;”.

Substitutes regulation 5 of the principal regulations.

5. Regulation 5 of the principal regulations shall be substituted by the following:

“5. (1) A substance or object, resulting from a production process, the primary aim of which is not the production of that item, is considered not to be waste as defined by regulation 4 but as being a by-product only if the following conditions are met:

- (a) further use of the substance or object is certain;
- (b) the substance or object can be used directly without any further processing other than normal industrial practice;
- (c) the substance or object is produced as an integral part of a production process; and

⁵⁶ OJ L 31, 1.2.2002, p. 1.

(d) further use is lawful, meaning that the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

(2) Where criteria on the uniform application of the conditions laid down in sub-regulation (1) have not been set at Union level, the competent authority may establish detailed criteria on the application of the conditions laid down in sub-regulation 1 to specific substances or objects.”

Amends
regulation 6 of
the principal
regulations.

6. Regulation 6 of the principal regulations shall be amended as follows:

(a) Sub-regulation (1) shall be substituted by the following:

“(1) Waste which has undergone a recycling or other recovery operation is considered to have ceased to be waste within the meaning of regulation 4 if it complies with the following conditions:”;

(b) Paragraph (a) of sub-regulation (1) shall be substituted by the following:

“(a) the substance or object is to be used for specific purposes;”;

(c) Paragraph (b) of sub-regulation (1) shall be deleted;

(d) Sub-regulation (2) shall be substituted by the following:

“(2) Where detailed criteria on the uniform application of the conditions laid down in sub-regulation (1) have not been set at Union level, the competent authority may establish detailed criteria on the application of the conditions laid down in sub-regulation (1) to certain types of waste. Those detailed criteria shall take into account any possible adverse environmental and human health impacts of the substance or object and shall include the following requirements:

(a) permissible waste input material for the recovery operation;

(b) allowed treatment processes and techniques;

(c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards, including limit values for pollutants where necessary;

(d) requirements for management systems to demonstrate compliance with the end-of-waste criteria, including for quality control and self-monitoring, and accreditation, where appropriate; and

(e) a requirement for a statement of conformity.”;

(e) Sub-regulation (5) shall be substituted by the following:

“(5) Where detailed criteria on the uniform application of the conditions laid down in sub-regulation (1) have not been set at either Union or national level under sub-regulation (2), the competent authority shall decide on a case by case basis, or take appropriate measures to verify, that certain waste has ceased to be waste on the basis of the conditions laid down in sub-regulation (1) and, where necessary, reflecting the requirements laid down in points (a) to (e) of sub-regulation (2), and taking into account limit values for pollutants and any possible adverse environmental and human health impacts:

Provided that the competent authority shall make information about case by case decisions and about the results of verification by the competent authority publicly available by electronic means.”;

(f) The following new sub-regulation (7) shall be inserted:

“(7) The natural or legal person who:

- (a) uses, for the first time, a material that has ceased to be waste and that has not been placed on the market; or
- (b) places a material on the market for the first time after it has ceased to be waste,

shall ensure that the material meets relevant requirements under the applicable chemical and product related legislation. The conditions laid down in sub-regulation (1) have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.”

Amends
regulation 7 of
the principal
regulations.

7. Regulation 7 of the principal regulations shall be amended as follows:

(a) In sub-regulation (1) the words “Commission Decision 2000/532/EC* establishing a list of wastes shall apply.” shall be substituted by the following: “The delegated acts of the Commission establishing a list of waste shall apply.”;

(b) Sub-regulation (2) shall be substituted by the following:

“(2) The competent authority may consider waste as hazardous waste where, even though it does not appear as such on the list of waste adopted by the Commission, it displays one or more of the properties listed in Schedule 3.”;

(c) In sub-regulation (3) the words “Commission Decision 2000/532/EC” shall be substituted by the words “the delegated acts of the Commission

establishing a list of waste”;

(d) In sub-regulation (4) the words “Commission Decision 2000/532/EC” shall be substituted by the words “the list of waste established by the Commission in its delegated acts”;

(e) In sub-regulation (5) the words “Commission Decision 2000/532/EC” shall be substituted by the words “the list of waste established by the Commission in its delegated acts”.

