

## **Federal Government Draft**

### **Regulation on strengthening the management of commercial municipal waste and certain construction and demolition waste**

#### **A. Problem and objective**

The Commercial Waste Ordinance was recast by the Ordinance of 18 April 2017 (Federal Law Gazette I, p. 896). The recast introduced stringent rules for the separate collection and treatment of commercial municipal waste and construction and demolition waste, as well as specific requirements for pre-treatment plants. The recast and subsequent amendments aimed in particular at strengthening the recycling of commercial municipal waste and construction and demolition waste. For the first time, a recycling rate for the pre-treatment of non-mineral waste was legally enshrined. Furthermore, the new version served to improve enforcement. The achievement of these objectives was verified over a period of three years by a research project entitled “Development of the basis for the evaluation of the Commercial Waste Ordinance” (UBA-Texte 47/2023) on behalf of the Federal Environment Agency.

The results of this research project show that the new concept of obligations has proven itself in principle, but the Ordinance of 18 April 2017 (Federal Law Gazette I p. 896) was not able to fully achieve its intended effect. This applies both to the enforcement of separate collection and to the achievement of the target recycling rate for the pre-treatment of mixtures. Too often, waste that should be collected separately is still recorded as mixed, and too often, waste that can be pre-treated is still recovered for energy. According to the findings of the research project, the causes lie both in the insufficient implementation by waste producers and owners, in partly unclear formulations in the regulations, and in deficits in official enforcement (see also paragraphs 1 and 2 of the decision on item 22 of the 101st meeting). Conference of Environment Ministers on 1 December 2023).

The aim of this Regulation is therefore to make the previous provisions of the Commercial Waste Ordinance even more stringent and enforceable and to strengthen the regulatory control of the separate collection of commercial municipal waste and of construction and demolition waste in order to improve separate collection and to ensure the achievement of the target recycling rate for the pre-treatment of mixtures. Better separate collection of individual waste fractions should also be enforced in the context of the collection of construction and demolition waste. In particular, non-hazardous asbestos-containing waste must be discharged (see also points 4 and 5 of the Decision on Item 22 of the 101. Conference of Environment Ministers on 1 December 2023 and circulation decision number 55/2021).

This draft is in the context of the jeopardised timely achievement of the objectives of the UN General Assembly resolution of 25 September 2015 “Transforming our world: the 2030 Agenda for Sustainable Development”, and in particular contributes to the achievement of SDG 12 to significantly reduce waste generation through prevention, reduction, recycling and reuse.

#### **B. Solution**

The evaluation of the Commercial Waste Ordinance has shown that existing recycling potentials for commercial municipal waste as well as construction and demolition waste are not sufficiently exploited. According to the sorting analyses, mixed commercial municipal

waste is 27 % by mass recyclable, but is currently only recycled to 4 % by mass. In order to promote recycling, the entire management of commercial municipal waste as well as construction and demolition waste must be considered. The introduction of a labelling requirement for collection containers will initially strengthen the separate collection of waste at the point of generation. Pre-treatment of mixed municipal waste is made more stringent by restricting sequential pre-treatment, while at the same time simplifying regulatory monitoring. In addition, to facilitate enforcement, the possibility of involving experts is introduced both in the verification of separate collection and in the pre-treatment of mixtures. Finally, operators of energy recovery plants are also included as addressees of the Regulation and are obliged to carry out random checks on the waste delivered. This is intended to ensure that recyclable waste is not subjected to energy recovery.

## **C. Alternatives**

None. In particular, it was examined whether measures at the enforcement level alone can improve the specific situation in the enforcement of the obligations of the Commercial Waste Ordinance. It has been shown that improving implementation by the Länder is an indispensable prerequisite for achieving the objectives of the Commercial Waste Ordinance, but that only by further developing the legal framework can the necessary impetus be given to this. The objectives set out in point A can therefore only be achieved by amending the Commercial Waste Ordinance.

## **D. Budgetary expenditure exclusive of compliance costs**

Any resulting additional requirements in terms of material and personnel resources in the federal sector must be counter-financed financially and in terms of posts in the respective section of the budget.

## **E. Compliance costs**

### **E.1 Compliance costs for citizens**

There are no compliance costs for citizens.

### **E.2 Compliance costs for businesses**

Overall, the regulation results in an annual reduction of the burden on the economy of around EUR 15.2 million. The additional annual compliance costs of around EUR 3 million are offset by reductions of around EUR 18.2 million. The regulation results in a one-off conversion cost of approximately EUR 16.7 million.

As the Ordinance does not create any additional compliance costs overall, the relief for industry under the one-in, one-out rule for new regulatory projects of the Federal Government (see Cabinet Decision of 25 March 2015) amounts to EUR 15.2 million.

Of the 28 information requirements set out in this Regulation, 20 remain unchanged and 7 are amended. In addition, an obligation to provide information is newly established. The industry does not incur any additional compliance costs as a result of the amended or newly established information obligations.

### **E.3 Compliance costs for the authorities**

Overall, this Regulation results in an additional annual compliance cost for the administration of the Länder of around EUR 3.4 million. This results in a one-off conversion expense of around EUR 3.1 million.

### **F. Further costs**

No effects on individual prices and price levels, particularly consumer price levels, are anticipated.

## Federal Government Draft

### Regulation on strengthening the management of commercial municipal waste and certain construction and demolition waste<sup>1)</sup>

Dated ...

Pursuant to

- Section 8(2), sentence 1, point 2, and Section 65(2) in conjunction with Section 67 of the Kreislaufwirtschaftsgesetz (Circular Economy Act) of 24 February 2012 (Federal Law Gazette I p. 212), after consulting the parties concerned and ... [insert: while respecting the rights of the Bundestag OR with the consent of the Bundestag OR taking into account the resolution of the Bundestag of ...] and
- Section 10(1) point 2 and 3 and (2) point 1 to 4, Section 16 sentence 1 point 2 and Section 43(1) sentence 1 point 3 Kreislaufwirtschaftsgesetz, of which Section 10(1) part of the sentence before point 1 has been amended by Article 1 point 10 letter a, double letter aa and Section 10(1)(2) by Article 1 point 10 letter a, double letter bb of the Law of 23 October 2020 (Federal Law Gazette I, p. 2232), after consulting the parties concerned.

the Federal German Government hereby decrees as follows:

## Article 1

### Amendment of the Commercial Waste Ordinance

The Commercial Waste Ordinance of 18 April 2017 (Federal Law Gazette I, p. 896), last amended by Article 3 of the Ordinance of 28 April 2022 (Federal Law Gazette I, p. 700), is amended as follows:

1. The table of contents is amended as follows:
  - a) The following entry is inserted after the entry relating to Section 3:

“Section 3a Monitoring of separate collection”.
  - b) The following information shall be inserted before the information relating to Section 10:

“Section 9a Labelling of waste containers”.
  - c) The entry for Section 13 shall be worded as follows:

“Section 13 Register of pre-treatment plants.”
  - d) The entry for Section 14 shall be worded as follows:

“Section 14 Sampling inspection of energy recovery plants.”
  - e) The entry relating to Section 15 is worded as follows:

<sup>1)</sup>Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1)”

“Section 15 Administrative offences”.

f) The reference to the Annex is replaced by the following:

“Annex 1 (to Section 3(3)) Documentation on the separate collection of commercial municipal waste pursuant to Section 3(3) Commercial Waste Ordinance (GewAbfV)

Annex 2 (to Section 4(5)) Documentation on mixed collected commercial municipal waste pursuant to Section 4(5) Commercial Waste Ordinance (GewAbfV)

Annex 3 (to Article 6(1)) Minimum technical requirements for pre-treatment plants

Annex 4 (to Section 8(3)) Documentation on the separate collection of construction and demolition waste pursuant to Section 8(3) Commercial Waste Ordinance (GewAbfV)

Annex 5 (to Section 9(6)) Documentation on mixed collected construction and demolition waste pursuant to Section 9(6) Commercial Waste Ordinance (GewAbfV)”.

2. Section 1 (2) point 2 shall be worded as follows:

1. “ Operators of
  - a) Pre-treatment plants
  - b) treatment plants and
  - c) plants for energy recovery.”

3. Section 2 shall be amended as follows:

a) Point 6 shall be worded as follows:

1. “Energy recovery plant:  
plant in which waste is recovered or processed for energy recovery,”.

b) In point 7, before the word “interconnected”, the word “two” is inserted and the words “all plants” are replaced by the words “both plants”.

c) In point 8, before the word “interconnected”, the word “two” is inserted, the words “all plants” are each replaced by the words “both plants”, and the full stop at the end is replaced by a comma.

d) The following point 9 is added:

1. “Approved expert:  
each person,
  - a) the competence of which has been established by an accreditation from the national accreditation body in a generally recognised procedure;
  - b) who, as an environmental auditor or environmental auditing organisation, is authorised on the basis of an authorisation pursuant to Sections 9 and 10 of the Environmental Audit Act (Umweltauditgesetz) in the version of the announcement of 4 September 2002 (Federal Law Gazette I, p. 3490), last amended by Article 17 of the Act of 10 August 2021 (Federal Law Gazette I, p. 3436), as amended, or in accordance with of Section 18 of the Environmental Audit Act, may operate in the area specified in more detail in Annex I Section E Division 38 of Regula-

tion (EC) No. 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No. 3037/90 and certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1), as last amended by Regulation (EU) 2019/1243 (OJ L 198, 25.7.2019, p. 241), as amended,

c) which is publicly appointed in accordance with Section 36 Industrial Code (Gewerbeordnung), or

d) who is established in another Member State of the European Union or in a Contracting State to the Agreement on the European Economic Area, who intends to carry out his activity in Germany only temporarily and occasionally and who has had his professional qualification verified in accordance with Section 13a Industrial Code (Gewerbeordnung) before commencing his activity; Section 13b of the Industrial Code (Gewerbeordnung) shall apply mutatis mutandis; The procedures referred to in this point may be carried out through a single body.”

4. Section 3 shall be amended as follows:

a) Paragraph 2 is amended as follows:

a%6) The following sentence is inserted after sentence 1:

“Separate collection is technically not possible when the possibilities for fulfilling the obligations have been examined and ruled out.”

b%6) The following sentence is added:

“A very small quantity cannot be assumed if more than 10 kilograms of the respective waste fraction are usually generated within one week.”

b) Paragraph 3 is amended as follows:

a%6) Sentence 2 is amended as follows:

a%7%7) In point 1, the word “location plans” shall be deleted, and the comma after “photographs” shall be replaced by the word “and”.

b%7%7) In point 2, the words “the intended whereabouts of the waste” are replaced by the words “the name and address of the operator of the plant to which the waste is to be sent”.

b%6) Sentence 3 is replaced by the following sentences:

“The form referred to in Annex 1 shall be used for documentation purposes. The documentation is to be presented at the request of the competent authority. The submission may be made electronically and shall be made electronically at the request of the competent authority. Where there are indications that the documentation is incorrect, the competent authority may appoint an approved expert to verify the information contained in the documentation. The competent authority shall, before appointing an approved expert, give the producer or holder the opportunity to submit their observations, providing them with the available information. If the approved expert finds that the documentation is incorrect, the competent authority may require the producer or holder to reimburse the costs of commissioning the approved ex-

pert. The competent authority shall, upon receipt, submit the test report of the approved expert to the producer or holder.

5. After § 3, the following § 3a is inserted:

‘§ 3a

Monitoring of separate collection

(1) The competent authority shall identify and list producers of commercial municipal waste within its area of responsibility. The list shall be regularly reviewed and, where necessary, updated by the competent authority.

(2) On the basis of the list, the competent authority shall carry out random checks on a number of establishments determined by it. At least ten establishments per 100 000 inhabitants in the area of responsibility of the authority must be inspected annually. The checks shall be carried out at random on the basis of a prior risk analysis. The risk analysis can be carried out on the basis of:

1. sector-specific characteristics;
2. the type and quantity of waste; or
3. non-compliances already established, in particular against provisions;
  - a) criminal law on offences endangering the public or offences against the environment;
  - b) immission control, waste, water, nature and landscape protection, chemicals, genetic engineering, or nuclear and radiation protection law,
  - c) under food-safety, pharmaceutical, plant-protection or infection-prevention legislation;
  - d) trade, occupational health and safety, transport or dangerous goods law, or
  - e) under legislation on narcotics, weapons or explosives.

The checks shall be carried out by examining the documentation in accordance with Section 3(3) and Section 4(5).

(3) For at least half of the establishments selected in accordance with (2) per 100 000 inhabitants, the competent authority shall carry out additional on-the-spot visits.

(4) If the competent authority has established infringements of Section 3(1) or (3) or Section 4(1) or (5), it shall take the necessary measures at its dutiful discretion. In addition, the competent authority shall conduct a new inspection within one year of the determination of the infringement.”

