Brief overview of the EU legal instruments for waste

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OVERVIEW OF EU LEGISLATION AND POLICY IN THE FIELD AND RELATED

WASTE

- Waste Framework Directive
- Batteries Directive
- Directive on end-of-life vehicles
- Landfill Directive
- Extractive Waste Directive
- Packaging Directive
- Plastic Carrier Bags Directive
- Sewage Sludge Directive
- WEEE Directive

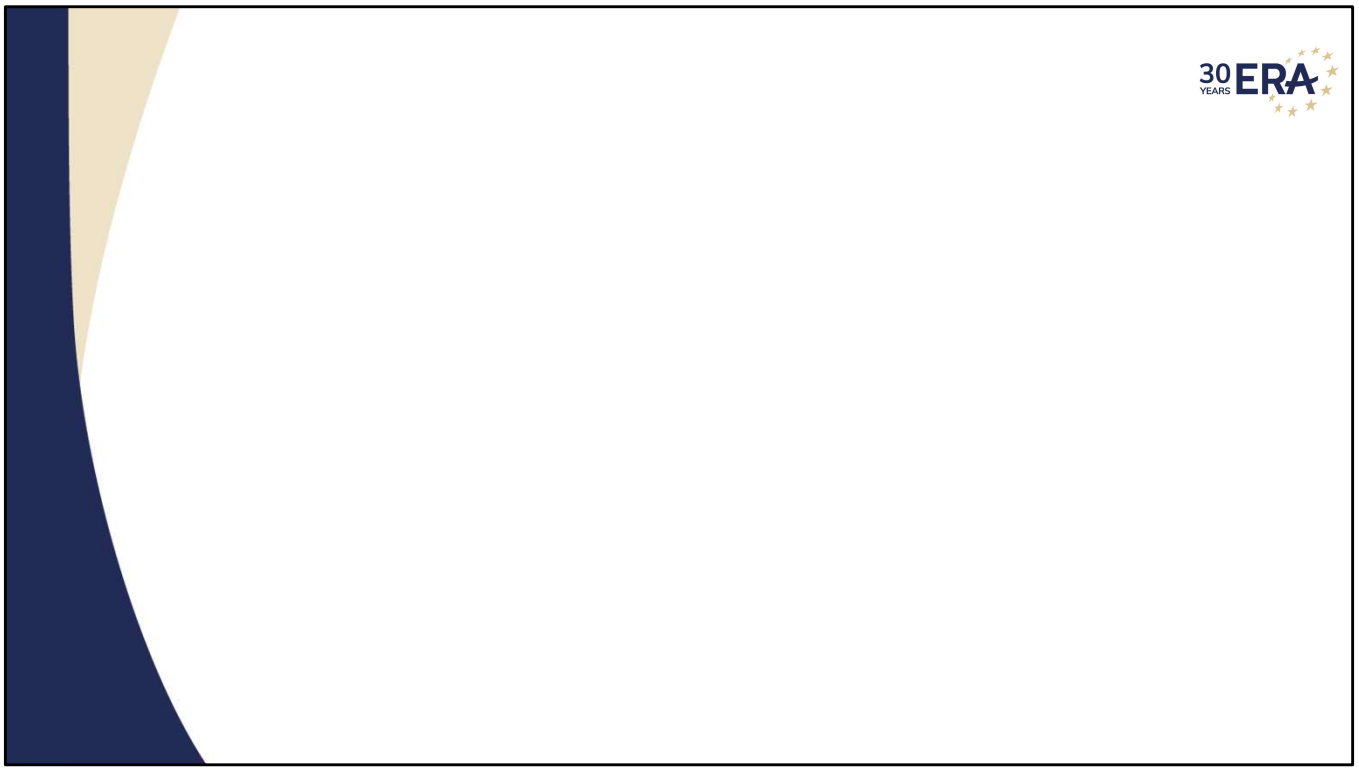
- Other related legislations, guidelines, and decisions (ships, shipments, POPs, etc)
- Related International Law (BRS Conventions, OECD, etc)