Substitutes regulation 8 of the principal regulations.

8. Regulation 8 of the principal regulations shall be substituted by the following:

“8.(1) The competent authority shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market when applying extended producer responsibility. The competent authority may introduce legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products has extended producer responsibility in accordance with Schedule 7. Where such introduced measures include the establishment of extended producer responsibility schemes, regulation 8A shall apply.

(2) In the case of the introduction of such measures referred to in sub-regulation (1), waste producers may be exempt partly or wholly from financing the costs of waste management in accordance with regulation 12(7), should it be decided that the costs of waste management be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such products may share these costs.

(3) The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in regulation 12(1) and without prejudice to existing waste stream specific and product specific Community or Maltese legislation.”

Adds a new regulation 8A to the principal regulations.

9. Immediately after regulation 8 of the principal regulations there shall be inserted the following new regulation:

“Extended producer responsibility schemes

8A. (1) Where the competent authority establishes extended producer responsibility schemes, the following general minimum requirements shall be included:

- (a) clear definitions of the roles and responsibilities of all relevant actors involved, including producers of products placing products on the Maltese market, organisations implementing extended producer responsibility obligations on their behalf, private or public waste operators, local authorities and, where appropriate, re-use and preparing for re-use operators and social economy enterprises;
- (b) the setup of the waste management targets, aiming to attain at least the quantitative targets relevant for the extended producer responsibility scheme as laid down in this regulation, Directive 94/62/EC⁵⁷, Directive 2000/53/EC,⁵⁸ Directive 2006/66/EC⁵⁹ and Directive 2012/19/EU⁶⁰, and a setup of other quantitative targets and/or qualitative objectives that the competent authority considers relevant for the extended producer responsibility scheme;
- (c) the setup of a reporting system to gather data on the products placed on the Maltese market by the producers of products subject to extended producer responsibility and data on the collection and treatment of waste resulting from those products specifying, where appropriate, the waste material flows, as well as other data relevant for the purposes of sub-paragraph (b) hereof;
- (d) a framework which ensures equal treatment of producers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products.

(2) The competent authority shall take the necessary measures to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with regulation 8A(1), are informed about waste prevention measures, centres for

⁵⁷ OJ L 365, 31.12.1994, p. 10.

⁵⁸ OJ L 269, 21.10.2000, p. 34.

⁵⁹ OJ L 266, 26.9.2006, p. 1.

⁶⁰ OJ L 197, 24.7.2012, p. 38.

re-use and preparing for re-use, take-back and collection systems, and the prevention of littering. The competent authority shall also take measures to create incentives for the waste holders to assume their responsibility to deliver their waste into the separate collection systems in place, notably, where appropriate, through economic incentives or regulations.

(3) The competent authority shall take the necessary measures to ensure that any producer of products or organisation implementing extended producer responsibility obligations on behalf of producers of products:

- (a) has a clearly defined geographical, product and material coverage without limiting those areas to those where the collection and management of waste are the most profitable;
- (b) provides an appropriate availability of waste collection systems within the areas referred to in sub-paragraph (a) hereof;
- (c) has the necessary financial means or financial and organisational means to meet its extended producer responsibility obligations;
- (d) puts in place an adequate self-control mechanism, supported, where relevant, by regular independent audits, to appraise:
 - (i) its financial management, including compliance with the requirements laid down in sub-paragraphs (a) and (b) of regulation 8A(4);
 - (ii) the quality of data collected and reported in accordance with the reporting system established in accordance with regulation 8A(1)(c) and with the requirements of Regulation 1013/2006⁶¹;
- (e) makes publicly available information about the attainment of the waste management targets referred to in regulation 8A(1)(b), and, in the case of collective fulfilment of extended producer responsibility

⁶¹ OJ L 190, 12.7.2006, p. 1.

obligations, also information about:

- (i) its ownership and membership;
- (ii) the financial contributions paid by producers of products per unit sold or per tonne of product placed on the market; and
- (iii) the selection procedure for waste management operators.

