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EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

**establishing criteria determining when certain types of scrap metal cease to be waste
under Directive 2008/98/EC of the European Parliament and of the Council**

EXPLANATORY MEMORANDUM

Pursuant to Article 6 (1) of Directive 2008/98/EC on waste certain specified waste shall cease to be waste when it has undergone a recovery operation and complies with specific criteria to be developed in line with certain legal conditions. In accordance with Article 6(2) of this directive such criteria should be set for specific materials by the Commission and be adopted in the regulatory procedure with scrutiny referred to in Article 39(2) of the directive.

Accordingly, the Commission submitted a draft Regulation for vote in the Committee established under Article 39 of the directive. The Committee did not deliver a favourable opinion on the draft Regulation in its meeting on 16 September 2010.

Thus in accordance with the procedure set out in Article 5(a) of Decision 1999/468/EC a Proposal for a Council Regulation is submitted to Council and forwarded to the European Parliament.

Proposal for a

COUNCIL REGULATION

establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives¹ and in particular Article 6 (2) thereof,

Whereas:

- (1) It results from an evaluation of several waste streams that recycling markets for scrap metal would benefit from the development of specific criteria determining when scrap metal obtained from waste ceases to be waste. Those criteria should ensure a high level of environmental protection. They should be without prejudice to the classification of metal scrap as waste by third countries.
- (2) Reports of the Joint Research Centre of the European Commission have shown that a market and demand exist for iron, steel and aluminium scrap to be used as feedstock in steel works, foundries, aluminium refiners and remelters for the production of metals. Iron, steel and aluminium scrap should therefore be sufficiently pure and meet the relevant scrap standards or specifications required by the metal producing industry.
- (3) The criteria determining when iron, steel and aluminium scrap cease to be waste should ensure that iron, steel and aluminium scrap resulting from a recovery operation meet the technical requirements of the metal producing industry, comply with existing legislation and standards applicable to products and do not lead to overall adverse environmental or human health impacts. Reports of the Joint Research Centre of the European Commission have shown that the proposed criteria on the waste used as input in the recovery operation, on the treatment processes and techniques, as well as on the scrap metal resulting from the recovery operation fulfil those objectives as they should result in the production of iron, steel and aluminium scrap devoid of hazardous properties and sufficiently free of non-metallic compounds.
- (4) In order to ensure compliance with the criteria, it is appropriate to provide that information on scrap metal which has ceased to be waste is issued and that a quality management system is implemented.

¹ OJ L 312, 22.11.2008, p. 3.

- (5) A review of the criteria may prove necessary if, on the basis of a monitoring of the development of market conditions for iron and steel and aluminium scrap, adverse effects on recycling markets for iron and steel scrap and aluminium scrap are noted, in particular with regard to the availability of, and access to, such scrap.
- (6) In order to allow operators to adapt to the criteria determining when scrap metal ceases to be waste, it is appropriate to provide for a reasonable period to elapse before this Regulation applies.
- (7) The Committee established by Article 39(1) of Directive 2008/98/EC has not delivered an opinion on the measures provided for in this Regulation and the Commission therefore submitted to the Council a proposal relating to the measures and forwarded it to the European Parliament,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes criteria determining when iron, steel and aluminium scrap, including aluminium alloy scrap, cease to be waste.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Directive 2008/98/EC shall apply.

In addition, the following definitions shall apply:

- (1) 'iron and steel scrap' means scrap metal which consists mainly of iron and steel;
- (2) 'aluminium scrap' means scrap metal which consists mainly of aluminium and aluminium alloy;
- (3) 'holder' means the natural or legal person who is in possession of scrap metal;
- (4) 'producer' means the holder who transfers scrap metal to another holder for the first time as scrap metal which has ceased to be waste;
- (5) 'importer' means any natural or legal person established within the Union who introduces scrap metal which has ceased to be waste into the customs territory of the Union.
- (6) 'qualified staff' means staff which is qualified by experience or training to monitor and assess the properties of metal scrap;
- (7) 'visual inspection' means inspection of metal scrap covering all parts of a consignment and using human senses or any non-specialised equipment.

- (8) 'consignment' means a batch of metal scrap which is intended for delivery from a producer to another holder and may be contained in either one or several transport units, such as containers.

Article 3

Criteria for iron and steel scrap

Iron and steel scrap shall cease to be waste where, upon transfer from the producer to another holder, all of the following conditions are fulfilled:

- (1) the waste used as input for the recovery operation complies with the criteria set out in Section 2 of Annex I;
- (2) the waste used as input for the recovery operation has been treated in accordance with the criteria set out in Section 3 of Annex I;
- (3) the iron and steel scrap resulting from the recovery operation complies with the criteria set out in Section 1 of Annex I;
- (4) the producer has satisfied the requirements set out in Articles 5 and 6.