6. Section 4 is amended as follows:

- a) (3) sentence 3 is repealed.
- b) in (5), the second to fifth sentences are replaced by the following:

“The documentation shall be carried out by means of photographs, practical evidence, such as delivery or weighing notes or similar documents, disposal contracts, and evidence of the person who takes over the waste to be delivered. The form set out in Annex 2 shall be used for documentation purposes. The documentation is to be presented at the request of the competent authority. The submission may be made electronically and shall be made electronically at the request of the competent authority. Where there are indications that the documentation is incorrect, the competent authority may appoint an approved expert to verify the information in the documentation. The competent authority shall, before appointing an approved expert, give the producer or holder the opportunity to submit their observations, providing them with the available information. If the approved expert finds that the documentation is incorrect, the competent authority may require the producer or holder to reimburse the costs of commissioning the approved expert. The competent authority shall, upon receipt, submit the test report of the approved expert to the producer or holder.

a) (6) is repealed.

7. Section 6 is amended as follows:

a) (1) shall be amended as follows:

a%6) In sentence 1, after the words “in the Annex”, the indication “3” is inserted, and after the words “to equip components”, the words “and to treat the accepted waste with the components” are inserted.

b%6) In sentence 2, the word “multiple” is replaced by the word “two” and the words “these plants” are replaced by the words “the two plants”.

c%6) In sentence 3, the word “Waste” is replaced by the word “Mixtures”.

d%6) The following sentence is added:

“By way of derogation from sentence 1, the competent authority shall:

1. refrain from one or more of the components listed in Annex 3 where it is likely that the quotas referred to in (3) and (5) will still be respected; and

2. to recognise as equivalent components other than those referred to in Annex 3 if it is demonstrated that they are equivalent with regard to the requirements referred to therein; Recognition shall be deemed to have been granted if the authority does not recognise equivalence within one month of receipt of the application; In all other respects, Section 42a of the Administrative Procedure Act shall apply mutatis mutandis.

b) (4) shall be amended as follows:

a%6) Sentence 1 shall be worded as follows:

“Operators of pre-treatment plants shall determine the sorting rate for each calendar year, document it immediately after determination, and submit the documentation to the competent authority by 31 March of the following year; at the request of the competent authority, the submission shall be made electronically in a format determined by the competent authority, indicating the basis for calculation.”;

b%6) The following sentence is inserted after sentence 1:



"In addition, operators of pre-treatment plants shall determine the sorting rate for each month and document it immediately after determination."

c%6) In the new sentence 6, the words "the operators of the downstream plants shall share with it" are replaced by the words "the operator of the downstream plant shall inform it".

d%6) In the new sentence 7, the words "downstream operators" are replaced by the words "the operator of the downstream plant".

c) (5) shall be amended as follows:

a%6) In sentence 1, the words "from 1 January 2019 at the latest" are deleted.

b%6) Sentence 2 is repealed.

a) (6) shall be amended as follows:

a%6) In sentence 1, the full stop at the end is replaced by a semicolon and the following clause is added:

"Submission shall be made electronically, at the request of the competent authority, in a format determined by the competent authority, indicating the basis for calculation.";

b%6) In sentence 4, the words "the operators of the downstream plants shall share with it" are replaced by the words "the operator of the downstream plant shall inform it".

c%6) In sentence 5, the words "the operators of the downstream plants" are replaced by the words "the operator of the downstream plant".

8. Section 8 is amended as follows:

a) (1) sentence 1) is amended as follows:

a%6) in point 5, the following words are added:

"subdivided into rock wool, glass wool and other insulation materials,".

b%6) The following words are added to point 7:

"subdivided into plasterboard, gypsum fibreboard and other gypsum-based building materials,".

c%6) the following sentence is inserted before sentence 2:

"Without prejudice to sentence 1, points 1 to 10, non-hazardous construction and demolition waste containing asbestos pursuant to Section 2 point 38, of the Landfill Ordinance of 27 April 2009 (Federal Law Gazette I p.900), last amended by Article 2 of the Ordinance of ... [insert: the date of issue and reference of this Regulation], separately from the other waste fractions, to be collected, transported, and disposed of properly and without damage."

b) (2) shall be amended as follows:

a%6) In sentence 1, after the words “(1), sentence 1”, the words “and sentence 2” are inserted.

b%6) The following sentence is inserted after sentence 1:

“Separate collection is technically not possible when the possibilities for fulfilling the obligations have been examined and ruled out.”

c%6) After the new sentence 5, the following sentence is added:

“A very small quantity shall not be assumed if more than 1 cubic metre of a waste fraction is generated per construction or demolition operation.”

c) Paragraph 3 is amended as follows:

a%6) Sentence 2 is amended as follows:

a%7%7) In point 1, the word “location plans” shall be deleted, and the comma after “photographs” shall be replaced by the word “and”.

b%7%7) In point 2, the words “the intended whereabouts of the waste” are replaced by the words “the name and address of the operator of the plant to which the waste is to be sent”.

b%6) Sentence 3 is replaced by the following sentences:

“The form referred to in Annex 4 shall be used for documentation purposes. The documentation is to be presented at the request of the competent authority. The submission may be made electronically and shall be made electronically at the request of the competent authority. Where there are indications that the documentation is incorrect, the competent authority may appoint an approved expert to verify the information in the documentation. The competent authority shall, before appointing an approved expert, give the producer or holder the opportunity to submit their observations, providing them with the available information. If the approved expert finds that the documentation is incorrect, the competent authority may require the producer or holder to reimburse the costs of commissioning the approved expert. The competent authority shall submit the test report of the approved expert to the producer or holder upon receipt.”

c%6) In the new sentence 9, “3” is replaced by “8”.

9. Section 9 (6) shall be amended as follows:

a) Sentence 2 shall be worded as follows:

“Documentation shall be carried out by means of photographs, practical evidence, such as delivery or weighing notes or similar documents, disposal contracts and evidence of the person taking over the waste to be delivered.”

b) Sentence 3 is replaced by the following sentences:

“The form set out in Annex 5 shall be used for documentation purposes. The documentation is to be presented at the request of the competent authority. The submission may be made electronically and shall be made electronically at the request of the competent authority. Where there are indications that the documentation is incorrect, the competent authority may appoint an approved expert to verify the information in the documentation. The competent authority shall, before

appointing an approved expert, give the producer or holder the opportunity to submit their observations, providing them with the available information. If the approved expert finds that the documentation is incorrect, the competent authority may require the producer or holder to reimburse the costs of commissioning the approved expert. The competent authority shall, upon receipt, submit the test report of the approved expert to the producer or holder.

a) In the new sentence 9, “3” is replaced by “8”.

10. Section 10 shall be preceded by the following Section 9a:

“9a

#### Labelling of waste containers

(1) Producers and holders who are required to collect waste separately in accordance with Section 3(1) sentence 1 and Section 8(1) sentence 1 shall ensure that the waste containers used for this purpose are labelled in such a way as to ensure proper separate collection in accordance with sentence 2. For this purpose, the waste fraction to be collected in the container must be clearly visible on the outer surface of the container and must be designated at least in German.

(2) Producers and holders of non-separated waste shall ensure that the waste containers used to collect the mixtures are labelled in accordance with sentence 2. For this purpose, the outer surface of the waste containers shall clearly indicate the waste fractions which are not permitted in the mixtures pursuant to Section 4(1) sentences 1 and 2, and (4) sentence 1, as well as Section 9(1), sentence 1, and (3) sentence 1, and shall at least be designated in German.”

11. The following Sections 13 and 14 are inserted after Section 12:

§ 1“

#### Register of pre-treatment plants

(1) The Länder maintain a nationwide uniform electronic register of pre-treatment plants. As far as possible, they use data from the Waste Management Company Register pursuant to Section 28 of the Ordinance on Specialised Waste Management Companies.

(2) The register of pre-treatment plants shall include at least:

1. the name and address of the operator,
2. the name and location of the plant;
3. the components operated in the plant pursuant to Section 6(1) sentence 1, and the capacity as a cascade plant pursuant to Section 6(1), sentences 2 and 3.

(3) The register of pre-treatment plants shall be updated regularly, at least annually. It shall be made available to the public in an appropriate manner.

(4) Further details on the establishment and maintenance of the register are regulated by agreement between the Länder.

§ 2

Sampling inspection of energy recovery plants

(1) Operators of energy recovery plants shall, on a random basis, inspect at least one delivery of waste per month in accordance with (2), document the result of the inspection, and submit it to the competent authority upon request. Documentation of the inspection shall be carried out, in particular, by means of photographs.

(2) The sample check shall include a visual inspection and the determination that:

1. the name and address of the person delivering the waste;
2. the mass and origin area of the delivered waste,
3. the waste key in accordance with the Annex of the Waste Catalogue Ordinance,
4. the pre-treatment of waste in a pre-treatment plant included in the register of pre-treatment plants pursuant to Section 13; and
5. indications that the waste was clearly not pre-treated contrary to Section 4(1) or Section 9(1)."

12. The previous Section 13 becomes Section 15 and is amended as follows:

a) In (1), point 1, after the words: "Section 8(1) sentence 1" the words "or sentence 2" have been inserted.

b) (2) shall be amended as follows:

a%6) In point 2, the words "Section 3(3), sentence 3" are replaced by the words "Section 3(3), sentence 4, first half-sentence" and the words "Section 6(6), sentence 1" are replaced by the words "Section 6(4), sentence 1, first half-sentence or Section 6(6), sentence 1, first half-sentence".

b%6) The following point 7a is inserted after point 7:

"7a. contrary to Section 9a(1) sentence 1, or (2), sentence 1, does not ensure that a waste container is marked,".

c%6) In point 13, at the end, the word "or" is replaced with a comma.

d%6) In point 14, the full stop at the end is replaced by the word "or".

e%6) The following point 15 is inserted after point 14:

"15. contrary to sentence 1 of Section 14(1), fails to carry out a random check, fails to do so correctly, fails to do so in full or fails to do so in good time."

13. The previous Sections 14 and 15 shall be repealed.

14. The Annex shall be preceded by Annexes 1 and 2 as set out in the notes to this Regulation.

15. The current Annex becomes Annex 3 and is amended as follows:

- a) In point 3, after the word “**sorting cabin**”, the words “**or sorting robot**” are inserted.
- b) Point 5 is worded as follows:
  - 1. “Near-infrared units for the application of
    - a) plastic with an output of at least 85 percent,
    - b) wood with a yield of at least 85 percent; or
    - c) Paper with a yield of at least 85 per cent.”

16. Appendices 4 and 5, as shown in the Annex to this Regulation, are added.

## Article 2

### Amendment of the Landfill Ordinance

The Landfill Ordinance of 27 April 2009 (Federal Law Gazette I, p. 900), as last amended by Article 3 of the Act of 3 July 2024 (BGBl. 2024 I, No 225), is amended as follows:

17. Section 2 shall be amended as follows:

- a) In point 37 the full stop at the end is replaced by a semicolon.
- b) The following points 38 and 39 are added:

“38. Non-hazardous construction and demolition waste containing asbestos: mineral construction and demolition waste with less than 0.1 % by mass of asbestos resulting from demolition, remediation, or maintenance activities for which a non-hazardous mirror entry exists in Chapter 17 of the Annex to the Waste Catalogue Ordinance;

39. Non-hazardous soil material containing asbestos: Soil material containing less than 0.1 % by mass of asbestos.

18. Section 6 is amended as follows:

- a) In sentence 1 of (1a), in the part of the sentence preceding point 1, the words “**Subsection 2**” are replaced by the words “**Subsection 3**”.
- b) In sentence 3 of (3), the words “**Sentence 1 and sentence 2 shall apply to waste containing asbestos**” are replaced by the words “**Sentences 1 and 2 shall apply to waste containing asbestos, with the exception of non-hazardous construction and demolition waste containing asbestos and non-hazardous soil material containing asbestos**”.

19. Section 8 is amended as follows:

- a) (2) sentence 1, point 1 is worded as follows:

“1. in the case of waste containing asbestos, with the exception of non-hazardous construction and demolition waste containing asbestos and non-hazardous soil material containing asbestos,”.

- b) In (5) sentence 9, after the words “waste containing asbestos”, the words “, other than non-hazardous asbestos-containing construction and demolition waste and non-hazardous asbestos-containing soil material,” are inserted.
20. In Annex 5, point 10, point 9, after the words “waste containing asbestos”, the words “, other than non-hazardous asbestos-containing construction and demolition waste and non-hazardous asbestos-containing soil material,” are inserted.

### **Article 3**

#### **Entry into force**

This Regulation shall enter into force on 1 July 2026.

Approved by the Bundesrat.

## Annex to Article 1(14) and (16)

### Annex 1

(re Section 3(3))

#### Documentation on the separate collection of commercial municipal waste pursuant to Section 3(3) of the Commercial Waste Ordinance (GewAbfV)

##### 1. Farm information:

1.1 Name

1.2 Address

1.3 Contact person (name, phone, e-mail)

##### 2. Documentation on the separate collection of commercial municipal waste pursuant to Section 3(1) GewAbfV

No	Waste fraction:	Mass per calendar year in tonnes	Divisor for determining the volume <sup>1</sup>	Volume per calendar year in m <sup>3</sup>	Name and address of the person taking over the waste
1	Paper, cardboard, carton (no hygienic paper)		0.15		
2	Glass		1.20		
3	Plastic		1.30		
4	Metals		1.00		

<sup>1</sup> To determine the volume, use the formula  $\text{Volume} = \text{Mass} \div \text{Divisor}$ .