(4) The competent authority shall take the necessary measures to ensure that the financial contributions paid by the producer of the product to comply with its extended producer responsibility obligations:

- (a) cover the following costs for the products that the producer puts on the Maltese market:
 - (i) costs of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the waste management targets, and costs necessary to meet other targets and objectives as referred to in regulation 8A(1)(b), taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees;
 - (ii) costs of providing adequate information to waste holders in accordance with sub-regulation 2,
 - (iii) costs of data gathering and reporting in accordance with regulation 8A(1)(c).

Provided that this subparagraph shall not apply to extended producer responsibility schemes established pursuant to Directive 2000/53/EC⁶², 2006/66/EC⁶³ or 2012/19/EU⁶⁴;

Provided further that, where justified by the need to ensure proper waste management and the economic viability of the extended producer responsibility scheme, the competent authority

⁶² OJ L 269, 21.10.2000, p. 34.

⁶³ OJ L 266, 26.9.2006, p. 1.

⁶⁴ OJ L 197, 24.7.2012, p. 38.

may depart from the division of financial responsibility as laid down in this subparagraph only in the following cases:

- (i) in the case of extended producer responsibility schemes established to attain waste management targets and objectives established under legislative acts of the Union, the producers of products bear at least 80 % of the necessary costs;
- (ii) in the case of extended producer responsibility schemes established on or after 4 July 2018 to attain waste management targets and objectives solely established in Maltese legislation, the producers of products bear at least 80 % of the necessary costs;

and provided that the remaining costs are borne by original waste producers or distributors.

- (b) in the case of collective fulfilment of extended producer responsibility obligations, are modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant Maltese legislation, and where available, based on harmonised criteria in order to ensure a smooth functioning of the internal market; and
- (c) do not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned.

(5) The competent authority shall establish an adequate monitoring and enforcement framework with a view to ensuring that producers of products and organisations implementing extended producer responsibility obligations on their behalf implement their extended producer responsibility obligations,

including in the case of distance sales, that the financial means are properly used and that all actors involved in the implementation of the extended producer responsibility schemes report reliable data.”

Adds a new regulation 8B to the principal regulations.

10. Immediately after regulation 8A of the principal regulations there shall be inserted the following new regulation:

“Prevention of waste

8B. (1) The competent authority shall take measures to prevent waste generation. Those measures shall, at least:

- (a) promote and support sustainable production and consumption models;
- (b) encourage the design, manufacturing and use of products that are resource-efficient, durable (including in terms of life span and absence of planned obsolescence), repairable, re-usable and upgradable;
- (c) target products containing critical raw materials to prevent that those materials become waste;
- (d) encourage the re-use of products and the setting up of systems promoting repair and re-use activities, including in particular for electrical and electronic equipment, textiles and furniture, as well as packaging and construction materials and products;
- (e) encourage, as appropriate and without prejudice to intellectual property rights, the availability of spare parts, instruction manuals, technical information, or other instruments, equipment or software enabling the repair and re-use of products without compromising their quality and safety;
- (f) reduce waste generation in processes related to industrial production, extraction of minerals, manufacturing, construction and demolition, taking into account best available techniques;
- (g) reduce the generation of food waste in primary production, in processing and manufacturing, in retail and other

distribution of food, in restaurants and food services as well as in households as a contribution to the United Nations Sustainable Development Goal to reduce by 50 % the per capita global food waste at the retail and consumer levels and to reduce food losses along production and supply chains by 2030;

- (h) encourage food donation and other redistribution for human consumption, prioritising human use over animal feed and the reprocessing into non-food products;
- (i) 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 of the European Parliament and of the Council (*5) provides the information pursuant to Article 33(1) of that Regulation to the European Chemicals Agency as from 5 January 2021;
- (j) reduce the generation of waste, in particular waste that is not suitable for preparing for re-use or recycling;
- (k) identify products that are the main sources of littering, notably in natural and marine environments, and take appropriate measures to prevent and reduce litter from such products; where Member States decide to implement this obligation through market restrictions, they shall ensure that such restrictions are proportionate and non-discriminatory;
- (l) aim to halt the generation of marine litter as a contribution towards the United Nations Sustainable Development Goal to prevent and significantly reduce marine pollution of all kinds; and
- (m) develop and support information campaigns to raise awareness about waste

prevention and littering.