Article 4

Criteria for aluminium scrap

Aluminium scrap, including aluminium alloy scrap, shall cease to be waste where, upon transfer from the producer to another holder, all of the following conditions are fulfilled:

- (1) the waste used as input in the recovery operation complies with the criteria set out in Section 2 of Annex II;
- (2) the waste used as input in the recovery operation has been treated in accordance with the criteria set out in Section 3 of Annex II;
- (3) the aluminium scrap resulting from the recovery operation complies with the criteria set out in Section 1 of Annex II;
- (4) the producer has satisfied the requirements set out in Articles 5 and 6.

Article 5

Statement of conformity

- (1) The producer or the importer shall issue, for each consignment of scrap metal, a statement of conformity conforming to the model set out in Annex III.
- (2) The producer or the importer shall transmit the statement of conformity to the next holder of the scrap metal consignment. They shall retain a copy of the statement of

conformity for at least one year after its date of issue and shall make it available to competent authorities upon request.

- (3) The statement of conformity may be in electronic form.

Article 6

Quality management

- (1) The producer shall implement a quality management system suitable to demonstrate compliance with the criteria referred to in Articles 3 and 4.
- (2) The quality management system shall include a set of documented procedures concerning each of the following aspects:
 - (a) acceptance control of waste used as input for the recovery operation as set out in section 2 of Annexes I and II;
 - (b) monitoring of the treatment processes and techniques described in section 3.3 of Annexes I and II;
 - (c) monitoring of the quality of scrap metal resulting from the recovery operation as set out in section 1 of Annexes I and II (including sampling and analysis);
 - (d) effectiveness of the radiation monitoring as set out in section 1.5 of Annexes I and II;
 - (e) feedback from customers concerning compliance with scrap metal quality;
 - (f) record keeping of the results of monitoring conducted under points (a) to (d);
 - (g) review and improvement of the quality management system;
 - (h) training of staff.
- (3) The quality management system shall also prescribe the specific monitoring requirements set out in Annexes I and II for each criterion.
- (4) Where any of the treatments referred to in Section 3.3 of Annex I or Section 3.3 of Annex II is carried out by a prior holder, the producer shall ensure that the supplier implements a quality management system which complies with the requirements of this Article.
- (5) A conformity assessment body as defined in Regulation (EC) No 765/2008, which has obtained accreditation in accordance with that Regulation, or any other environmental verifier as defined in Art 2 (20) (b) of Regulation (EC) No 1221/2009 shall verify that the quality management system complies with the requirements of this Article. The verification should be carried out every three years.
- (6) The importer shall require his suppliers to implement a quality management system which complies with the requirements of paragraphs 1, 2 and 3 of this Article and has been verified by an independent external verifier.

- (7) The producer shall give competent authorities access to the quality management system upon request.

Article 7

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...] 2011. [*Please insert a specific date; transitional period 6 month after publication*]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX I

Criteria for iron and steel scrap

Criteria	Self-monitoring requirements
1. Quality of scrap resulting from the recovery operation	
<p>1.1 The scrap shall be graded according to a customer specification, an industry specification or a standard for direct use in the production of metal substances or objects by steel works or foundries.</p>	<p>Qualified staff shall grade each consignment.</p>
<p>1.2 The total amount of foreign materials (steriles) shall be $\leq 2\%$ by weight.</p> <p>Foreign materials are:</p> <ol style="list-style-type: none"> (1) non-ferrous metals (excluding alloying elements in any ferrous metal substrate) and non-metallic materials such as earth, dust, insulation and glass; (2) combustible non-metallic materials such as rubber, plastic, fabric, wood and other chemical or organic substances; (3) larger pieces (brick-size) which are non-conductors of electricity such as tyres, pipes filled with cement, wood or concrete; (4) residues arising from steel melting, heating, surface conditioning (including scarfing), grinding, sawing, welding and torch cutting operations, such as slag, mill scale, baghouse dust, grinder dust, sludge. 	<p>Qualified staff shall carry out a visual inspection of each consignment.</p> <p>At appropriate intervals (at least every 6 months), representative samples of foreign materials shall be analysed by weighing after magnetic or manual (as appropriate) separation of iron and steel particles and objects under careful visual inspection.</p> <p>The appropriate frequencies of monitoring by sampling shall be established taking into account the following factors:</p> <ol style="list-style-type: none"> (1) the expected pattern of variability (for example as shown by historical results); (2) the inherent risk of variability in the quality of waste used as input for the recovery operation and any subsequent processing; (3) the inherent precision of the monitoring method; and (4) the proximity of results to the limitation of the foreign materials' content to a maximum of 2% per weight. <p>The process of determining monitoring frequencies should be documented as part of the quality management system and should be available for auditing.</p>