CHEMICAL

- REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation
- CLP (Classification, Labelling and Packaging)
- PIC (Prior Informed Consent) Regulation

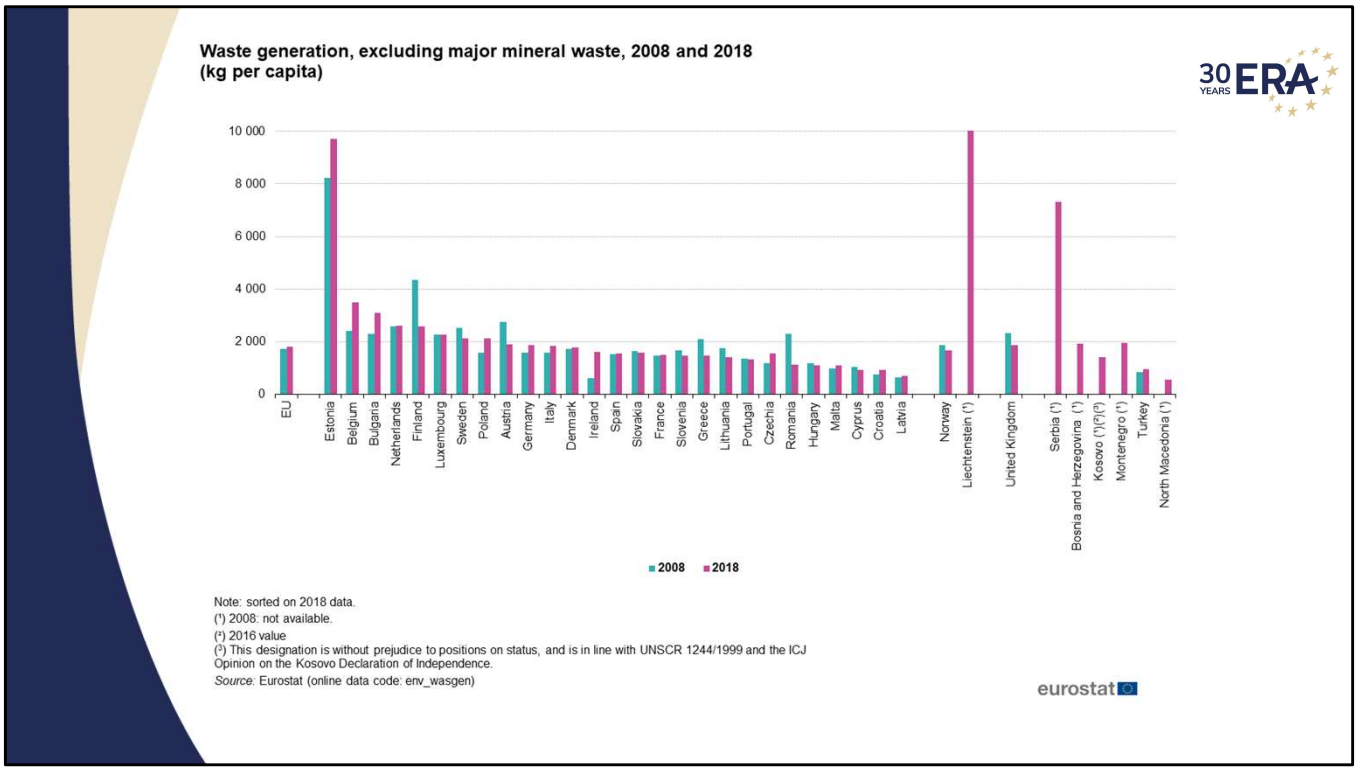
CONNECTED STRATEGIES

- European Green Deal
- Circular Economy Action Plan
- Zero Pollution Action Plan
- European Industrial Strategy
- Europe's Beating Cancer Plan
- Hydrogen Strategy
- Pharmaceuticals Strategy