(2) The competent authority shall monitor and assess the implementation of the waste prevention measures. For that purpose, it shall use appropriate qualitative or quantitative indicators and targets, notably on the quantity of waste that is generated.

(3) The competent authority shall monitor and assess the implementation of the measures on re-use by measuring re-use on the basis of the common methodology established by the implementing act adopted by the Commission, as from the first full calendar year after the adoption of that implementing act.

(4) The competent authority shall monitor and assess the implementation of the food waste prevention measures by measuring the levels of food waste on the basis of the methodology established by the Commission Delegated Decision (EU) 2019/1597⁶⁵, as from the first full calendar year after the adoption of that delegated act.”

Substitutes
regulation 9
of the
principal
regulations.

11. Regulation 9 of the principal regulations shall be substituted by the following:

“Recovery

9. (1) An establishment or undertaking which collects, transports or receives waste which has been separately collected shall not mix that waste with other waste or other material with different properties.

(2) The competent authority may allow derogations from the prohibition in sub-regulation (1) only where at least one of the following conditions is met:

(a) collecting certain types of waste together does not affect their potential to undergo preparing for re-use, recycling or other recovery operations and results in output from those operations which is of comparable quality to that achieved through separate collection;

(b) separate collection does not deliver the best environmental outcome when considering the overall environmental impacts of the

⁶⁵ OJ L 248, 27.9.2019, pp. 77–85.

management of the relevant waste streams;

(c) separate collection is not technically feasible taking into consideration good practices in waste collection;

(d) separate collection would entail disproportionate economic costs taking into account the costs of adverse environmental and health impacts of mixed waste collection and treatment, the potential for efficiency improvements in waste collection and treatment, revenues from sales of secondary raw materials as well as the application of the polluter-pays principle and extended producer responsibility.

(3) Waste that has been separately collected for preparing for re-use and recycling shall not be incinerated:

Provided that waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome is allowed.

(4) An establishment or undertaking which carries out recovery operations shall take measures to ensure that hazardous substances, mixtures and components from hazardous waste are removed before or during the recovery operation with a view to their treatment.”

Amends
regulation 10
of the
principal
regulations

12. Regulation 10 of the principal regulations shall be amended as follows:

(a) Sub-regulation 2 shall be substituted by the following:

“(2) Subject to regulation 9, local councils shall by 31 December, 2024 set up separate collection for textiles in order to promote high quality recycling.”;

(b) Sub-regulation 3 shall be substituted by the following:

S.L. 549.45

“(3) Any carrier registered in accordance with the Waste Management (Activity Registration) Regulations to carry waste as defined in

regulation 4 and collects waste paper, metal, plastic, glass, or textiles separately, must keep all fractions collected separated.”;

(c) Immediately after sub-regulation 3 thereof, there shall be added the following new sub-regulations (4) and (5):

“(4) The duties in this regulation apply only subject to regulation 9(2) and 9(3).

(5) The competent authority shall take measures to promote selective demolition in order to enable removal and safe handling of hazardous substances and facilitate re-use and high-quality recycling by selective removal of materials, and to ensure the establishment of sorting systems for construction and demolition waste at least for wood, mineral fractions (concrete, bricks, tiles and ceramics, stones), metal, glass, plastic and plaster.”

Amends
regulation 16
of the
principal
regulations

13. Sub-regulation 3 of regulation 16 of the principal regulations shall be substituted by the following:

“(3) Where hazardous waste has been mixed in a manner contrary to sub-regulation (1), separation shall be carried out where technically feasible and necessary to possible and necessary in order to comply with the provisions laid down in paragraph 3 of Schedule 5:

Provided that, where separation is not required, the mixed waste shall be treated in a facility that has obtained a permit in accordance with regulation 19 to treat such a mixture.”