<p>1.3 The scrap shall not contain excessive ferrous oxide in any form, except for typical amounts arising from outside storage of prepared scrap under normal atmospheric conditions.</p>	<p>Qualified staff shall carry out a visual inspection for the presence of oxides.</p>
<p>1.4 Scrap shall be free of visible oil, oily emulsions, lubricants or grease except negligible amounts that will not lead to any dripping.</p>	<p>Qualified staff shall carry out a visual inspection of each consignment, paying particular attention to those parts where oil is most likely to drip.</p>
<p>1.5 Radioactivity: there is no need for response action according to national or international rules on monitoring and response procedures for radioactive scrap metal.</p> <p>This requirement is without prejudice to the legislation on the health protection of workers and members of the public adopted under Chapter III of the Euratom Treaty, in particular Council Directive 96/29/Euratom²</p>	<p>Qualified staff shall monitor the radioactivity of each consignment.</p> <p>Each consignment of scrap shall be accompanied by a certificate established in accordance with national or international rules on monitoring and response procedures for radioactive scrap metal. The certificate may be included in other documentation accompanying the consignment.</p>
<p>1.6 The scrap shall not display any of the hazardous properties listed in Annex III to Directive 2008/98/EC. The scrap shall comply with the concentration limits laid down in Commission Decision 2000/532/EC³ and shall not exceed the concentration limits laid down in Annex IV to Regulation (EC) No 850/2004⁴</p> <p>Properties of individual elements included in iron and steel alloys are not relevant for this requirement.</p>	<p>Qualified staff shall carry out a visual inspection of each consignment. Where visual inspection raises any suspicion of possible hazardous properties, further appropriate monitoring measures shall be taken, such as sampling and testing where appropriate</p> <p>The staff shall be trained on potential hazardous properties that may be associated with iron and steel scrap and on material components or features that allow recognising the hazardous properties.</p> <p>The procedure of recognising hazardous materials shall be documented under the quality management system.</p>
<p>1.7 The scrap shall not contain any pressurised, closed or insufficiently</p>	<p>Qualified staff shall carry out a visual inspection of each consignment.</p>

² OJ L 159, 29.6.1996, p.1.
³ OJ L 226, 6.9.2000, p. 3.
⁴ OJ L 158, 30.4.2004, p. 7.

<p>open containers that could cause explosions in a metalwork furnace.</p>	
<p>2. Waste used as input for the recovery operation</p>	
<p>2.1 Only waste containing recoverable iron or steel may be used as input.</p> <p>2.2 Hazardous waste shall not be used as an input except where proof is provided that the processes and techniques specified in section 3 of this Annex to remove all hazardous properties have been applied.</p> <p>2.3 The following waste shall not be used as an input:</p> <p>(a) filings and turnings that contain fluids such as oil or oily emulsions and</p> <p>(b) barrels and containers, except equipment from end-of-life vehicles, which contain or have contained oil or paints.</p>	<p>Acceptance control of all waste received (by visual inspection) and of the accompanying documentation shall be carried out by qualified staff which is trained on how to recognise waste that does not meet the criteria set out in this Section.</p>
<p>3. Treatment processes and techniques</p>	
<p>3.1 The iron or steel scrap shall have been segregated at source or while collecting and shall have been kept separate or the input waste shall have been treated to separate the iron and steel scrap from the non-metal and non-ferrous components.</p> <p>3.2 All mechanical treatments (like cutting, shearing, shredding or granulating; sorting, separation, cleaning, de-polluting, emptying) needed to prepare the metal scrap for direct input into final use in steel works and foundries shall have been completed.</p> <p>3.3 For waste containing hazardous components, the following specific requirements shall apply:</p>	

⁵ OJ L 37, 13.2.2003, p. 24.

⁶ OJ L 269, 21.10.2000, p. 34.