No	Waste fraction:	Mass per calendar year in tonnes	Divisor for determining the volume	Volume per calendar year in m <sup>3</sup>	Name and address of the person taking over the waste
5	Wood		0.48		
6	Textile		0.40		
7	Biowaste (un-packaged)		0.60		
8	Biowaste (packaged)		0.60		
9	other waste to be collected separately (pursuant to Section 2(1)(1) (b) GewAbfV)		No factor		
10	Residual waste pursuant to Section 7(2) GewAbfV		0.1		Not applicable due to transfer to the public waste disposal agency

In accordance with Section 3(3) sentence 2, point 1 GewAbfV, attach the following documents to the documentation:

- Photographs and
- Practical documents, such as delivery or weighing slips or similar documents.

**3. Documentation of the supply of separately collected waste for recovery pursuant to Section 3(3) sentence 2, point 2 GewAbfV**

To this end, a declaration from the person who takes over the waste must be attached. The declaration shall contain the following information:

- the name and address of the person taking over the waste;
- the mass of the waste received,
- the method of recovery and



- the intended destination of the waste.

**4. Derogation from the obligation to collect separately pursuant to Section 3(3) sentence 2, point 3 GewAbfV**

If, for reasons of technical impossibility or economic unreasonableness, the obligation to separate the collection of commercial municipal waste is derogated from, the waste fractions concerned shall be indicated in the table below and the reasons for this shall be set out in the text box on the next page.

Please note that in the event of a deviation from the obligation of separate collection, Annex 2 must also be completed.

Waste fractions collected in the mixture <sup>2</sup>	The separate collection of the waste fraction is:	
	technically not possible	economically unreasonable
	<input type="checkbox"/>	<input type="checkbox"/>

Please include here your justification for deviating from the obligation of separate collection and what options you have considered to fulfil your obligations:

th  
nd



5  
2  
5)

**Documentation on mixed collected commercial municipal waste pursuant to Section 4(5) of the Commercial Waste Ordinance (GewAbfV)**

**1. Farm information:**

- 1.1 Name
- 1.2 Address
- 1.3 Contact person (name, phone, e-mail)

**2. Documentation on the collection of mixed commercial municipal waste (mixtures) pursuant to Section 3(2) and Section 4(1) GewAbfV**

2.1 In the mixed<sup>2</sup> collected waste fractions

2.2 Quantity and whereabouts information

Mass per calendar year in tonnes	Divisor for determining the volume <sup>3</sup>	Volume per calendar year in m <sup>3</sup>	Name and address of the pre-treatment plant
	0.10		

**3. Exemption from the obligation to supply mixtures to a pre-treatment plant pursuant to Section 4(3) GewAbfV**

In exceptional cases, deviation from the obligation of Section 4(1) sentence 1 GewAbfV is permissible. In such cases, the mixtures shall be kept separate from other waste and immediately prioritised for proper, harmless, and high-quality other recovery, in particular energy recovery.

The reasons for a deviation from the obligation under Section 4(1) sentence 1 GewAbfV must be proven. In accordance with Section 4(5) sentence 2 GewAbfV, attach the following documents to the documentation:

- Photos,
- Practical documents, such as delivery or weighing slips or similar documents,
- Disposal contracts and
- Evidence from the person taking over the waste to be delivered.

Please select the applicable criterion:

<sup>2</sup> In these mixtures, 1. Wastes from human or veterinary medical care and research in accordance with Chapter 18 of the Annex to the Waste Catalogue Ordinance are not included, and 2. Biowaste and glass may only be included if they do not impair or prevent pre-treatment (Section 4(1) GewAbfV).

<sup>3</sup> To determine the volume, use the formula Volume = Mass ÷ Divisor.

Pre-treatment not technically possible	Pre-treatment economically unreasonable	Name and address of the person taking over the waste
<input type="checkbox"/>	<input type="checkbox"/>	

Please include here your justification for deviating from the obligation to supply to a pre-treatment plant and describe the options you have considered to fulfil your obligations:

## Annex 4

(re Section 8(3))

### Documentation on the separate collection of construction and demolition waste pursuant to Section 8(3) Commercial Waste Ordinance (GewAbfV)<sup>\*)</sup>

This documentation must be completed for each construction or demolition operation.

#### 1. Farm information:

1.1 Name

1.2 Address

1.3 Contact person (name, phone, e-mail)

1.4 Address of construction site or site of generation of construction and demolition waste

#### 2. Documentation on the separate collection of construction and demolition waste pursuant to Section 8(1) GewAbfV

No	Waste fraction:	Mass per construction site in tonnes	Divisor for determining the volume <sup>1</sup>	Volume per construction site in m <sup>3</sup>	Name and address of the collector or carrier
1	Glass (waste code 170202)		1.20		
2	Plastic (waste code 170203)		0.60		
3	Metals (waste codes 170401 to 170407 and 170411)		2.60		

<sup>\*)</sup> Excludes substances pursuant to Section 8(1a) GewAbfV. The documentation of the separate collection of mineral substitute building materials is finally regulated in Section 24(5) Substitute Building Materials Ordinance.

<sup>1</sup> To determine the volume, use the formula  $\text{Volume} = \text{Mass} \div \text{Divisor}$ .

No	Waste fraction:	Mass per construction site in tonnes	Divisor for determining the volume	Volume per construction site in m <sup>3</sup>	Name and address of the collector or carrier
4	Wood (waste code 170201)		0.50		
5a	Rock wool (waste code 170604)		0.80		
5b	Glass wool (waste code 170604)		0.80		
5c	Other insulation materials (waste code 170604)		0.80		
6	Bituminous mixtures (waste key 170302)		1.80		
7a	Plasterboard (waste code 170802)		0.34		
7b.	Gypsum fibreboard (waste code 170802)		0.34		
7C.	Other gypsum-based building materials (waste code 170802)		0.34		

No	Waste fraction:	Mass per construction site in tonnes	Divisor for determining the volume	Volume per construction site in m <sup>3</sup>	Name and address of the collector or carrier
8	Concrete (waste code 170101)		1.30		
9	Bricks (waste code 170102)		1.30		
10	Tiles and ceramics (waste code 170103)		1.30		
11	Non-hazardous asbestos-containing construction and demolition waste		1.50		

In accordance with Section 8(3) sentence 2, point 1 GewAbfV, attach the following documents to the documentation:

- Photographs and
- Practical documents, such as delivery or weighing slips or similar documents.

**3. Documentation of the supply of separately collected waste for recovery pursuant to Section 8(3) sentence 2, point 2 GewAbfV**

To this end, a declaration from the person who takes over the waste must be attached. The declaration shall contain the following information:

- the name and address of the person taking over the waste;
- the mass of the waste received,
- the method of recovery and
- the intended destination of the waste.

**4. Derogation from the obligation to collect separately pursuant to Section 8(3) sentence 2, point 3 GewAbfV**

Should the obligation to separate the collection of construction and demolition waste be waived for reasons of technical impossibility or economic unreasonableness, the waste fractions concerned shall be indicated in the table below and the reasons for this shall be set out in the text box on the next page.

Please note that in the event of a deviation from the obligation of separate collection, Annex 5 must also be completed.

Waste fractions collected in mixed form <sup>2</sup>	The separate collection of the waste fraction is:	
	technically not possible	economically unreasonable
	<input type="checkbox"/>	<input type="checkbox"/>

Please include here your justification for deviating from the obligation of separate collection and what options you have considered to fulfil your obligations:

## Annex 5

Re Section 9(6)

### Documentation on mixed collected construction and demolition waste in accordance with Section 9(6) of the Commercial Waste Ordinance (GewAbfV)

This documentation must be completed for each construction or demolition operation.

#### 1. Farm information:

1.1 Name

1.2 Address

1.3 Contact person (name, phone, e-mail)

1.4 Address of construction site or site of generation of construction and demolition waste

#### 2. Documentation on the collection of mixed construction and demolition waste pursuant to Section 8(2) and Section 9(1) GewAbfV

2.1 In mixed<sup>1</sup> collected waste fractions

2.2 Information on the quantity and whereabouts of the mixture

Mass per construction site in tonnes	Divisor for determining the volume <sup>2</sup>	Volume per construction site in m <sup>3</sup>	Name and address of the pre-treatment plant
	0.60		

#### 3. Exemption from the obligation to supply mixed collected construction and demolition waste to a pre-treatment plant pursuant to Section 9(4) GewAbfV

In exceptional cases, deviation from the obligation of Section 9(1) GewAbfV is permissible. In such cases, the waste mixtures shall be kept separate from other waste in accordance with Section 9(5) and immediately prioritised for proper, harmless, and high-quality other recovery. The reasons for a deviation from the obligation of Section 9(1) sentence 1 GewAbfV must be proven.

In accordance with Section 9(6) sentence 2 GewAbfV, attach the following documents to the documentation:

- Photos,
- Practical documents, such as delivery or weighing slips or similar documents,

<sup>1</sup> The mixtures referred to in sentence 1, points 1 and 2, may only contain glass, insulating material, mixtures of bituminous substances, and gypsum-based building materials, provided that they do not impair or prevent pre-treatment or preparation. In addition, the mixtures referred to in sentence 1, point 1, may only contain concrete, bricks, tiles, and ceramics insofar as they do not impair or prevent the pre-treatment.

<sup>2</sup> To determine the volume, use the formula  $\text{Volume} = \text{Mass} \div \text{Divisor}$ .



- Disposal contracts and
- Evidence from the person taking over the waste to be delivered.

Please select the applicable criterion:

Pre-treatment not technically possible	Pre-treatment economically unreasonable	Name and address of the person taking over the waste
<input type="checkbox"/>	<input type="checkbox"/>	

Please include here your justification for deviating from the obligation to supply to a pre-treatment or reprocessing plant and describe the options you have considered to fulfil your obligations:

## **Explanatory notes**

### **A. General part**

#### **I. Objective of and need for the provisions**

##### **1. Initial situation**

The Commercial Waste Ordinance (GewAbfV) was revised in 2017 to fully implement the five-stage waste hierarchy and, in particular, the priority of material over energy recovery, including in the field of commercial municipal waste and construction and demolition waste. Compared to the previous version, this led to significantly more stringent regulations with clear rule/exception ratios (see Bundestag document 18/10345, pp. 32 et seq.).

The primary obligation is the separate collection and transport of individual fractions of commercial municipal waste and construction and demolition waste for preparation for reuse and recycling. Mixtures may only be produced if separate collection is technically impossible or economically unreasonable. Non-mineral waste mixtures must undergo pre-treatment in the form of sorting. For pre-treatment, minimum technical standards apply, and pre-treatment plants must comply with a sorting rate of at least 80 per cent and, based on this, a recycling rate of at least 30 per cent.

Exceptionally, if this is not technically possible or economically unreasonable, waste mixtures may be used for energy recovery without pre-treatment. Alongside the obligations of the Commercial Waste Ordinance, the documentation obligations for official monitoring have been expanded. In the context of two minor amendments, the requirements of the GewAbfV for the separate collection of packaged foodstuffs (cf. Section 4a) and the relationship with the new Substitute Building Materials Ordinance (cf. Section 8(1a)), which entered into force in August 2023, were further developed.

As part of the 2017 recast, the legislator had already provided for an obligation for the Federal Government to evaluate the recycling rate for pre-treatment plants by 31 December 2020 (Section 6(5) sentence 2). Furthermore, the Federal Government was called upon to evaluate the objectives and effects of the entire Regulation by 31 December 2023 (see Bundestag document 18/10345, p. 66). The Federal Government prepared both evaluation mandates through the broad-based research project "Development of the basis for the evaluation of the Commercial Waste Ordinance" (UBA-Texte 47/2023) and subsequently discussed the results with the Länder and the economic operators concerned.

This has shown that the overall structure of the recast Regulation's obligations has proved its worth. At the same time, the evaluation has shown that the objectives of the Regulation have not yet been fully achieved. Too often, waste is not collected separately and mixtures are not sufficiently pre-treated.

This draft is in the context of the jeopardised timely achievement of the objectives of the UN General Assembly resolution of 25 September 2015 "Transforming our world: the 2030 Agenda for Sustainable Development", and in particular contributes to the achievement of SDG 12 to significantly reduce waste generation through prevention, reduction, recycling and reuse.

## 2. Results of the evaluation

According to the available data on the recovery of commercial municipal waste from the above-mentioned research project, commercial municipal waste in the order of about 60 percent by mass is already collected separately and recycled in high proportions. In this context, reference should be made to the new provision of Section 9(4) Circular Economy Act (KrWG), which has been in force since 2020, according to which waste collected separately for recycling may only be recovered for energy purposes if it has been separated during downstream treatment and energy recovery ensures the protection of people and the environment best or equivalent to recycling, taking into account the criteria laid down in Section 6(2) sentences 2 and 3 KrWG.