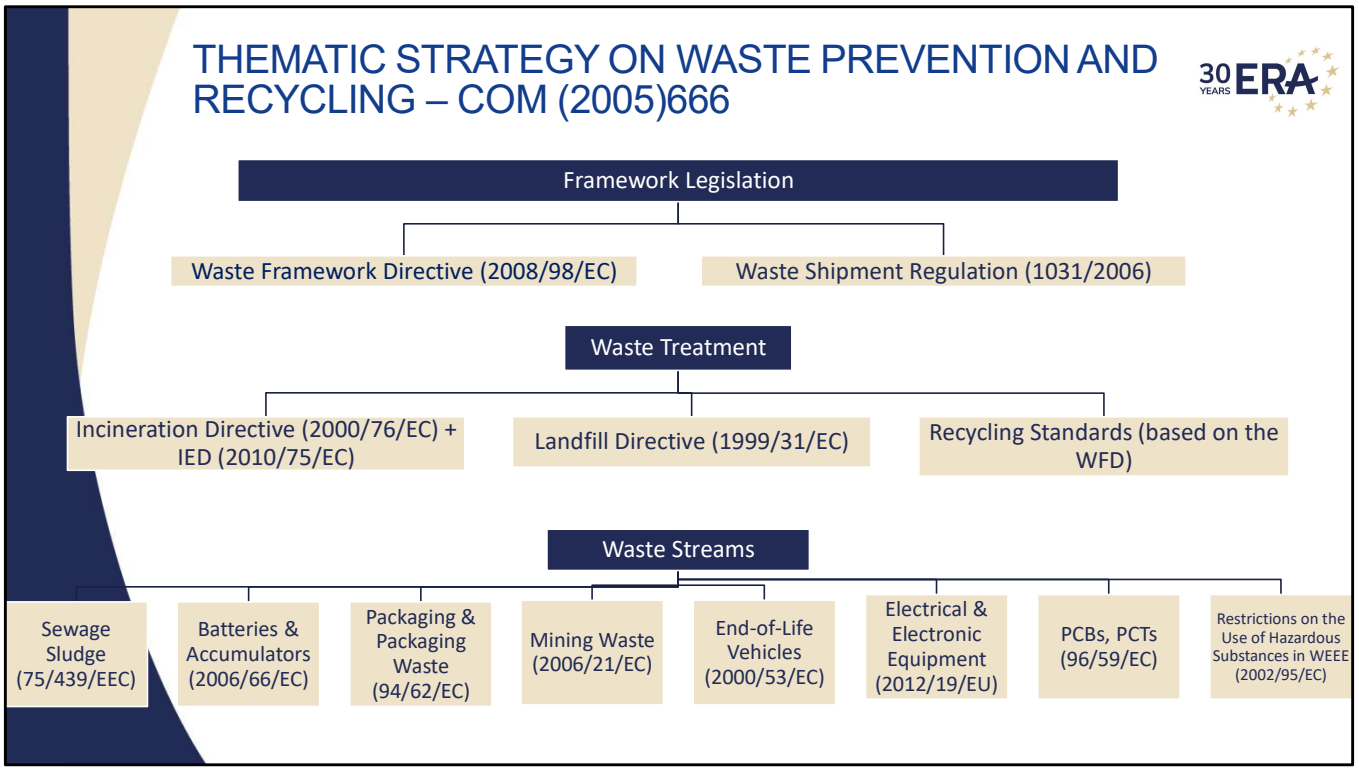


EU Waste Legislation and Policy

EU waste policy aims to contribute to the circular economy by extracting high-quality resources from waste as much as possible.