<p>(a) Input materials that originate from waste electrical or electronic equipment or from end-of-life vehicles shall have undergone all treatments required by Article 6 of Directive 2002/96/EC of the European Parliament and of the Council⁵ and by Article 6 of Directive 2000/53/EC of the European Parliament and of the Council⁶;</p> <p>(b) Chlorofluorocarbons in discarded equipment shall have been captured in a process approved by the competent authorities;</p> <p>(c) Cables shall have been stripped or chopped. If a cable contains organic coatings (plastics), the organic coatings shall have been removed in accordance with the best available techniques;</p> <p>(d) Barrels and containers shall have been emptied and cleaned;</p> <p>(e) Hazardous substances in waste that is not mentioned in point (a) shall have been efficiently removed in a process which is approved by the competent authority.</p>	
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ANNEX II

Criteria for aluminium scrap

Criteria	Self-monitoring requirements
1. Scrap quality	
<p>1.1 The scrap shall be graded in accordance with a customer specification, an industry specification or a standard for direct use in the production of metal substance or objects by refining or re-melting.</p>	<p>Qualified staff shall grade each consignment.</p>
<p>1.2 The total amount of foreign materials shall be ≤ 5 % by weight or the metal yield shall be ≥ 90%;</p> <p>Foreign materials are</p> <p>(1) metals other than aluminium and aluminium alloys;</p> <p>(2) non-metallic materials such as earth, dust, insulation materials and glass;</p> <p>(3) combustible non-metallic materials such as rubber, plastic, fabric, wood and other chemical or organic substances;</p> <p>(4) larger pieces (brick-size) which are non-conductors of electricity such as tyres, pipes filled with cement, wood or concrete or</p> <p>(5) residues arising from melting of aluminium and aluminium alloys, heating, surface conditioning (including scarfing), grinding, sawing, welding and torch cutting operations such as slag, dross, skimmings, baghouse dust, grinder dust, sludge.</p>	<p>The producer of the aluminium scrap shall check compliance by monitoring the amount of foreign materials or by determining the metal yield.</p> <p>Qualified staff shall carry out visual inspection of each consignment.</p> <p>At appropriate intervals (at least every 6 months), representative samples of each grade of aluminium scrap shall be analysed to measure the total amount of foreign materials or the metal yield.</p> <p>The representative samples shall be obtained in accordance with the sampling procedures described in standard EN 13920⁷.</p> <p>The total amount of foreign materials shall be measured by weight after separating aluminium metallic particles and objects from particles and objects consisting of foreign materials by hand sorting or other means of separation (such as by magnet or by using density as a basis).</p> <p>Metal yield shall be measured in accordance with the following procedure:</p> <p>(1) Determination of mass (m_1) after removal and determination of moisture (in accordance with point 7.1. of the EN 13920-1:2002 standard);</p>

⁷ EN 13920-1:2002; Aluminium and aluminium alloys - Scrap- Part 1: General requirements, sampling and tests; CEN 2002.

	<p>(2) Removal and determination of free iron (in accordance with point 7.2. of the EN 13920-1:2002 standard);</p> <p>(3) Determination of the mass of the metal after melting and solidifying (m_2) following the procedure for the determination of the metal yield in accordance with point 7.3. of the EN 13920-1:2002 standard;</p> <p>(4) Calculation of the metal yield m [%] = $(m_2/m_1) \times 100$.</p> <p>The appropriate frequencies of analysis of representative samples shall be established taking into account the following factors:</p> <p>(1) the expected pattern of variability (such as shown by historical results);</p> <p>(2) the inherent risk of variability in the quality of waste used as input for the recovery operation and in the performance of the treatment processes;</p> <p>(3) the inherent precision of the monitoring method; and</p> <p>(4) the proximity of results to the limit values for the total amount of foreign materials or the metal yield.</p>
<p>1.3 The scrap shall not contain PVC in form of coatings, paints, plastics.</p>	<p>Qualified staff shall carry out a visual inspection of each consignment.</p>
<p>1.4 The Scrap shall be free of visible oil, oily emulsions, lubricants or grease except negligible amounts that will not lead to any dripping.</p>	<p>Qualified staff shall carry out a visual inspection of each consignment, paying particular attention to those parts where oil is most likely to drip.</p>
<p>1.5 Radioactivity: there is no need for response action according to national or international rules on monitoring and response procedures for radioactive scrap metal.</p>	<p>Qualified staff shall monitor the radioactivity of each consignment. Each consignment of scrap shall be accompanied by a certificate established in accordance with national or international rules on monitoring and response procedures for radioactive scrap metal. The certificate may be included in</p>