However, this also means that around 40 % by mass of commercial municipal waste is currently still recorded as a mixture, with the result that important recycling potential is lost. Although there are no specific figures on construction and demolition waste, separate collection significantly promotes high-quality recycling. This applies to both mineral and non-mineral waste. The proportion of mixtures of commercial municipal waste that were fed directly to a thermal waste treatment plant without pre-treatment has fallen significantly with the entry into force of the recast Commercial Waste Ordinance, from 46 % by mass (2016) to 32 % by mass (2020). During the same period, the proportion of mixtures treated in sorting plants increased from 36 % by mass (2016) to 45 % by mass (2020) and in other pre-treatment plants from 8 % by mass (2016) to 12 % by mass (2020). This positive finding can also be attributed to the new requirements of the Commercial Waste Ordinance 2017.

Ultimately, however, the 30 % recycling rate for pre-treatment facilities introduced by the amendment to the Commercial Waste Ordinance was not achieved in almost all facilities. The reasons for this are manifold. On the one hand, the facilities for pre-treatment are not technically adequately equipped or are insufficiently configured for the purpose of recycling. However, the most important reason for the quota failure is that waste mixtures containing recyclables are only roughly pre-sorted and then fed into energy recovery with other waste. This is mainly due to the lack of control in the context of cascade pre-treatment and the fact that the energy recovery plants have not yet been included in the obligations of the Commercial Waste Ordinance.

## 3. Solution

This Regulation takes up the results of the evaluation and channels them into appropriate measures to further strengthen the recycling of commercial municipal waste and certain construction and demolition waste, and to make enforcement more stringent. To this end, the obligations regarding the separate collection and recovery of commercial municipal waste and construction and demolition waste are specified, electronic control is simplified, and other actors are included in the obligations of the Regulation. Central measures include the obligation to label waste containers, the reduction of the cascade reservation to two facilities, the introduction of electronic forms to fulfill documentation obligations, and the inclusion of facilities for energy recovery.

### II. Main content of the draft

**Article 1** contains the amendments to the Commercial Waste Ordinance. Key content includes:

#### a) Improvement of separate collection

In order to improve separate collection, the obligation to label the collection containers for commercial municipal waste and construction and demolition waste is introduced. In addition, the competent authority may in future appoint an expert to verify compliance with the

separate collection obligations. Finally, the new obligation to draw up official monitoring plans will contribute to a uniform and structured implementation.

#### **b) More stringent pre-treatment obligations**

The main change in pre-treatment is the limitation of the possibility of dividing the pre-treatment between different plants (cascade use). In practice, this regulation has hampered investment in plant engineering and made it difficult to verify the proper pre-treatment of mixtures. Instead of being unlimited as before, commercial municipal waste may therefore only be pre-treated in two consecutively connected facilities in the future. The previous exemption from the pre-treatment obligation is deleted to simplify enforcement.

#### **c) Format requirements for documentation obligations**

The existing documentation obligations for the separate collection and pre-treatment of waste are facilitated by uniform format requirements throughout Germany for the electronic transmission of documentation in enforcement.

#### **d) Requirements for pre-treatment plants**

The present regulation provides for the establishment of a nationwide electronic register for all pre-treatment plants. This will increase legal certainty for producers and owners and facilitate the monitoring of plants for the competent authorities, including across countries. Furthermore, the documentation obligations for sorting and recycling quotas are standardised. The amendment reduces the possibility of cascade pre-treatment, expands the requirements for pretreatment plants, and clarifies that the existing plant components must also be used during treatment. At the same time, provision is made for the competent authority to establish exemptions from the mandatory components of pre-treatment plants.

#### **e) Inclusion of plants for energy recovery**

The inclusion of operators of energy recovery plants in the scope of application results in the obligation for those operators to carry out random checks of the mixtures delivered. This will create another instrument to prevent the energy recovery of recyclable waste.

**Article 2** contains amendments to the Landfill Ordinance. A definition of non-hazardous asbestos-containing construction and demolition waste and non-hazardous asbestos-containing soil material is inserted. The amendments are closely linked to the development of separate collection of construction and demolition waste in Article 1, which in future provides for separate collection of non-hazardous asbestos-containing waste. Overall, the new regulations on non-hazardous asbestos-containing waste serve the implementation of Circular Decision 55/2021 of the Conference of Environment Ministers.

**Article 3** contains the provision on the entry into force of the Regulation.

### **III. Alternatives**

None. The above-mentioned objectives of the scheme can only be achieved by amending the legal provisions.

### **IV. Regulatory power**

The provision is based on Sections 8(2) sentence 1 point 2, 10(1) points 2 and 3 and (2) points 1 to 4, 16 sentence 1 point 2, 43(1) point 3 and 65(2) KrWG.

## **V. Compatibility with European Union law and international treaties**

The rules are compatible with the provisions of European Union law and international treaties. In addition to the general requirements of Directive 2008/98/EC on waste and repealing certain Directives (OJ EU L 312, p. 3), as last amended by Directive (EU) 2018/851 (OJ EU L 150, p. 109), there are no specific rules at European or international level for industrial waste.

## **VI. Consequences of the Legislation**

### **1. Legal and administrative simplification**

This Regulation is partly accompanied by legal and administrative simplification. Certain rules that have not proved their worth in practice will be repealed. This includes, in particular, the treatment of waste mixtures in several successively connected facilities. According to the new requirements, waste mixtures are only treated in a maximum of two pre-treatment plants and then fed directly to the recycling plant. The existing procedures for documenting the separate collection can be simplified by nationwide uniform electronic forms for business and enforcement.

### **2. Sustainability aspects**

The draft Act is in line with the Federal Government's guiding principle on sustainable development within the meaning of the German Sustainable Development Strategy, which serves to implement the UN 2030 Agenda for Sustainable Development.

By making the provisions of the Commercial Waste Ordinance even more stringent and enforceable, the draft contributes to the achievement of the UN Sustainable Development Goal (SDG 12) "Ensure sustainable consumption and production patterns". This sustainability target, with its target 12.5, requires a significant reduction in waste generation by 2030 through prevention, reduction, recycling and reuse. The draft contributes to the achievement of this target by improving the separate collection of commercial waste, thereby ensuring the achievement of the target recycling rate for the pre-treatment of mixtures. The regulatory project specifies the technical requirements for pre-treatment plants.

By driving the development of effective processes for the recycling of commercial municipal waste and increasing the supply of recycled materials that can then be used in the production of new products through the increased use of recyclates, the draft also contributes to the achievement of SDG 9, which, with its target 9.4, requires industries to be retrofitted to make them sustainable by 2030.

Certain plant components, such as near-infrared units, are mandatory, while at the same time, official exemptions are established to enable an appropriate decision in individual cases. At the same time, in the spirit of the systemic understanding of the SDGs, the draft contributes to the achievement of Goal 16, which requires in its Target 16.6 to develop effective, accountable and transparent institutions at all levels. The draft promotes the achievement of this target by strengthening the regulatory control of the separate collection of commercial municipal waste and construction and demolition waste in order to enforce the separate collection of individual waste fractions.

The draft thus takes into account the interconnections between the SDGs and their integrating nature, which is crucial for the achievement of the objective and purpose of the UN's 2030 Agenda.

The draft thus follows the principles of sustainable development in accordance with the German Sustainability Strategy:

“(1.) Consistently apply sustainable development as a guiding principle in all areas and in all decisions, by making an important contribution to the sustainable protection of the earth's natural resources through the strengthening of the recycling of certain wastes. As a result, resources are conserved and indirectly more recyclates are produced for further sustainable economic use.

“(3.) Preserving natural resources by strengthening the reuse and recycling of commercial municipal waste and construction and demolition waste. This saves natural resources.

“(4.) “Strengthening sustainable management” by increasing the overall availability of recyclates on the market through the enhancement of reuse and recycling. This allows market participants to operate in a sustainable and resource-efficient manner through the use of recyclates. Overall, this can reduce resource consumption and decouple it from economic growth.

“(6.) “Utilise education, science and innovation as drivers of sustainable development” by promoting innovation in plant engineering and obliging companies to maintain certain plant components as mandatory.

### **3. Budgetary expenditure exclusive of compliance costs**

Any resulting additional requirements in terms of material and personnel resources in the federal sector must be counter-financed financially and in terms of posts in the respective section of the budget.

### **4. Compliance costs**

#### a) Overall result

##### (aa) Citizens

The regulation does not impose any compliance cost on citizens.

##### bb) Economy

Overall, the regulation results in an annual reduction of the burden on the economy of around EUR 15.2 million. The additional annual compliance costs of around EUR 3 million are offset by reductions of around EUR 18.2 million. The regulation results in a one-off conversion cost of approximately EUR 16.7 million.

As the regulation does not create any additional compliance costs overall, the relief for industry under the one-in, one-out rule for new regulatory projects of the Federal Government (see Cabinet Decision of 25 March 2015) amounts to EUR 15.2 million.

Of the 28 information requirements contained in the Regulation, 20 are adopted unchanged and 7 are amended. In addition, an obligation to provide information is newly established. The business community does not incur any additional compliance costs as a result of the amended or newly established obligation to provide information.

Following the guidelines on the consideration of the interests of medium-sized enterprises in the regulatory impact assessment (SME test) of 30 December 2015, it was examined whether less burdensome regulatory alternatives are possible. The possibility for special arrangements has been created. Thus, Section 6(1), sentence 2, point 1 permits the approval of alternative plant components on request instead of the NIR aggregates prescribed for pre-treatment plants, and Section 6(1), sentence 2, point 2 permits the omission of individual plant components on request. Precisely the specification of standards for documentation provides relief for small and medium-sized enterprises. The interests of small and medium-sized enterprises were therefore sufficiently taken into account.

cc) Administration

Overall, the regulation results in an additional annual compliance cost for the administration of the federal states amounting to approximately 3.4 million euros. This results in a one-time conversion cost of around 3.1 million euros.

b) Requirements

<b>Item No</b>	<b>Provision</b>	<b>Requirement description</b>	<b>Addressee/Information obligation</b>
1	Article 1 Section 3(3), third sentence	Format requirement for the documentation obligation for separate collection of commercial municipal waste	B (IO), A
2	Article 1 Section 3(3) sentences 4 to 6	Commissioning of the expert	B, A
3	Article 1 Section 3(3) sentence 7	Submission of the inspection report to the producer or holder	V
4	Article 1 § 3a(1)	Maintaining a list of producers of industrial waste	V
5	Article 1 § 3a(2)	Planning and carrying out random checks of operational documentation	V
6	Article 1 § 3a(3)	Planning and implementation of on-the-spot checks	V
7	Article 1 § 3a(4)	Additional controls on specific occasions	V
8	Article 1 Section 4(5), third sentence	Format specification for the documentation requirement for the supply to pre-treatment plants	B (IO), A
9	Article 1 Section 4(5) sentences 4 to 6	Commissioning of the expert	B, A
10	Article 1 Section 4(5) sentence 7	Submission of the inspection report to the producer or holder	V
11	Article 1 Section 6(1)	Equipping pre-treatment plants with prescribed plant components	Businesses
12	Article 1 Section 6(1) sentence 4, point	Application for approval of other equivalent plant components in pre-treatment plants	B, A

<b>Item No</b>	<b>Provision</b>	<b>Requirement description</b>	<b>Addressee/Information obligation</b>
	1		
13	Article 1 Section 6(1) sentence 4, point 2	Application for exemption of individual plant components	B, A
14	Article 1 Section 6(4), first sentence	Format specification for the documentation requirement of the sorting quota	B (IO), A
15	Article 1 Section 6(4), first sentence	Transmission of the annual sorting rate to the competent authority	Businesses (IO)
16	Article 1 Section 6(6), first sentence	Format requirement for the documentation obligation of the recycling rate	B (IO), A
17	Article 1 Section 8(1) point 5	Separate collection of insulation materials	Businesses
18	Article 1, Section 8(1), point 7	Separate collection of gypsum-based building materials	Businesses
19	Article 1 Section 8(1), second sentence	Separate collection of non-hazardous asbestos-containing construction and demolition waste	Businesses
20	Article 1 Section 8(3), third sentence	Format requirement for the documentation obligation for separate collection of construction and demolition waste	B (IO), A
21	Article 1 Section 8(3) sentences 5 to 7	Commissioning of the expert	B, A
22	Article 1 Section 8(3) sentence 8	Submission of the inspection report to the producer or holder	V
23	Article 1 Section 9(6), third sentence	Format specification for the documentation requirement for delivery to a pre-treatment or treatment plant	B (IO), A
24	Article 1 Section 9(6) sen-	Commissioning of the expert	B, A