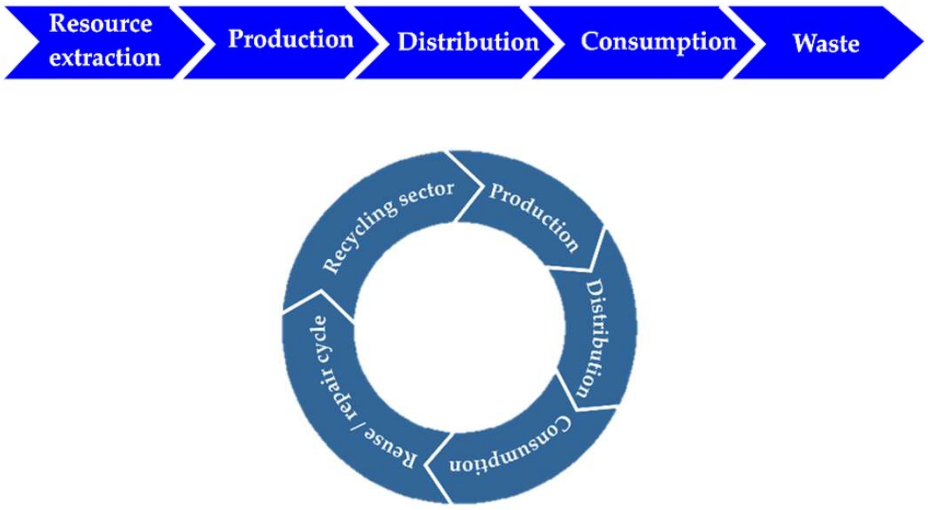
According to the European Union's official statistics (Eurostat), approx. 2.3 billion tons of solid waste were produced in the EU in 2018, excluding organic waste from agriculture and sewage sludge. 5 tonnes of waste is produced by the average European each year. Only 38% of waste in the EU is recycled and over 60% of household waste still goes to landfill in some EU countries.



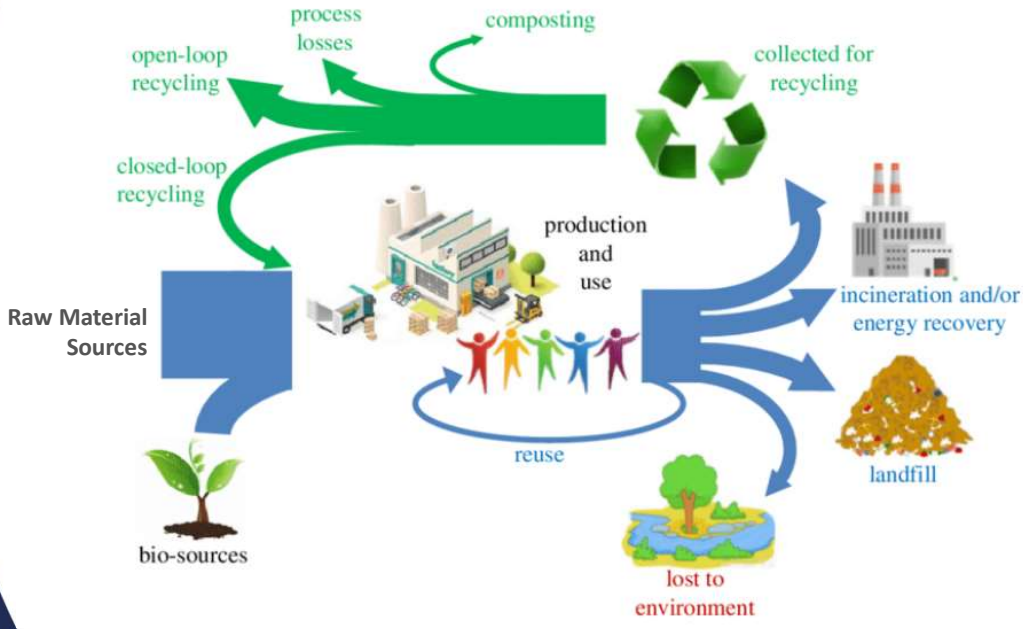
Since the first EU Waste Framework Directive was adopted in 1975, legislation has expanded dramatically to cover many specific waste streams and various areas of waste management, including landfill, hazardous waste, shipment of waste, and waste statistics. Therefore, **as well as the overarching legal framework, the EU has many laws to address different types of waste**.

EU waste policy **aims** to protect the environment and human health and help the EU's transition to a circular economy. It sets objectives and targets to improve waste management, stimulate innovation in recycling and limit landfilling.