Amends
regulation 17
of the
principal
regulations

14. Immediately after sub-regulation 2 of regulation 17, there shall be added the following new sub-regulations:

“17.(3) The local councils shall set up separate collection for hazardous waste fractions produced by households by 31 December 2024 to ensure that they are treated in accordance with sub-paragraph 2(1) and paragraph 3 of Schedule 5 and do not contaminate other municipal waste streams.”

Amends
regulation 18
of the
principal
regulations

15. Sub-paragraphs (a), (b) and (c) of sub-regulation 1 of regulation 18 shall be substituted by the following:

“(a) be collected separately, unless separate collection is not technically feasible taking into account good practices;

(b) treated, giving priority to regeneration or alternatively to other recycling operations delivering an equivalent or a better overall

environmental outcome than regeneration, in accordance with subparagraph 2(1) and paragraph 3 of Schedule 5;

(c) not be mixed where of different characteristics and not be mixed with other kinds of waste or substances, if such mixing impedes their regeneration or another recycling operation delivering an equivalent or a better overall environmental outcome than regeneration.”

Amends
regulation 28
of the
principal
regulations

16. Sub-regulation (4) of Regulation 28 of the principal regulations shall be substituted by the following:

S.L. 549.29
S.L. 549.62
S.L. 549.100

“(4) The competent authority shall ensure that the waste management plans conform to the strategy for the reduction of biodegradable waste going to landfill, referred to in regulation 5 of the Waste Management (Landfill) Regulations, and to the strategy for the prevention of litter, referred to in regulation 10 of the Marine Policy Framework Regulations and regulation 12 of the Water Policy Framework Regulations.”

Substitutes
regulation 29
of the
principal
regulations

17. Regulation 29 of the principal regulations shall be substituted by the following:

“29. (1) The competent authority shall establish waste prevention programmes setting out at least the waste prevention measures in accordance with regulation 2, regulation 8B(1) and Schedule 5. Such programmes shall either:

- (a) be integrated into the waste management plans provided for in regulation 28, or
- (b) be integrated into other environmental policy programmes, as appropriate, or
- (c) function as separate programmes:

Provided that if any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

“(2) When establishing such programmes, the competent authority shall, where relevant, describe the contribution of instruments and measures listed in Schedule 12 to waste prevention and shall evaluate the usefulness of the examples of measures indicated in Schedule 6 or other appropriate measures. The competent authority shall describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in Schedule 6 or other appropriate measures.

(3) The competent authority shall adopt specific food waste prevention programmes within the waste prevention programmes.”

Amends
regulation 33
of the
principal
regulations

18. Regulation 33 of the principal regulations shall be amended as follows:

(a) In sub-regulation (1) following the words “to the competent authority” there shall be inserted the words “through the electronic registry or registries to be established pursuant to sub-regulation (4).”

(b) Immediately after sub-regulation (4), there shall be added the following new sub-regulation:

“(5) The competent authority shall set up an electronic registry or coordinated registries to record the data on hazardous waste referred to in sub-regulation (1) covering the Maltese territory. The competent authority may also establish such registries for other waste streams, in particular for those waste streams for which targets are set in legislative acts of the Union. The competent authority shall use the data on waste reported by industrial operators in the European Pollutant Release and Transfer Register set up under Regulation (EC) No 166/2006.⁶⁶”

Amends
regulation 34
of the
principal
regulations

19. In sub-regulation (1) of regulation 34 of the principal regulations following the words “management of waste” there shall be inserted the words “including littering.”

Amends
Schedule 2 of
the principal
regulations

20. Paragraphs R3, R4 and R5 of Schedule 2 of the principal regulations paragraphs shall be substituted by the following:

“R3	Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)(†) ⁶⁷
R4	Recycling/reclamation of metals and metal compounds (††) ⁶⁸
R5	Recycling/reclamation of other inorganic materials (‡) ⁶⁹ ”

Amends
Schedule 5 of

21. Schedule 5 of the principal regulations shall be amended as follows:

⁶⁶ OJ L 33, 4.2.2006, p. 1.

⁶⁷ (†) This includes preparing for re-use, gasification and pyrolysis using the components as chemicals and recovery of organic materials in the form of backfilling.