<p>This requirement is without prejudice to the legislation on the health protection of workers and members of the public adopted under Chapter III of the Euratom Treaty, in particular Council Directive 96/29/Euratom⁸</p>	<p>other documentation accompanying the consignment.</p>
<p>1.6 The scrap shall not display any of the hazardous properties listed in Annex III to Directive 2008/98/EC. The scrap shall comply with the concentration limits laid down in Commission Decision 2000/532/EC⁹ and shall not exceed the concentration limits laid down in Annex IV to Regulation (EC) No 850/2004.¹⁰</p> <p>Properties of individual elements included in aluminium alloys are not relevant for this requirement.</p>	<p>Qualified staff shall investigate each consignment by visual inspection. Where visual inspection raises any suspicion of possible hazardous properties, further appropriate monitoring measures shall be taken, such as sampling and testing where appropriate.</p> <p>Staff shall be trained on potential hazardous properties that may be associated with aluminium scrap and on material components or features that allow recognising the hazardous properties.</p> <p>The procedure of recognising hazardous materials shall be documented under the quality management system.</p>
<p>1.7 The scrap does not contain any pressurised, closed or insufficiently open containers that could cause explosions in a metalwork furnace.</p>	<p>Qualified staff shall investigate each consignment by visual inspection.</p>
<p>2. Waste used as input in the recovery operation</p>	
<p>2.1 Only waste that contained recoverable aluminium or aluminium alloys may be used as input.</p> <p>2.2 Hazardous waste shall not be used as an input except where proof is provided that the processes and techniques specified under section 3 of this Annex to remove all hazardous properties have been applied.</p> <p>2.3 The following waste shall not be used as an input:</p> <p>(a) filings and turnings that contain fluids such as oil or oily emulsions and</p>	<p>Acceptance control of all waste received (by visual inspection) and of the accompanying documentation shall be carried out by qualified staff which is trained on how to recognise waste that does not fulfil the criteria set out in this Section.</p>

⁹ OJ L 226, 6.9.2000, p. 3.

¹⁰ OJ L L 229, 30.4.2004, p. 1.

(b) barrels and containers, except equipment from end-of-life vehicles, which contain or have contained oil or paints.

3. Treatment processes and techniques

3.1 The aluminium scrap shall have been segregated at source or while collecting and shall have been kept separate or the input waste shall have been treated to separate the **aluminium scrap** from the non-metal and non-aluminium metal components.

3.2 All mechanical treatments (like cutting, shearing, shredding or granulating; sorting, separation, cleaning, de-polluting, emptying) needed to prepare the metal scrap for direct input into final use shall have been completed.

3.3 For waste containing hazardous components the following specific requirements shall apply:

- (a) Input materials that originate from waste electrical or electronic equipment and end-of-life vehicles shall have undergone all treatments required by Article 6 of Directive 2002/96/EC of the European Parliament and of the Council¹¹ and Article 6 of Directive 2000/53/EC of the European Parliament and of the Council¹²;
- (b) Chlorofluorocarbons in discarded equipment shall have been captured in a process approved by the competent authorities;
- (c) Cables shall have been stripped or chopped. If a cable contains organic coatings (plastics), the organic coatings shall have been removed in accordance with the best available techniques;
- (d) Barrels and containers shall have been emptied and cleaned;
- (e) Hazardous substances in waste not mentioned in point (a) shall have

¹¹ OJ L 37, 13.2.2003, p. 24.

¹² OJ L 269, 21.10.2000, p. 34.

been efficiently removed in a process which is approved by the competent authority.

Annex III

Statement of Conformity with the end-of-waste criteria referred to in Article 5(1)

1.	Producer/importer of scrap metal: Name: Address Contact person Tel.: Fax: E-mail:
2.	a) name or code of the scrap metal category, in accordance with an industry specification or standard: b) where relevant, main technical provisions of a customer specification, such as composition, size, type and properties:
3.	The scrap metal consignment complies with the specification or standard referred to in point 2
4.	Quantity of the consignment in tonnes:
5.	A radioactivity test certificate has been established in accordance with national or international rules on monitoring and response procedures for radioactive scrap metal

6.	The producer of scrap metal applies a quality management system complying with Article 6 of Regulation (EU) No... <i>[Please insert the reference of this Regulation once adopted]</i> , which has been verified by an accredited verifier or, where scrap metal which has ceased to be waste is imported into the customs territory of the Union, by an independent verifier.
7.	The scrap metal consignment meets the criteria referred to in paragraphs 1 to 3 of Articles 3 and 4 of Regulation (EU) No... <i>[Please insert the reference of this Regulation once adopted]</i>
8.	<p>Declaration of the producer/importer of scrap metal : I certify that the above information is complete and correct to my best knowledge:</p> <p>Name:</p> <p>Date:</p> <p>Signature:</p>