Item No	Provision	Requirement description	Addressee/Information obligation
	tences 5 to 7		
25	Article 1 Section 9(6) sentence 8	Submission of the inspection report to the producer or holder	V
26	Article 1 Section 9a	Labelling of waste containers	Businesses
27	Article 1 Section 13	Establishment of a nationwide uniform register of pre-treatment plants	V
28	Article 1 Section 14(1)	Sampling control by operators of energy recovery plants	Businesses (IO)

C) Summary of processes

aa) Processes for the economy

The requirements for the economy are consolidated into the following processes:

- Format requirement for the documentation obligations for producers and holders of commercial municipal waste
  - Point 1 (Article 1 Section 3 (3)(3))
  - Point 8 (Article 1 Section 4(5) sentence 3)
- Review by an expert of the documentation on the management of commercial municipal waste
  - Point 2 (Article 1 Section 3(3) sentences 4 to 6)
  - Point 9 (Article 1 Section 4(5) sentences 4 to 6)
- Documentation of the sorting and recycling rate
  - Point 14 (Article 1 Section 6(4) sentence 1)
  - Point 15 (Article 1 Section 6(4) sentence 1)
  - Point 16 (Article 1 Section 6(6) sentence 1)
- Format requirement for documentation obligations for producers and holders of construction and demolition waste
  - Point 20 (Article 1 Section 8(3) sentence 3):
  - Point 23 (Article 1 Section 9(6) sentence 3)
- Review by an expert of the documentation relating to the management of construction and demolition waste
  - Point 21 (Article 1 Section 8(3) sentences 5 to 7)
  - Point 24 (Article 1 Section 9(6) sentences 5 to 7)

bb) Processes of administration

The management requirements are summarised in the following processes:

- Format requirement for the documentation of the management of commercial municipal waste and construction and demolition waste
  - Point 1 (Article 1 Section 3(3) sentence 3):
  - Point 8 (Article 1 Section 4(5) sentence 3)
  - Point 20 (Article 1 Section 8(3) sentence 3):
  - Point 23 (Article 1 Section 9(6) sentence 3)
- Review by an expert of the documentation of the management of commercial municipal waste
  - Point 2 (Article 1 Section 3(3) sentences 4 to 6)
  - Point 3 (Article 1 Section 3(3) sentence 7)
  - Point 9 (Article 1 Section 4(5) sentences 4 to 6)
  - Point 10 (Article 1 Section 4)(5) sentence 7)
- Monitoring of separate collection
  - Point 4 (Article 1 Section 3a)(1))
  - Point 5 (Article 1 Section 3a)(2))
  - Point 6 (Article 1 Section 3a)(3))
  - Point 7 (Article 1 Section 3a)(4))
- Requests from operators of pre-treatment plants
  - Point 12 (Article 1 Section 6(1) sentence 4, point 1)
  - Point 13 (Article 1 Section 6(1) sentence 4, point 2)
- Format specification for the sorting and recycling rate
  - Point 14 (Article 1 Section 6(4) sentence 1)
  - Point 16 (Article 1 Section 6(6) sentence 1)
- Review of the documentation of the management of construction and demolition waste by an expert
  - Point 21 (Article 1 Section 8(3) sentences 5 to 7)
  - Point 22 (Article 1 Section 8(3)sentence 8)
  - Point 24 (Article 1 Section 9(6) sentences 5 to 7)
  - Point 25 (Article 1 Section 9(6) sentence 8)

d) Presentation of the compliance costs in detail

aa) Businesses

(aaa) Format requirements for documentation obligations for producers and holders of commercial municipal waste (points 1 and 8)

The obligation to document separate collection under this Regulation applies to all businesses. According to the Statistical Business Register, there are a total of around 3.4 million commercial enterprises in Germany ([www.destatis.de/DE/Themen/Branchen-Unternehmen/Unternehmen/Unternehmensregister/Tabellen/unternehmen-beschaefigte-umsatz-wz08](http://www.destatis.de/DE/Themen/Branchen-Unternehmen/Unternehmen/Unternehmensregister/Tabellen/unternehmen-beschaefigte-umsatz-wz08)). From this number of undertakings, those that dispose of their waste on the same property together with the waste of private households must be deducted due to the small quantity regulation in Section 5. In the 2017 amendment, a total of 3.8 million commercial enterprises were considered, with 500,000 enterprises expected to fall under this scheme. This corresponds to around 13 percent of the total number of farms. Based on this, the current 3.4 million enterprises are also expected to have a share of 13 percent. Therefore, a total of around 2.9 million farms are affected by the requirement.

The documentation obligation is already prescribed by the currently applicable version of the Commercial Waste Ordinance (Section 3(3) and Section 4(5)). By specifying the information on the whereabouts of the waste (Section 3(3) sentence 2, point 2) and the official format to be applied in the future (Section 3(3) sentence 3, and Section 4(5) sentence 3), no additional costs are to be expected for the undertakings. The format specifications result in time savings, as there is no longer a need to create individual documentation, and any coordination with the competent authority for individual solutions is also eliminated. The deletion of the site plans also contributes to the time saving, as they involve a significantly higher effort compared to photographs. It is therefore assumed that at least 15 minutes (Annex 5: Time value table Economy, standard activity 15 (medium) of the guidance on compliance costs) are saved in the annual transmission of documentation. In the case of low qualifications, an hourly rate of EUR 23.30 must be applied (Annex 7: Wage Cost Table Economy, J Information and Communication, Guidance on Compliance Costs). This results in annual savings of approximately EUR 16.9 million.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
2.9 million	0.25	23.30	0		0
Annual compliance costs (in EUR)				- 16.892.500	

bbb) Verification of the documentation of the management of commercial municipal waste by an authorised expert (points 2 and 9)

A new provision is the power of the competent authority to appoint an approved expert if there are indications that the documentation of producers and holders of commercial municipal waste is incorrect (Section 3(3) sentences 5 and 6, and Section 4(5) sentences 5 and 6). The costs of commissioning the expert to verify the documentation shall in principle be borne by the authority. However, if the inspection by an expert reveals that the documentation is incorrect, the authority may request reimbursement of costs from the producer or owner. It can be assumed that an expert review will be conducted in approximately 1 percent of all cases. With 2.9 million commercial enterprises, this results in a case number of about 29,500. The estimated number of cases is based on the assumption that, precisely because of the new format specifications, the documentation is usually kept correctly and prevents inaccuracies. Based on the experience gained from the implementation of the Packaging Act, an inspection period of an average of three hours per case is assumed. For the remuneration of the expert, in accordance with the Guide on Compliance Costs, Annex 7: Wage cost table for the economy “provision of professional, scientific and technical services” with a high level of qualification, at an hourly rate of 59.70 euros. Furthermore, it is assumed that in 50 % of cases an inaccuracy is detected

by the expert and the competent authority imposes the costs on the producer or owner. As a result, an annual compliance cost of approximately 2.6 million euros is to be expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
14,750	3	59.70	0	2,641,725	0
Annual compliance costs (in EUR)				2,641,725	

ccc) Equipping pre-treatment plants with mandatory plant components (point 11)

Pre-treatment plants must already meet the minimum technical requirements set out in the Annex to Section 6. So far, under point 5, aggregates for the application of plastic, wood, or paper have been mentioned there. In practice, the equipment with near-infrared aggregates (NIR aggregates) for the application of the aforementioned waste fractions is already the most common, as it is the most efficient variant. With this amending regulation, the provision of NIR units is now mandatory.

According to the Waste Management Company Register, there are 247 pre-treatment plants in Germany that meet the requirements of Sections 6 and 10. After evaluation and inclusion of the Land lists, the total number of pre-treatment plants is 361 (UBA Texts 47/2023, p. 63). A differentiation between full plants and cascade plants could not be made from this survey. Of the 73 full plant operators surveyed by the UBA researcher, around 70 per cent stated that their plant was equipped with NIR separation units. It is not known what proportion of the cascade systems has NIR separation units. The calculation is therefore based on estimates and approximate data that the researcher of the UBA was able to provide.

In the now only permitted two-stage cascades, at least one of the two cascade stages must contain a NIR aggregate. This requirement eliminates the obligation for many plants to purchase a NIR unit. It is also possible to submit an application to the competent authority for the approval of equivalent plant components. Upon approval, no conversion costs are incurred for these plants either. However, according to the current state of the art, no comparable aggregate is available on the market. The number of plants that need to be retrofitted, as they do not yet have an NIR unit and are obliged to install one as a full or cascade plant, is therefore estimated at around 50 plants. Costs for the purchase and installation of an NIR unit amount to an average of 300,000 euros. A one-off conversion cost of approximately EUR 15 million is therefore to be expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
50	0	0	300,000	0	15,000,000
One-off conversion costs (in EUR)				15,000,000	

ddd) Application for approval of other equivalent plant components in pre-treatment plants (point 12)

Applications for the approval of an alternative plant component are expected to focus primarily on the application for an alternative to a NIR unit. As some of the 361 pre-treatment plants are already equipped with NIR units and others do not need to retrofit due to the

possibility of forming cascades, applications are estimated at a low double-digit number. The effort required to submit an application is therefore negligible.

eee) Application for exemption of individual plant components (point 13)

Applications for exemption of individual plant components, as well as applications for approval of other individual plant components, are estimated to have a small number of cases. For this reason, compliance costs are assumed to be negligible at most.

fff) Documentation of the sorting and recycling rate (points 14 to 16)

The obligation to record the monthly and annual sorting rate as well as the recycling rate for operators of pre-treatment plants already exists under the current legal framework. The only new feature is the power of the competent authority to specify a format for the documentation, and that the sorting quota must now also be submitted to the competent authority. Since the submission can be made electronically, this will at most trigger a small compliance effort.

ggg) Separate collection of insulation materials (point 17)

The separate collection of insulation materials (waste code 17 06 04) under Section 8(1) sentence 1, point 5 of the Commercial Waste Ordinance is further specified by this amending regulation. For the purpose of easier recycling, insulation materials must be collected separately by material in the future. This results in a separate collection divided into glass wool, mineral wool, and other insulation materials. Since the current version of the Regulation already requires the separate collection of insulation materials, a further subdivision into three different categories, based on the material, is associated with only minor additional costs, if at all. This is also supported by the assumption that, as a rule, only one type of insulation material is used on each construction site, since different types are not usually employed for the construction of a building.

hhh) Separate collection of gypsum-based building materials (point 18)

Pursuant to Section 8(1) sentence 1, point 7, of the current version of the Commercial Waste Ordinance, gypsum-based building materials (waste code 17 08 02) that are generated in the context of construction and demolition waste must already be collected separately. This serves the purpose of prioritising their reuse or recycling. Now there is a new requirement to separate gypsum-based building materials according to their type. In future, gypsum board, gypsum fibreboard and other gypsum-based building materials will have to be collected separately, transported and treated in accordance with Section 8(1) and Section 9(4) KrWG. The necessary recycling capacities were already expanded in the course of the amendment of this Regulation in 2017 and are now largely available. Furthermore, due to the separate collection regime that has been in force since 2017, no additional effort is to be expected from the extended separation of gypsum-based building materials into two different categories.

iii) Separate collection of non-hazardous asbestos-containing construction and demolition waste (point 19)

Non-hazardous construction and demolition waste containing asbestos shall be collected separately from other construction and demolition waste, whatever its nature. The separate collection of non-hazardous asbestos-containing waste in a separate container is unlikely to result in any or only a slight additional effort. There are no or only minor compliance costs.

jjj) Format requirement for documentation obligations for producers and holders of construction and demolition waste (points 20, 23)

The obligation to document separate collection under this Regulation applies to all establishments where construction and demolition waste is generated. According to the Federal Statistical Office, there are around 220,000 construction sites with a building permit every year. ([www.destatis.de/EN/Topics/Industry-Companies/Building/Tables/Building-Permits.html](http://www.destatis.de/EN/Topics/Industry-Companies/Building/Tables/Building-Permits.html)). For all construction sites, documentation on the management of the waste generated must be kept.