Circular Economy



EU waste policy has been subject to constant development. Most notably, the EU decided to **transform its linear economy** (take-make-dispose) **into a Circular Economy.** In this model, the producer is responsible throughout the entire life cycle of the product. From designing to manufacturing, in a way that minimise resource consumption, to recycling and disposing a product which is easy to dismantle.


process
losses
composting
open-loop
recycling
collected for
recycling
closed-loop
recycling
production
and
use
Raw Material
Sources
incineration and/or
energy recovery
reuse
landfill
bio-sources
lost to
environment

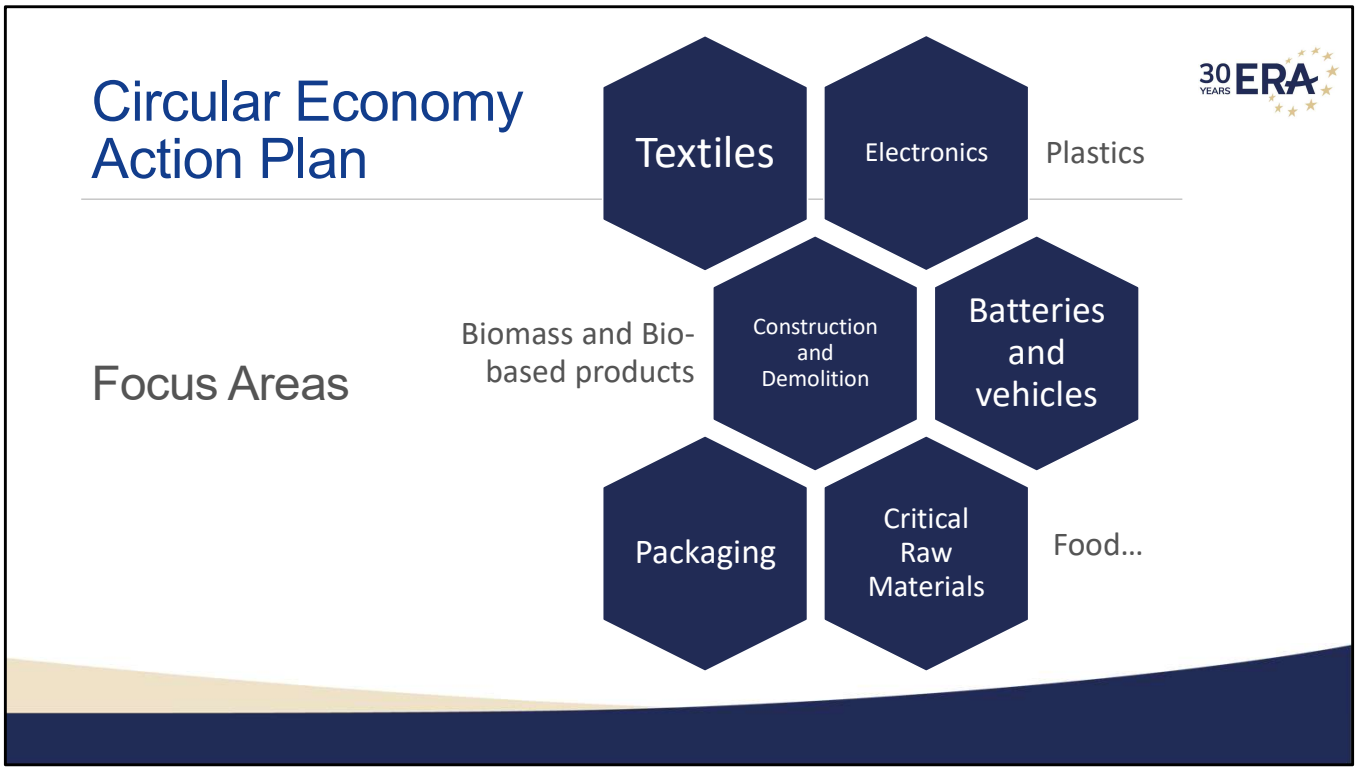
The **European Green Deal** (2020) aims to promote growth by transitioning to a modern, resource-efficient and competitive economy. As part of this transition, several EU waste laws are reviewed here.