⁶⁸ (††) This includes preparing for re-use.

⁶⁹ (‡) This includes preparing for re-use, recycling of inorganic construction materials, recovery of inorganic materials in the form of backfilling, and soil cleaning resulting in recovery of the soil.”

the principal
regulations

(a) Paragraph 1 shall be substituted by the following:

“1. To protect the environment and human health by preventing or reducing the generation of waste, the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.”;

(b) Immediately after sub-paragraph (3) of paragraph 2 there shall be added the following new sub-paragraph:

“(4) The competent authority shall make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy, such as those indicated in Schedule 12 or other appropriate instruments and measures.”;

(c) Paragraph 6 shall be substituted by the following:

“6. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

- (a) the type, quantity and source of waste generated within the Maltese territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;
- (b) existing major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste, waste containing significant amounts of critical raw materials, or waste streams addressed by specific national and Union legislation;
- (c) an assessment of the need for closure of existing waste installations and for additional waste installation infrastructure in accordance with paragraph 4 of this Schedule. The competent authority shall ensure that an assessment of the investments and other financial means, including for local authorities, required to meet those needs is carried out. This assessment shall be included in the relevant waste management plans or in other strategic documents covering the Maltese territory;
- (d) information on the measures to attain the objective laid down in Article 5(3a) of Directive 1999/31/EC⁷⁰ or in other strategic documents covering the Maltese territory;

⁷⁰ OJ L 182, 16.7.1999, p. 1.

- (e) an assessment of existing waste collection schemes, including the material and territorial coverage of separate collection and measures to improve its operation, of any derogations granted in accordance with regulation 9(2) and of the need for new collection schemes;
- (f) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;
- (g) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems;
- (h) measures to combat and prevent all forms of littering and to clean up all types of litter;
- (i) appropriate qualitative or quantitative indicators and targets, including on the quantity of generated waste and its treatment and on municipal waste that is disposed of or subject to energy recovery.”;

(d) Paragraph 8 shall be substituted by the following:

“8. Measures to promote high quality recycling and, to this end, shall set up separate collections of waste subject to sub-regulations 9(1) and (2).”;

(e) Paragraph 9 shall be substituted by the following:

“9. (1) Measures to ensure that by 31 December 2023 and subject to sub-regulations 9(1) and (2), bio-waste is either separated and recycled at source, or is collected separately and is not mixed with other types of waste:

Provided that waste with similar biodegradability and compostability properties which complies with relevant European standards or any equivalent national standards for packaging recoverable through composting and biodegradation may be collected together with bio-waste.

(2) Measures in accordance with paragraph 3 of this Schedule, to:

- (a) encourage the recycling, including composting and digestion, of bio-waste in a way that fulfils a high level of environment protection and results in output which meets relevant high-quality standards;
- (b) encourage home composting; and
- (c) promote the use of materials produced from bio-waste.”

(f) Paragraph 10 shall be substituted by the following:

“10. Measures to promote preparing for re-use activities, notably by:

- (a) encouraging the establishment of and support for preparing for re-use and repair networks;
- (b) facilitating, where compatible with proper waste management, their access to waste held by collection schemes or facilities that can be prepared for re-use but is not destined for preparing for re-use by those schemes or facilities; and
- (c) promoting the use of economic instruments, procurement criteria, quantitative objectives or other measures.”;

(g) In paragraph 11 following the words “part 1 of this schedule” there shall be inserted the following new words “and regulation 9 of these regulations”.

(h) Paragraph 12 shall be substituted by the following:

“12. (1) The necessary measures to achieve the following targets:

- (a) by 2020 the preparing for re-use and the recycling of paper, metal, plastic and glass from households, shall be increased to a minimum of overall 50% by weight;
- (b) by 2020 the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste^{*71} shall be increased to a minimum of 70% by weight;
- (c) by 2025, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 55 % by weight;
- (d) by 2030, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 60 % by weight;
- (e) by 2035, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 65 % by weight.

⁷¹ OJ L 226, 6.9.2000, p. 3.