The documentation obligation is already prescribed by the currently applicable version of the Commercial Waste Ordinance (Section 8(3) and Section 9(6)). By specifying the information on the whereabouts of the waste (Section 8(3) sentence 2, point 2 and the official format to be applied in the future (Section 8(3), sentence 3, and Section 9(6) sentence 3), no additional costs are to be expected for the undertakings. The format specifications result in time savings, as there is no longer a need to create individual documentation, and any coordination with the competent authority for individual solutions is also eliminated. As already explained in triple letter aaa, the deletion of the site plans also results in a time saving. It is assumed that at least 15 minutes (Annex 5: Time value table Economy, standard activity 15 (medium) of the guidance on compliance costs) are saved in the annual transmission of documentation. In the case of low qualifications, an hourly rate of EUR 22.90 is to be applied (Annex 7: Wage Cost Table Economy, F Construction, Guide to Compliance Expenses). Annual savings of approximately 1.3 million euros are expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs  Total (in EUR)
220,000	0.25	22.90	0	1,259,500	0
Annual compliance costs (in EUR)				- 1,281,500	

kkk) Examination of the documentation on the management of construction and demolition waste by an expert (points 21 and 24)

A new requirement is the authority of the competent authority to appoint an approved expert if there are indications that the documentation is incorrect. The costs of commissioning the expert to check the documentation shall in principle be borne by the authority. However, if the inspection by an expert reveals that the documentation is incorrect, the authority may request reimbursement of costs from the producer or owner. It can be assumed that an expert review will be conducted in approximately 1 percent of all cases. For around 220,000 construction sites, which are obliged to provide documentation, this results in a number of cases of approximately 2,200. The estimated number of cases is based on the fact that the documentation is maintained correctly precisely due to the new format specifications and prevents inaccuracies. By analogy with the assumptions regarding commercial municipal waste, an average test duration of three hours per case is assumed. For the remuneration of the expert, in accordance with the Guide on Compliance Costs, Annex 7: Wage cost table for the economy "provision of professional, scientific and technical services" with a high level of qualification, at an hourly rate of 59.70 euros. Furthermore, it is assumed that in 50 % of cases an inaccuracy is detected by the expert and the competent authority imposes the costs on the producer or owner. As a result, an annual compliance cost of around EUR 200,000 is to be expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
1,100	3	59.70	0	197,010	0
Annual compliance costs (in EUR)				197,010	

III) Labelling of waste containers (point 26)

Producers and holders of commercial waste shall be required to label waste containers in such a way as to ensure proper separate collection. The labelling of the waste containers must indicate the waste fraction collected in each case and, in the case of mixed collections, the non-authorised waste fractions.

This regulation creates a conversion cost, as it can be assumed that most containers are already labelled (see the requirements of LAGA leaflet 34, p. 21, under 2.1.1). Clearly visible labels, for example printed on paper and attached with adhesive tape, are sufficient. It can be assumed that in about 50 % of the cases (1.7 million companies) there is a partial need for retrofitting. Each case is estimated at 1 euro for material costs. This results in a one-off conversion cost of 1.7 million euros.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
1.7 million	0	0	1	0	1,700,000
One-off conversion costs (in EUR)				1,700,000	

mmm) Random checks by operators of waste-to-energy plants (point 28)

The operators of the approximately 120 plants for the energy recovery of waste are obliged to subject the accepted waste to regular random checks. The inspection shall be carried out in accordance with the criteria set out in Section 14(2) and shall be documented. For the visual inspection and examination of the supporting documents provided by an experienced employee with the appropriate professional qualifications, 90 minutes are estimated per case. The hourly rate according to the guidance on the determination of compliance costs in Annex 7 is: Wage cost table for the water supply sector E; Waste-water and waste disposal and pollution removal with high qualification 58.90 euro. Each plant should carry out an average of one inspection per month. This results in a total of 1,440 inspections per year. Overall, compliance costs of around EUR 127,000 per year are to be expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
1,440	1.5	58.90	0	127,224	0
Annual compliance costs (in EUR)				127,224	

bb) Authorities

According to Article 83 Basic Law (GG), the implementation of the Commercial Waste Ordinance is in principle the responsibility of the Länder. The present amendment does not establish any competencies for federal authorities. The comments below therefore relate to the authorities responsible under Federal State law.

(aaa) Format requirement for the documentation of the management of commercial municipal waste and construction and demolition waste (points 1, 8, 20 and 23)

Upon request, the authorities may inspect the documentation of the producers and holders of commercial waste and check it (Section 3(3) and Section 4(5) as well as Section 8(3) and Section 9(6)). These regulations also apply in the version currently in force. The formats specified in the new Annexes 1, 2, 4, and 5, in which the documentation must be carried out in the future, relieve the administration, as the verification of the documentation can be conducted more efficiently by means of uniform forms. In addition, the information needs of the affected companies are decreasing. Due to the new requirements for monitoring the separate collection by the authority, it can be assumed that the authorities annually check at least the documentation of 8,300 establishments, as explained below under triple letter ccc. A minor relief is to be expected.

bbb) Examination by an expert of the documentation of the management of commercial municipal waste (points 2, 3, 9 and 10)

With the entry into force of this amendment, the authority is empowered to commission an expert to examine the documentation if there are indications of inaccuracies in the documentation of producers and holders of commercial waste. The costs of commissioning the expert to verify the documentation shall in principle be borne by the authority. However, if the inspection by an expert reveals that the documentation is incorrect, the authority may demand reimbursement of costs from the producer and owner. As a mirror requirement for the examination of the documentation of the management of commercial municipal waste by an approved expert for the economy, the number of cases is 29,500, the inspection duration is an average of three hours per case, and for the remuneration of the expert, compliance costs are determined in accordance with the guideline Annex 7: Wage cost table for the economy "provision of professional, scientific and technical services" with a high level of qualification, at an hourly rate of 59.70 euros. Furthermore, it is assumed that in 50 % of cases an inaccuracy is detected by the expert and the competent authority imposes the costs on the producer or owner. The forwarding of the test report to the producer or holder is disregarded due to the minor effort involved. There is an annual compliance cost of around 2.6 million euros.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Material costs Total (in EUR)
14,750	3	59.70	0	2,641,725	0
Annual compliance costs (in EUR)				2,641,725	

ccc) Monitoring of separate collection (points 4 to 7)

List of producers and holders of commercial municipal waste and construction and demolition waste:

Each business must be reported to the district, municipal, or city administration, so that the regulatory and trade offices already have all the necessary data to draw up the list. The time taken to draw up the list of producers of commercial waste is assumed to be one person-day. The hourly rate is 33.40 euros. At approximately 10,775 municipalities, one-



off conversion costs of around 2.9 million euros are to be expected. The additions and deletions of newly registered or deregistered establishments involve a minor amount of time. The annual compliance costs for these adjustments are therefore at most marginal.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Total material costs (in euro)
10,775	8	33.40	0	2,879,080	0
One-off conversion costs (in EUR)				2,879,080	

Planning and conducting random checks of operational documentation as well as ad hoc ancillary checks:

The operational documentation on the separate collection of commercial waste shall be verified by the competent authorities on a sample basis. The administrations must inspect 10 establishments per 100,000 inhabitants. According to the current version of the Commercial Waste Ordinance, authorities should already carry out inspections. For this reason, the calculation of compliance costs is based on five additional audits from the entry into force of the amendment. With around 83 million inhabitants in Germany, this results in a total of 4,150 establishments to be tested. A test duration of one hour is estimated per case at an hourly rate of 44.60 euros. The expected annual compliance costs for the audits are around 185,000 euros.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Total material costs (in euro)
4,150	1	44.60	0	185,090	0
Annual compliance costs (in EUR)				185,090	

Planning and implementation of on-the-spot checks:

For a further 5 holdings per 100,000 inhabitants, additional on-the-spot checks must be carried out. On-the-spot checks are also already provided for under Section 47 KrWG and are carried out in some federal states, for example in priority actions. Therefore, it is assumed that for the additional on-the-spot checks, only half of all cases need to be considered for compliance costs. This corresponds to a case number of 2,075. An average duration of 3 hours is planned for the inspections. The hourly rate is 44.60 euros. In addition, according to Annex 6 of the Guidelines on the calculation of compliance costs, journey times and material costs per case of 40 minutes travel time and EUR 5.20 must be taken into account. Due to the different responsibilities in districts and cities, the average journey time from Table 4 of Annex IV of the Guidance on the Determination of Compliance Costs was used for both the outward and return journeys. Overall, an annual compliance cost of around EUR 346,000 is to be expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Total material costs (in euro)
2,075	3	44.60	0	277,635	0
2,075	0.66	44.60	5.20	61,079.70	7,121.40
Annual compliance costs (in EUR)				345,836.10	

ddd) Applications from operators of pre-treatment facilities (points 12 and 13)

Of the full and cascade plants that would need to retrofit NIR aggregates, approximately 50 operators are expected to submit an application for approval of an equivalent alternative plant component. In a further 50 cases, an application for a waiver of individual plant components can be assumed. A total of 100 applications are expected. Since further applications are also expected only occasionally, a minor conversion cost is to be assumed.

eee) Format requirement for the sorting and recycling rate (points 14 and 16)

The new requirement stipulates that the Authority may establish a formal requirement for the annual quotas to be transmitted. The requirement triggers a minor compliance burden for the definition of the formats. At the same time, however, it relieves the burden on the examination of quotas, as uniform formats facilitate this process. Overall, a minor compliance cost and a minor relief can be assumed.

fff) Audit of the documentation of the management of construction and demolition waste by an expert (points 21, 22, 24 and 25)

The costs of commissioning the expert to verify the documentation shall in principle be borne by the authority. However, if the inspection by an expert reveals that the documentation is incorrect, the authority may demand reimbursement of costs from the producer and owner. As a mirror requirement for the examination of the documentation of the management of commercial municipal waste by an approved expert for the economy, the number of cases is 29,500, the inspection duration is an average of three hours per case, and for the remuneration of the expert, compliance costs are determined in accordance with the guideline Annex 7: Wage cost table for the economy "provision of professional, scientific and technical services" with a high level of qualification, at an hourly rate of 59.70 euros. Furthermore, it is assumed that in 50 % of cases an inaccuracy is detected by the expert and the competent authority imposes the costs on the producer or owner. The forwarding of the test report to the producer or holder is disregarded due to the minor effort involved. There is an annual compliance cost of around EUR 200,000.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Total material costs (in euro)
1,100	3	59.70	0	197,010	0
Annual compliance costs (in EUR)				197,010	

ggg) Establishment of a nationwide register of pre-treatment facilities (point 27)

Although maintaining the uniform register of pre-treatment plants throughout Germany is a new task for the competent authorities under regulatory law, maintaining a database of pre-treatment plants is already an enforcement practice, as can be seen from the results of the study commissioned by the UBA entitled "Development of the basis for the evaluation of the Commercial Waste Ordinance" on page 63. Reference is made here to the information provided by the Länder on the pre-treatment plants. Furthermore, many pre-treatment plants are also registered in the Waste Management Company Register, so that necessary data for the new register of pre-treatment plants are already available.

The one-off conversion costs for the establishment of the nationwide uniform electronic and publicly accessible register are estimated at 200,000 euros. This estimate is based on the calculations carried out for the Waste Management Company Register in accordance

with the Ordinance on Specialised Waste Management Companies (EfbV). The lower estimated investment costs compared to the Waste Management Company Register are due to the fact that no certificates will be sent in the register of pre-treatment plants and therefore less programming effort is required.

The burden of recording and checking the plausibility of the sorting rate sent annually to the competent authority will decrease once the register is established. In addition, there is a further time saving for checking the documentation of the supply of commercial waste to the pre-treatment plant, as the authority can use the register to verify whether the waste has been supplied to a proper plant that has the required plant components. The cost reduction is due in particular to the changeover to the uniform electronic data processing system. A minor relief is to be expected.

Number of cases	Time spent per case (in h)	Wage rate per h (in EUR)	Material costs per case (in EUR)	Total personnel costs (in EUR)	Total material costs (in euro)
1	0	0		0	200,000
One-off conversion costs (in EUR)				200,000	

## 5. Additional costs

No effects on individual prices and price levels, particularly consumer price levels, are anticipated.

## 6. Further consequences of the legislation

### a) Consideration of the interests of SMEs

In line with the Guidelines for considering the interests of SMEs in legislation impact assessments (SME test) of 30 December 2015, it has been examined whether less burdensome legislative alternatives or support measures are possible. The existing provisions of the Regulation to take account of the interests of small and medium-sized enterprises remain unchanged. Further relief measures could not be enshrined due to the objectives of the Regulation.

### b) Assessment of relevance to equality policy

The relevance assessment to be conducted in accordance with Section 2 of the Joint Rules of Procedure for the Federal Ministries revealed no impact from the Act which would be contrary to the goals of equal treatment policy, taking into account the different living situations of men and women.

### c) Demographic check

The draft legislation is also not expected to have any demographic impact such as on birth trends, age structure, immigration, regional distribution of the population or the ratio between the generations.

### d) Equivalent living conditions

In accordance with the Guidelines on implementing the 'equivalence check' for draft federal legislation of 20 April 2020, it has been examined whether and what impact the draft federal legislation would have on the equivalence of people's living conditions in Germany. The proposed regulation has a positive impact on the "natural resources" factor.

The aim is to make the regulation more enforceable in order to strengthen the recycling of commercial municipal waste and of construction and demolition waste, thereby promoting the protection of natural resources.

## **VII. Time limit; Evaluation**

The Regulation cannot be limited in time to safeguard the legal and investment security of producers and plant operators. By 31.12.2030, the Federal Government will examine whether the objectives of the Regulation have been achieved. To this end, it is determined whether separate collection has been strengthened, the standardised documentation requirements have achieved their effect, and the target recycling rate for the pre-treatment of mixtures has been achieved. In addition, it is also to be determined whether, in the meantime, plant technologies have become available that achieve comparable application rates to the NIR aggregates referred to in point 5 of Annex 3 and are therefore generally equivalent to NIR technology. In order to determine the data, the Federal Government may, in addition to surveying the Länder and the economic sectors concerned, again commission a research project to be awarded by the Federal Environment Agency.