The **8th EU Environmental Action Programme** (2021-), as part of the European Green Deal adopted the objective of a "climate-neutral, resource-efficient and regenerative economy (which gives back to the planet more than it takes)." To achieve this goal, it has been identified that coordination among sectoral policies should be enhanced. Furthermore, environmental and

climate concerns should underline a large amount of future European policymaking.

On the same line of thought, and also part of the European Green Deal, the **New Circular Economy Action Plan** (nCEAP) adopted in March 2020 represents the new agenda for Europe's sustainable development.

The nCEAP announces initiatives along the entire life cycle of products. It targets how products are designed, promotes circular economy processes, encourages sustainable consumption, and aims to ensure that waste is prevented, and the resources used are kept in the EU economy for as long as possible. It introduces legislative and non-legislative measures targeting areas where action at the EU level brings real added value.



The objectives of the nCEAP are to:

- Make sustainable products the norm in the EU.
- Empower consumers and public buyers.
- Focus on the sectors that use most resources and where the potential for circularity is high such as: electronics and ICT, batteries and vehicles, packaging, plastics, textiles, construction and buildings, food, water and nutrients.
- Ensure less waste.
- Make circularity work for people, regions and cities.

- Lead global efforts on circular economy.

Circular Economy Action Plan

- 35 actions to be achieved, among which: legislative proposals, criteria, targets, certification and reward systems, revisions, restrictions, strategies, methodologies, etc.
- Goal to enhance circularity in a non-toxic environment
- Strengthens the extended producer responsibility
- Circularity as pre-requisite for climate neutrality

Many of the 35 actions under the nCEAP are delivered or implemented. In 2021, for example, the European Commission adopted a proposal for a new regulation on sustainable batteries, a proposal to update rules on persistent organic pollutants in waste and proposal for news rules on waste shipments. In 2022, the Commission adopted the Sustainable Products Initiative, EU strategy for sustainable and circular textiles, proposal for a revised Construction products Regulation. Several initiatives have been adopted under the nCEAP, most notably a new policy framework on bio-based, biodegradable and compostable plastics, measures to reduce the impact of microplastic pollution on the

environment, and a review of requirements on packaging and packaging waste in the EU.

WASTE FRAMEWORK DIRECTIVE

The EU legal framework pertaining to waste is structured by the so-called **Waste Framework Directive**, which **defines the legal category of waste**. This includes provisions of what is not waste, for example by-products (substances or objects obtained from a production process, the primary aim of which is not the production of that substance or object), and products obtained from recovered waste (further to recycling). These provisions have been among the most litigious of EU environmental law, as the question of whether a given substance or object is waste has been fiercely disputed since 1975 when the predecessor to the current Waste Framework Directive was first adopted.

This is because, uniquely, even waste remains susceptible to the potential of economic exploitation.

Waste Framework Directive
Definition of Waste (Article 3(1)) 1/2

'waste' means any substance or object which the holder discards or intends or is required to discard.

Must be interpreted broadly and on a case-by-case basis.
See, e.g.:
Joined cases C-418/97 and C-419/97 ARCO (2000), paras 36 et seqq; Case C-252/05 Thames Water (2007) para 28; Case C-188/07 Commune de Mesquer (2008), para 39, 44.