(2) The deadlines for attaining the targets referred to in points (c), (d) and (e) of paragraph (1) may be postponed by up to five years provided that Malta:

- (a) prepared for re-use and recycling less than 20 % or landfilled more than 60 % of its municipal waste generated in 2013 as reported under the Joint Questionnaire of the OECD and Eurostat; and
- (b) at least 24 months before the respective deadline laid down in point (c), (d) or (e) of sub-paragraph (1), the Commission is notified of Malta's intention to postpone the respective deadline and an implementation plan in accordance with Schedule 13 is submitted.

(3) In the event of postponing the attainment of the targets in accordance with paragraph 2, the competent authority shall take the necessary measures to increase the preparing for re-use and the recycling of municipal waste:

- (a) to a minimum of 50 % by 2025 in the event of postponing the deadline for attaining the target referred to in point (c) of sub-paragraph (2);
- (b) to a minimum of 55 % by 2030 in the event of postponing the deadline for attaining the target referred to in point (d) of paragraph 2;
- (c) to a minimum of 60 % by 2035 in the event of postponing the deadline for attaining the target referred to in point (e) of paragraph 2."

Adds a new Schedule 12 and Schedule 13 to the principal regulations

22. Following Schedule 11 of the principal regulations, there shall be added the following new Schedule 12 and Schedule 13:

"SCHEDULE 12

EXAMPLES OF ECONOMIC INSTRUMENTS AND OTHER MEASURES TO PROVIDE INCENTIVES FOR THE APPLICATION OF THE WASTE HIERARCHY REFERRED TO IN SCHEDULE 5

1. Charges and restrictions for the landfilling and incineration of waste which incentivise waste prevention and recycling, while keeping landfilling the least preferred waste management option;
2. "Pay-as-you-throw" schemes that charge waste producers on the basis of the actual amount of waste generated and provide incentives for separation at source of recyclable waste and for reduction of mixed waste;
3. Fiscal incentives for donation of products, in particular food;

4. Extended producer responsibility schemes for various types of waste and measures to increase their effectiveness, cost efficiency and governance;
5. Deposit-refund schemes and other measures to encourage efficient collection of used products and materials;
6. Sound planning of investments in waste management infrastructure, including through Union funds;
7. Sustainable public procurement to encourage better waste management and the use of recycled products and materials;
8. Phasing out of subsidies which are not consistent with the waste hierarchy;
9. Use of fiscal measures or other means to promote the uptake of products and materials that are prepared for re-use or recycled;
10. Support to research and innovation in advanced recycling technologies and remanufacturing;
11. Use of best available techniques for waste treatment;
12. Economic incentives for regional and local authorities, in particular to promote waste prevention and intensify separate collection schemes, while avoiding support to landfilling and incineration;
13. Public awareness campaigns, in particular on separate collection, waste prevention and litter reduction, and mainstreaming these issues in education and training;
14. Systems for coordination, including by digital means, between all competent public authorities involved in waste management;
15. Promoting continuous dialogue and cooperation between all stakeholders in waste management and encouraging voluntary agreements and company reporting on waste.

SCHEDULE 13

IMPLEMENTATION PLAN TO BE SUBMITTED PURSUANT TO SUB-PARAGRAPH 12(2)(B) OF SCHEDULE 5

The implementation plan to be submitted pursuant to sub-paragraph 12(2)(b) of Schedule 5 shall contain the following:

1. assessment of the past, current and projected rates of recycling, landfilling and other treatment of municipal waste and the streams of which it is composed;
2. assessment of the implementation of waste management plans and waste prevention programmes in place pursuant to Schedule 5;

3. reasons for which the competent authority considers that it might not be able to attain the relevant target laid down in paragraph 12 of Schedule 5 within the deadline set therein and an assessment of the time extension necessary to meet that target;
4. measures necessary to attain the targets set out in paragraph 12 of Schedule 5 that are applicable to Malta during the time extension, including appropriate economic instruments and other measures to provide incentives for the application of the waste hierarchy as set out in Schedule 5 and Schedule 12;
5. a timetable for the implementation of the measures identified in sub-paragraph 4, determination of the body competent for their implementation and an assessment of their individual contribution to attaining the targets applicable in the event of a time extension;
6. information on funding for waste management in line with the polluter-pays principle;
7. measures to improve data quality, as appropriate, with a view to better planning and monitoring performance in waste management.”