### **B. Specific part**

#### **Re Article 1**

Article 1 contains the amendments to the Commercial Waste Ordinance.

#### **Re point 1 (Table of Contents)**

Point 1 contains the necessary amendments to the table of contents of the Regulation. In total, four new provisions are added to the Regulation and the provision on administrative offences is reclassified. Section 3a on monitoring plans, Section 9a on labelling requirements for waste containers, and Sections 13 and 14, which contain the register of pre-treatment plants and sample checks for energy recovery plants, are newly introduced.

#### **Re point 2 (Section 1 Scope of Application)**

Point 2 amends Section 1(2) and extends the scope of the Regulation. In addition to the operators of pre-treatment and treatment plants, the operators of energy recovery plants are now also included. The link with the word “and” makes it clear that the Regulation applies to the three operators mentioned, provided that one of the plants referred to in points (a) to (c) is operated. The background for the inclusion is the findings from the above-mentioned research project (UBA Texts 47/2023, pp. 120 et seq.). The extension of the scope corresponds to the new obligation for plant operators to carry out a random check (cf. Section 14 newly inserted by point 11). In addition to the registration obligations already existing under general waste law, the additional checks on the delivered mixtures by the operators of energy recovery plants are intended to facilitate and support official enforcement.

#### **Re point 3 (Section 2 Definitions)**

Point 3 makes the necessary changes to the definitions in accordance with Section 2 and adds two new definitions.

Letter a defines the newly inserted concept of plants for the energy recovery of waste. The term “energy recovery” is used several times in the Circular Economy Act. It includes all plants for the thermal treatment of waste assigned to recovery. In addition to waste incineration plants, this also includes other plants in which the thermal recovery of commercial

waste is permitted, in particular plants that incinerate substitute fuels or waste wood. In addition, plants that produce substitute fuels are covered, in particular mechanical-biological treatment plants (MBT).

Letters b and c limit cascade pre-treatment to two plants for the calculation of the sorting and recycling rate in points 7 and 8 of the definitions (see also point 7 letter a).

Letter d introduces the definition of authorised experts. In doing so, it essentially adopts the previous provisions of Section 4(6). So far, the involvement of an expert was mandatory in the application of the separate collection rate of 90 percent pursuant to Section 4(3) sentence 3. This possibility of exemption from the pre-treatment obligation is now deleted (see point 6 letter a), but at the same time various rules provide for the possibility for the competent authorities to appoint an expert to verify the fulfilment of the obligations of producers and holders on a case-by-case basis. The existing regulation on accredited experts is therefore still required and is being transferred to the provision on definitions due to its now general significance for the Regulation.

#### **Re point 4 (Section 3 Separate collection, preparation for reuse and recycling of commercial municipal waste)**

Point 4 specifies the obligation to collect commercial municipal waste separately in accordance with Section 3 of the Ordinance to promote recycling and ease enforcement.

Letter a concerns the exceptions to the separate collection obligation. The exceptions of technical impossibility and economic reasonableness are retained as an expression of the principle of proportionality, but are further specified and restricted.

The addition in letter a, double letter aa clarifies the application of the exception of technical impossibility. In line with previous enforcement practice (see LAGA Communication 34, p. 23 under 2.1.2.1), the regulation expressly clarifies that a technical impossibility cannot simply be claimed, but that all possible options for separate collection must first be examined by producers and owners for each waste fraction generated. The introduction of the inspection obligation also increases the requirements for documentation. Flat-rate arguments no longer meet the requirements.

The addition in letter a, double letter bb now specifies the standard example of the very small quantity for commercial municipal waste in the legal text. Up to now, a guideline value of ten kilograms per week and fraction as a quantity of waste below which a very small quantity could be assumed has been used as an aid to implementation (see LAGA Communication 34, p. 25 under 2.1.2.2). In the case of the two fractions, paper, cardboard, and glass, a separate collection should remain reasonable even under the aforementioned ten-kilogram limit. This guideline value of ten kilograms per week and fraction is now legally enshrined. The negative wording “is not present” makes it clear that from an amount of ten kilograms per week there is no longer a “small amount” of the respective waste fraction. Account must be taken of the “ordinary” operational situation, i.e. exceptional situations, such as annual company events and the like, are not taken into account in the analysis. The 10-kilogram limit ensures in particular that all catering establishments and establishments with employee kitchens and canteens, as well as all establishments selling food, such as supermarkets and kiosks, must carry out a separate collection of biowaste.

Letter b concerns the obligation to document separate collection. The amendments aim to facilitate and standardise administrative enforcement and to increase the transparency of separate collection, the disposal of separately collected waste pursuant to Section 3(1) and the use of exemptions pursuant to Section 3(2).

The amendments to letter b, double letter aa concern the documentation of the disposal of separately collected waste pursuant to point 2 of sentence 2 of Section 3(3). The amend-

ment order in triple letter aaa removes the obligation to submit site plans in the documentation for simplification. The proper separate collection may be checked on the basis of the photographs to be attached. So far, producers and owners have only had to obtain confirmation of “the intended whereabouts” from their respective disposal company. In practice, this has often led to very general and incomprehensible information from disposal companies, such as “recycling” or “material recovery”, which is not comprehensible to the competent authorities. By specifying in triple letter bbb that the plant to which the waste is to be fed must be indicated, the confirmation becomes more meaningful and the planned disposal of the separately collected waste becomes more comprehensible for the producers, holders, and authorities concerned.

Letter b, double letter bb specifies the documentation of separate collection by producers and holders and introduces for the first time a form for documentation. The obligation to use a specific format consistently continues the previous possibility of electronic documentation. The format for documentation is laid down uniformly throughout Germany in Annex 1 to facilitate enforcement authorities. The documentation template is made available electronically by the Federal Ministry for the Environment and Consumer Protection (BMUV). With the introduction of the format by the Regulation, producers and holders are obliged to use it for documentation. In addition, further sentences are added. They shall authorise the Authority, on a case-by-case basis, to appoint an expert to review the documentation. The prerequisite is that there are indications of inaccuracy. The new obligation is deliberately designed as a discretionary provision. As a result, the authority is required to examine less restrictive means before appointing an expert. In that regard, it is clarified that the producer or holder must first be given the opportunity to dispel the indications of inaccuracies in the documentation through further submissions. Evidence requiring expert examination may, for example, arise from inaccurate or incomplete documentation or if the authority has actual knowledge of the improper separate collection. The costs for the expert shall in principle be borne by the authority as the contracting entity. However, the new sentence 7 clarifies that the authority may only claim reimbursement of costs from the producer or holder if the expert determines that the documentation is incorrect. The test result shall be submitted to the producer or holder.

### **Re point 5 (Section 3a new monitoring of separate collection)**

Point 5 introduces a new Section 3a. The new Section 3a contains provisions for monitoring compliance with the separate collection by producers and holders of commercial municipal waste. The control authorities shall carry out more efficient and regular controls through this predefined structure. Overall, the aim is to strengthen the separate collection and recycling of the aforementioned waste and to increase compliance with the obligations of producers and holders.

This is a specification of Section 47 KrWG. The requirements of Section 47(3) KrWG are met. On the one hand, the undertakings targeted are producers and holders of waste and thus persons obliged to provide information pursuant to Section 47(3) sentence 1 point 1 KrWG. On the other hand, it serves to monitor compliance with the obligations under Sections 7 and 15 KrWG. Under that provision, producers or holders are primarily obliged to recover their waste in accordance with Paragraph 7(2) KrWG and secondarily to dispose of their waste in accordance with Paragraph 15(1) KrWG. These provisions are particularly relevant in the case of commercial waste, as there is no public law transfer obligation under Section 17(1) KrWG in this respect. Separate collection and pre-treatment are a first step towards complying with these obligations, as only single-variety waste can be recovered.

The commercial establishments referred to in (1) may be determined, for example, on the basis of the compulsory residual waste bins issued pursuant to Section 7 or, where permitted, on the basis of the commercial notices.

The controls should be appropriate and representative. It is not sufficient to select the samples solely on a random basis. (2) therefore contains requirements for the selection of holdings for the samples. These requirements are intended to facilitate enforcement by the competent authorities. In quantitative terms, the selection is limited to at least ten holdings per commenced 100,000 inhabitants per year. If there are fewer than 100,000 inhabitants in the area of responsibility, the word "started" clarifies that at least ten holdings must be inspected. From a qualitative point of view, the risk analysis required for an appropriate selection is specified by the characteristics in points 1 to 3. Thereafter, the risk analysis can be carried out on the basis of industry-specific characteristics. According to the research project "Development of the basis for the evaluation of the Commercial Waste Ordinance" (UBA-Texte 47/2023, p. 52 et seq., in particular Figures 11, 12), large quantities of mixed commercial municipal waste are generated, particularly in the food, services, machinery and vehicle construction industries, as well as in the mining, stone and earth extraction industries, and in the metal industry, which are suitable for increased separate collection. Another criterion for the risk analysis is the type and quantity of waste. For this criterion, among other things, the size of the establishment is an indicator, whereby large establishments with corresponding waste generation are, for example, those which, according to Section 1 sentences 1 and 4 in conjunction with Annex 1 to the 4th Ordinance on the Implementation of the Federal Immission Control Act (BImSchV) are subject to approval. Another possible criterion is already established infringements of the aforementioned laws, whereby the risk analysis must assess ex ante the extent to which an already established infringement poses an increased risk of new infringements over a longer period. This is a non-exhaustive list ("in particular"), so that further violations of the law can be taken into account in individual cases. With regard to the Narcotics Act referred to in No. 5, for example, violations of the New Psychoactive Substances Act (NpSG) may also need to be considered. The selection can also take into account whether the producer has already been monitored for compliance with the Commercial Waste Ordinance as part of a waste stream inspection pursuant to Section 47 KrWG or an environmental inspection pursuant to Sections 52 and 52a Federal Immission Control Act (BImSchG). Double monitoring is usually not efficient. Representative and efficient controls can only be carried out by taking all these parameters into account.

In the case of at least half of the holdings to be selected annually per 100,000 inhabitants, an on-the-spot check pursuant to (3) shall also be carried out in addition to the paper inspection pursuant to (2). The supervisory authority is entitled to carry out on-site inspections as part of the general monitoring pursuant to Section 47 KrWG. A prior announcement by the authority is not required, but may be appropriate. A prior determination of the dates of the on-the-spot checks, as in Section 52(2) of the Federal Immission Control Act, is not standardised by law, but can facilitate the conduct of the necessary checks.

(4) provides that, in the event of an established infringement, necessary further measures are to be taken by the authority. It clarifies that the measures are at the discretion of the authority. In addition to the initiation of administrative offence proceedings, the request to remedy the identified deficiency is particularly relevant. In addition, an ex-post check must be carried out within one calendar year. Whether a paper check or an on-the-spot check is to be carried out shall be determined by the competent authority at its own discretion.

#### **Re point 6 (Section 4 Pre-treatment of commercial municipal waste)**

Point 6 amends the obligation to pre-treat commercial municipal waste in accordance with Article 4 of the Regulation.

In letter a, sentence 3 of (3) is deleted. This provided for an exception to the pre-treatment obligation if a separate collection rate of 90 percent was observed. The scheme has not proved its worth in practice. The stated goal of incentivising companies to improve separate collection in order to strengthen recycling was not achieved. On the contrary, the exemption option is used only in very isolated cases, almost exclusively by waste producers

from sectors whose commercial waste already consists predominantly of mono batches and who use the scheme as a simple solution to avoid the pre-treatment obligation. It is irrelevant how high the proportions of recyclable waste are that remain in the resulting mixture. The elimination of the regulation reduces the authority's inspection effort and thus contributes to facilitating enforcement.

Letter b rewrites sentences 2 to 5 of the previous (5). As a result of the amendment in letter a, the previous sentences 4 and 5 are deleted first. These regulated the documentation of the separate collection rate and the examination by an expert. The previous rules on the documentation of the pre-treatment or the existence of the exceptions remain in place, but are supplemented. First of all, in line with Section 3(3) sentence 3, it is clarified that documentation must be carried out on the basis of the documents listed. On the one hand, as with the documentation of the separate collection, a nationwide uniform format is prescribed. In addition, the Authority shall be authorised to have the documentation of the pre-treatment of the waste referred to in paragraph 1 or the conditions for an exemption referred to in (2) verified by an expert. The examination by an expert is only carried out on a case-by-case basis if there are indications. Evidence may arise, for example, from incomplete or incorrect documentation. The new obligation is deliberately designed as a discretionary provision. As a result, the Authority is required to examine more lenient means before an examination by an expert. In that regard, it is clarified that the producer or holder must first be given the opportunity to dispel the indications of inaccuracies in the documentation through further submissions. The costs for the expert shall in principle be borne by the authority as the contracting entity. However, the new sentence 6 clarifies that the authority can only assert a claim for reimbursement of costs against the producer or holder if the expert determines the documentation to be incorrect. The test result shall be submitted to the producer or holder.