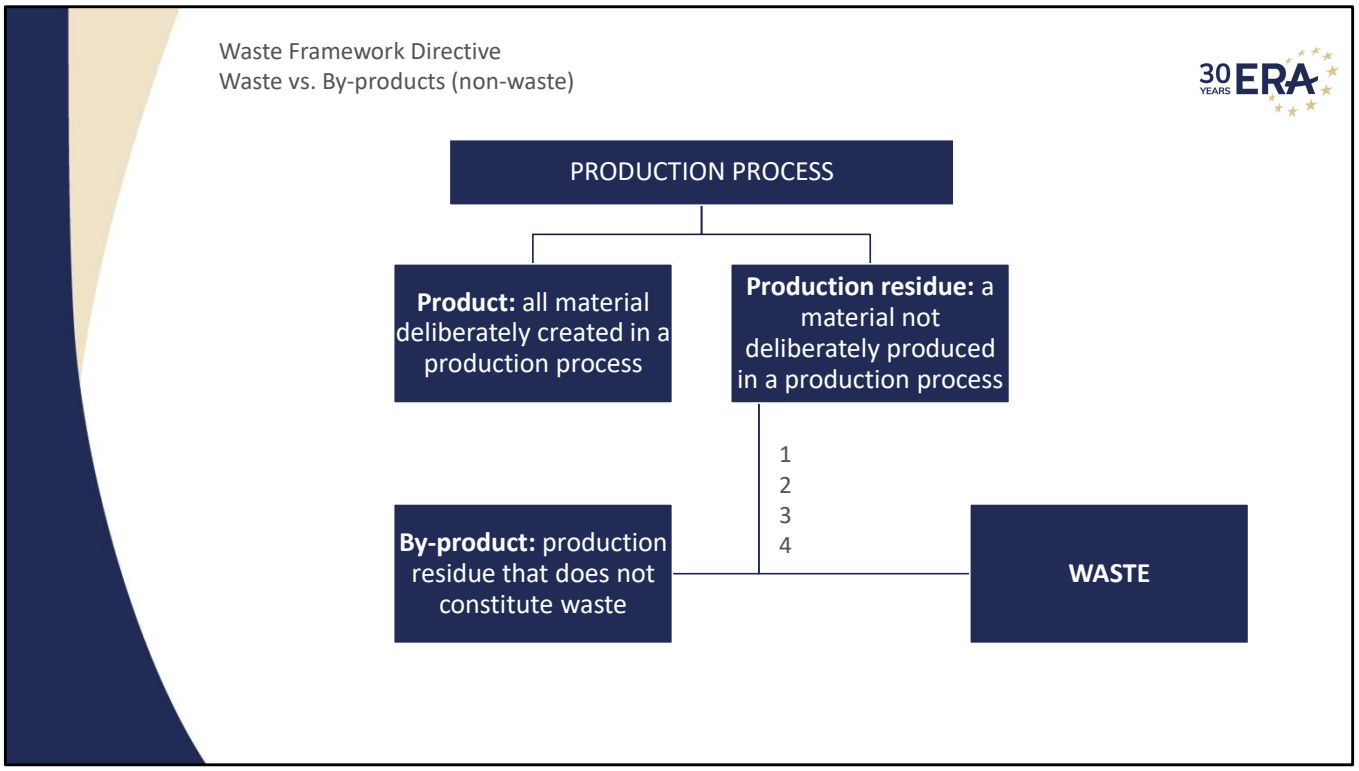
The scope of waste legislation is quite naturally determined by reference to the concept of waste.
The definition of waste is included in Article 3 of the Waste Framework Directive, i.e. Directive 2008/98/EC, modified by Directive (EU) 2018/851, as part of the Circular Economy Waste Package.
Of fundamental importance for the comprehension of the notion of waste is the case-law of the Court of Justice, which has opted to emphasize the environmental protection aspects of the Directive. The Court has adopted a case-by-case approach, considering all the factual circumstances involved. In general, the Court has opted to emphasize the environmental protection aspects of the Directive, with the result that it has applied the definition of waste, and it has considered incompatible with the Directive any attempt to interpret this definition restrictively.

Waste Framework Directive
Definition of Waste (Article 3(1)) 2/2

- **Does it matter if discard is deliberate or accidental?**
  - Case C-252/05 Thames Water (2007) para 28.
  - Case C-1/03 van de Walle (2004) paras 46 et seqq
- **Does it matter if the material/substance has an economic value?**
  - Joined cases C-206/88 and C-207/88 Vessoso and Zanetti (1990), para 9

The existence of 'waste' must be determined in light of all the circumstances, some of which may constitute evidence that a substance or object has been discarded or of an intention or requirement to discard it. Among the circumstances that may constitute such evidence is the fact that a substance is a production or consumption residue, that is to say a product which was not itself sought and for which special precautions must be taken if it is used owing to the environmentally hazardous nature of its composition. Particular attention must be paid to the fact that the substance or object in question is not or is no longer of any use to its holder, such that that substance or object constitutes a burden which that

holder will seek to discard.