ECO-CONTRIBUTION ACT

(CAP. 473)

Eco-Contribution (Exemptions) (Amendment) Regulations, 2020

IN exercise of the powers conferred by articles 12 and 13 of the Eco-Contribution Act, the Minister for the Environment, Climate Change and Planning, in concurrence with the Minister for Finance, has made the following regulations:-

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| Citation.
S.L. 473.05 | 1. (1) The title of these regulations is the Eco-Contribution (Exemptions) (Amendment) Regulations, 2020 and they shall be read and construed as one with the Eco-Contribution (Exemptions) Regulations hereinafter referred to as "the principal regulations". |
| Entry into force | (2) These regulations shall be deemed to come into force upon publication in the Government Gazette. |
| Amends regulation 2 of the principal regulations. | 2. In regulation 2 of the principal regulations the definition of "Waste Framework Directive" shall be substituted by the following:

“ "Waste Framework Directive" means Directive 2008/98/EC as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.” |

L.N. XX of 2020

REGULATOR FOR ENERGY AND WATER SERVICES ACT

(CAP. 545)

Promotion of Energy from Renewable Sources (Amendment) Regulations, 2020

IN exercise of the powers conferred by article 37(1) of the Regulator for Energy and Water Services Act, the Minister responsible for Energy and Water Management, after consultation with the Regulator for Energy and Water Services, has made the following regulations:-

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| Citation.

S.L. 545.11 | 1. (1) The title of these regulations is the Promotion of Energy from Renewable Sources (Amendment) Regulations, 2020 and they shall be read and construed as one with the Promotion of Energy from Renewable Sources Regulations hereinafter referred to as "the principal regulations". |
| Entry into force | (2) These regulations shall be deemed to come into force upon publication in the Government Gazette. |
| Amends regulation 4 of the principal regulations. | 2. In sub-paragraph (iii) of paragraph (e) of regulation 4 of the principal regulations for the words "Directive 2008/98/EC" there shall be substituted the words "Directive 2008/98/EC as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste". |

L.N. XX of 2020

ENVIRONMENT PROTECTION ACT

(CAP. 549)

Environmental Impact Assessment (Amendment) Regulations, 2020

IN exercise of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister responsible for the Environment, Sustainable Development and Climate Change, in consultation with the Environment and Resources Authority, has made the following regulations:-

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| Citation.
S.L. 549.46 | 1. (1) The title of these regulations is the Environmental Impact Assessment (Amendment) Regulations, 2020 and they shall be read and construed as one with the Environmental Impact Assessment Regulations hereinafter referred to as "the principal regulations". |
| Entry into force | (2) These regulations shall be deemed to come into force upon publication in the Government Gazette. |
| Amends Schedule I of the principal regulations. | 2. In Schedule I of the principal regulations for the words "Directive 2008/98/EC" wherever they appear thereof there shall be substituted the words "Directive 2008/98/EC as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste". |

L.N. XX of 2020

ENVIRONMENT PROTECTION ACT

(CAP. 549)

Industrial Emissions (Integrated Pollution Prevention and Control) (Amendment) Regulations, 2020

IN exercise of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister responsible for the Environment, Sustainable Development and Climate Change, in consultation with the Environment and Resources Authority, has made the following regulations:-

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| Citation. | 1. (1) The title of these regulations is the Industrial Emissions (Integrated Pollution Prevention and Control) (Amendment) Regulations, 2020 and they shall be read and construed as one with the Industrial Emissions (Integrated Pollution Prevention and Control) Regulations hereinafter referred to as "the principal regulations". |
| S.L. 549.77 | |
| Entry into force | (2) These regulations shall be deemed to come into force upon publication in the Government Gazette. |
| Amends Schedule I of the principal regulations. | 2. In Schedule I of the principal regulations for the words "Directive 2008/98/EC" there shall be substituted the words "Directive 2008/98/EC as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste". |