The essence of a recovery operation, which is a necessary element for waste to achieve the status of «end of waste», is the waste serving a useful purpose, substituting other materials.

A by-product is a substance or an object which would otherwise be considered waste but meets specific criteria – and is not waste from legal perspective. The classification of 'by-product' and the status of 'waste' are mutually exclusive.

The Court of Justice of the EU, through a number of judgments, has given guidance on when a material can be regarded as something which an undertaking wishes to exploit rather than a substance or object which is being discarded. See, for instance, the judgments: *Palin Granit* (case C-9/00), *Saetti* (case C-235/02), *Euro Tombesi* (joined cases C-304/94, C-330/94, C-342/94 and C-224/95) and *Inter-Environmental (*case C-129/96).

Waste Framework Directive
Key points (1/2)

- Grounded on the waste hierarchy (Article 4 + Article 3(10-19))

The waste hierarchy enounced in Article 4 of the Directive indicates which are the preferred options in treating waste, because they deliver the best environmental outcome. The priority order is the following: prevention, preparing for reuse, recycling, other recovery (e.g. energy recovery) and disposal in landfills.

Waste Framework Directive (Directive 2008/98/EC) - Key points (1/2)

- Grounded on the waste hierarchy
- Confirms the polluter-pays principle (+ precautionary, proximity, and waste hierarchy principles)
- Introduces the concept of Extended Producer Responsibility (articles 3 and 8)
- Makes an explicit distinction between waste and by-products (article 5)
- Establishes that the waste management must be carried out **without any risk** to water, air, soil, plants or animals, **without causing a nuisance** through noise or smells, or harming the countryside or places of special interest.
- Producers or holders of waste must treat it themselves or have it handled by an officially recognised operator. Both require a permit and are inspected periodically.

Waste Framework Directive
Key points (2/2)

- Competent national authorities must establish **waste-management plans** and **waste-prevention programmes**.
- Special conditions apply to **hazardous waste**, **waste oils** and **bio-waste**
- It introduces **recycling and recovery targets** to be achieved by 2020 for household waste (50%) and construction and demolition waste (70%) *
- The legislation does not cover certain types of waste such as radioactive elements, decommissioned explosives, faecal matter, waste waters and animal carcasses. (article 2)

Member States must ensure that an integrated and adequate network of waste management installations be established; these installations must be controlled by the competent authorities. In addition, they must adopt waste management plans and waste prevention programmes.

Amendments
(focus on Amending Directive (EU) 2018/851)

It sets minimum operating requirements for extended producer-responsibility schemes. These can also include organisational responsibility and a responsibility to contribute to waste prevention and to the reusability and recyclability of products.

- It strengthens rules on waste prevention. It also sets new municipal-waste-recycling targets: by 2025, at least 55% of municipal waste by weight will have to be recycled. This target will rise to 60% by 2030 and 65% by 2035.
- Member States must:
  - establish, by 1 January 2025, separate collection of textiles and hazardous waste generated by households;
  - ensure that, by 31 December 2023, bio-waste is collected separately or recycled at source (for example, by composting).

In 2018 the Waste Framework Directive (2008/98/EC) was amended by Directive 2018/851, which is considered part of the Union's Circular Economy Package.

Hazardous waste

Hazardous waste is waste with one or more of the **hazardous properties** listed in Annex III of the EU's Waste Framework Directive

In particular, Articles 17 (control), 18 (ban on mixing of hazardous waste, 19 (labelling), and 20 (hazardous waste produced from household).

The decision 2014/955/EU (so called list of waste) is a reference nomenclature for classification of waste which has a major impact, *inter alia,* on transport of waste and installation permits.

Thank you!

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