Letter c deletes the former (6). Deletion is the necessary consequential amendment to the deletion of the separate collection rate in sentence 3 of (3) (cf. letter a). However, the definition and the requirements for the expert are not deleted without replacement, but are now included in the definitions pursuant to Article 2 of the Regulation (cf. point 2 letter b).

### **Re point 7 (Section 6 Requirements for pre-treatment plants)**

Letter a contains the amendments to the minimum technical equipment of pre-treatment plants pursuant to Section 6(1).

Letter a, double letter aa provides for a clarification in sentence 1 of Section 6(1) that pre-treatment plants must not only be equipped with the plant components specified in the Annex, but these components must also be used in the pre-treatment of the accepted waste. This requirement for pre-treatment plants applies to all mixtures pursuant to Section 4(1) sentence 1, Section 9(1) sentence 1, point 1, and Section 9(3) sentence 1. The background is the finding that in some cases the plants have all components, but for economic reasons they are not used. At the same time, the recycling rate of 30 per cent by mass, which the plants must adhere to and which is currently often not met, can only be achieved if the existing plant technology is actually utilised. In addition, the numbering of the Annex is regulated as a necessary consequential change.

Letter a, double letter bb limits the possibility of dividing the legally required plant components (so-called cascade pre-treatment) into two plants. The other conditions (ensuring full pre-treatment through appropriate contracts and compliance with sorting and recycling quotas) remain in place. Experience in enforcement has shown that cascade pre-treatment has led to a significant circumvention of the pre-treatment obligation. Often, at the first stage, some large, easily recyclable components are removed, and the mixture is then declared either as completely pre-treated or as no longer pre-treatable, mixed with other mixtures, and sent for energy recovery, although further waste containing recyclables could have been sorted out when passing through the complete cascade. Mixtures



requiring pre-treatment include, for example, mixed packaging (waste code 150106), mixed municipal waste (waste code 200301) and bulky waste (waste code 200307). In addition, the passage through the cascade and compliance with sorting and recycling quotas for each cascade cannot be monitored by the authorities with reasonable effort. Even in a cascade with three systems connected in series, the control is so complex that it is no longer actually carried out. The same applies to the exchange of information between the plants required under Section 6(4) and (6).

Letter (a) double letter cc clarifies that all mixtures are to be passed on, but not possibly sorted-out pure fractions.

Letter a, double letter dd provides for the introduction of the possibility for the competent authority to allow deviations from the equipment in individual cases. On the one hand, the competent authority may completely refrain from equipping it with one or more components. However, this presupposes that the sorting and recycling quotas are still strictly adhered to. On the other hand, it may permit components other than those listed in Annex 3 in the sense of equipment open to innovation. The condition is that they are equivalent to those listed in Annex 3. Equivalence exists when the application of the individual types of material and their respective application rates is ensured in the same type, quality, and quantity, i.e., the same application rates are achieved. In this regard, the authority has to make a forecast decision. The fiction of recognition in accordance with the second half-sentence of point 2 ensures that the procedure can be completed quickly and unbureaucratically and that the plant operator receives legal and investment certainty promptly. In order to expedite the process, the decision-making period for the authority is, contrary to what is provided for in Section 42a of the Administrative Procedure Act, not three months, but only one month. The newly introduced flexibility takes into account, on the one hand, the fact that the configuration of the plant also depends on the type of waste received and, on the other hand, that the plant standard is increased by this Regulation (see point 13).

Letter b contains changes to the procedure for determining and transmitting the sorting quota pursuant to Article 6(4). The level of the minimum sorting rates of 85 percent remains unchanged.

Letter (b), double letters aa and bb, align the procedure for determining and transmitting the sorting quota with that of the recycling quota pursuant to Section 6(6). The joint identification and transmission of the two quotas ensures simplification for plant operators and public authorities. It also provides the Authority with the possibility to prescribe the electronic transmission and the corresponding format. The requirement to indicate the basis of calculation serves the purpose of verifiability. Defining a uniform calculation method for the sorting and recycling rate is a task for the LAGA Enforcement Assistance. The obligation to determine the monthly sorting rate in double letter bb remains independent of the annual determination of the sorting rate inserted in double letter aa and submission to the competent authority.

Letter b, double letters cc and dd, contain editorial consequential amendments to limit the possibility of cascade pre-treatment.

Letter c deletes provisions related to the review of the recycling rate, which have now been resolved.

Letter d, double letter aa provides the authority with the possibility to prescribe the electronic transmission and a corresponding format.

Letter d, double letters bb and cc, contain editorial consequential amendments to limit the possibility of cascade pre-treatment.

**Re point 8 (Section 8 Separate collection, preparation for reuse and recycling of certain construction and demolition waste)**

Point 8 contains amendments to the obligation to separately collect construction and demolition waste in accordance with Section 8.

Letter a concerns changes in the fractions to be collected separately pursuant to Section 8(1).

Letter a, double letter aa concerns insulation materials (waste code 17 06 04). Practice has shown that the joint collection of different insulation materials prevents high-quality recycling. The separation of the different insulation materials after a common collection is no longer technically possible. The new specification therefore provides for a more extensive separate collection and divides the fraction into rock wool, glass wool, and other insulation materials. Further separation enables recycling and the production of high-quality recyclates.

Letter a, double letter bb) divides the waste fraction gypsum into plasterboard, gypsum fibreboard, and other gypsum-based building materials. The obligation to keep gypsum boards separate extends in particular to plasterboard. Gypsum fibre boards must be kept separate from the other gypsum boards, as the fibres have an influence on the recycling process of gypsum boards (see Factsheet Gypsum UBA (FKZ 3716 35 3230), p. 3). As demonstrated in letter aa for insulation materials, it has also been shown in practice for gypsum-based building materials that further separate collection promotes high-quality recycling. This is because contamination of the individual gypsum fractions inevitably has adverse effects on the technical feasibility of recycling measures and on the quality of recyclates.

Letter a, double letter cc concerns the separate collection of non-hazardous asbestos-containing waste. Asbestos-containing waste can generally be generated in different fractions (e.g. asbestos-containing plasters, fillers, spacers, formwork anchors, and insulation materials with asbestos adhesions). Due to the asbestos content in these wastes, recovery is not possible regardless of the classification as hazardous or non-hazardous waste, and the waste must be disposed of (see LAGA Communication 23 "Enforcement Assistance for the Disposal of Asbestos-Containing Wastes," Chapters 2.2 and 7.1). Against this background, the newly inserted sentence 1 regulates the separate collection of non-hazardous asbestos-containing waste, distinct from the other non-hazardous waste fractions referred to in Section 8(1). The wording "without prejudice" is necessary, as the classification of non-hazardous asbestos-containing waste under one of the waste codes referred to in Section 8(1) points 1 to 10 is precisely irrelevant for the fraction of non-hazardous asbestos-containing waste. According to the requirements of the Waste Catalogue Ordinance, waste containing asbestos would be assigned a key number based on the main component. However, as asbestos-containing waste must be disposed of, it can be collected together regardless of its waste key. The asbestos content is determined on the basis of various legal requirements even before the waste is generated (see LAGA Communication 23 "Enforcement Assistance for the Disposal of Waste Containing Asbestos", p. 19 et seq.). Corresponding to this provision, the amendment to the Landfill Ordinance introduces a legal definition of the term "non-hazardous construction and demolition waste containing asbestos" in Article 2 (see below for Article 2 point 1a).

Letter b, double letter aa concerns changes to the exceptions to separate collection pursuant to Section 8(2). As a result of the newly introduced obligation for the separate collection of non-hazardous asbestos-containing waste in letter (a) double letters (cc), the scope of (2) is now also extended to include the obligation for the separate collection of non-hazardous asbestos-containing waste. The standard of assessment shall apply to the possibility of separate collection of this fraction of waste from the other fractions referred to in points 1 to 10 of (1). By contrast, the existing reference to Section 9a KrWG (Section

8(1) sentence 4) already ensures that account is taken of the technical possibility and economic feasibility of separately recording non-hazardous asbestos-containing waste and hazardous asbestos-containing waste. Pursuant to Section 9a(1) KrWG, there is a prohibition on mixing hazardous waste with other hazardous or non-hazardous waste. Pursuant to Section 9a(3) KrWG, inadmissibly mixed hazardous waste must be separated by the producer and holder as far as technically possible and economically reasonable. This ensures that hazardous waste containing asbestos must be collected separately and must not be collected or mixed with non-hazardous waste for the purpose of complying with the limit value for achieving the definition of non-hazardous waste. In practice, unauthorised mixing is likely to occur in particular if hazardous asbestos-containing fibre cement boards are not collected separately with the aim of falling below the limit value.

The specification regarding the technical impossibility in letter bb corresponds to the addition in the case of commercial municipal waste (see point 4 letter a, double letter aa). A specification of the technical possibilities to be examined for compliance with the separate collection can be made in the LAGA Enforcement Assistance.

Letter b, double letter cc, now specifies the standard example of the very small amount for construction and demolition waste in the legal text. A guideline value of one cubic metre per fraction and construction and demolition measure was already used to assist implementation (see LAGA Communication 34, p. 52 under 3.1.2.2). The newly introduced regulation now sets the limit at this benchmark of 1 cubic metre per construction and demolition measure and fraction. The term “construction measure” derives from building regulations law (building regulations of the Länder) and includes the construction, modification, demolition, disposal, change of use or maintenance of a building or part of a building. The negative wording “is not present” clarifies that from a quantity of 1 cubic metre per measure there is no longer a “small quantity” of the respective waste fraction.

Letter c concerns changes to the documentation obligations pursuant to Section 8(3). The changes are similar to those for commercial municipal waste (see point 4 letter b).

#### **Re point 9 (Section 9 Amendment of the pre-treatment and treatment of certain construction and demolition waste)**

Point 9 contains amendments to the documentation requirements for the supply of construction and demolition waste for pre-treatment or processing. The changes are similar to those for commercial municipal waste (see point 6 letter b).

#### **Re point 10 (Section 9a new Labelling of Waste Containers)**

Point 10 introduces the new obligation to label waste containers. The obligation is systematically assigned to the “Common rules” section and thus targets both producers and holders of commercial municipal waste and construction and demolition waste. The new regulation aims to strengthen separate collection and primarily seeks to enhance the knowledge of the respective employees in the company.

Sentence 2 of (1) stipulates that the marking must be affixed visibly to the outer surface of the container and at least in German. The requirements are deliberately not too detailed to take into account the heterogeneity of the companies and establishments affected by the Commercial Waste Ordinance. The word at least serves to clarify that, in addition to labelling in German, translations into other languages that are useful for the establishments concerned are also possible.

In addition to the containers for the collection of monofractions, the containers in which mixtures are collected shall also be labelled in accordance with paragraph 2. The provision in (2) is negatively formulated and stipulates that those waste fractions which must not be contained must be labelled on the container. This is because mixtures only arise when separate collection is economically unreasonable or technically impossible. There-

fore, only the fractions that must not be included should be labelled, as otherwise no pre-treatment is possible. In any case, hazardous waste that must already be kept separate in accordance with Section 9a(1) KrWG must not be included. This includes, in particular, dangerous lithium-ion batteries. The regulation is necessary in order to carry out a proper feeding to the pre-treatment or treatment plant in accordance with Section 8(1) points 1 and 2.

### **Re point 11 (Sections 13 and 14 new register of pre-treatment facilities and sample checks for energy recovery facilities)**

Point 11 introduces two new provisions.

The **new Section 13** introduces a register of pre-treatment facilities to facilitate enforcement and ensure transparency for those responsible for disposal.

(1) addresses the obligation to maintain a register to the Länder as enforcement authorities. The Waste Management Company Register in accordance with Section 28 Ordinance on Specialised Waste Management Companies can serve as a model for this register. Under this provision, the Länder have already established a nationwide uniform electronic register. The data from the Waste Management Company Register shall be used as far as possible, as not all pre-treatment plants are included in the register and more up-to-date data may also be available.

Paragraph 2 sets out the minimum content of the register. These relate to the plant operator, the master data of the plant, and the plant components. As a result, the producers and owners receive the necessary information on the existing pre-treatment plants in accordance with Article 6 and can thus ensure compliance with the pre-treatment obligation in accordance with Section 4.

Paragraph 3 provides that the register shall be regularly updated and made available to the public. The regulation is deliberately not further specified to grant the countries the necessary leeway in its implementation.

Paragraph 4 leaves the details of the establishment and maintenance of the register to the Länder. The register provides legal certainty for producers and holders of industrial waste and, in the future, facilitates enforcement. Although the creation of the register initially involves additional effort for the enforcement authorities, the simplification of the traceability of the plant locations and equipment is expected to facilitate enforcement in the long term.

The **new Section 14** contains the obligation for operators of energy recovery plants to carry out random checks and visual inspections and to make certain findings on the basis of the documentation. Such a provision on the obligations of operators of energy recovery plants has not yet been included in the Regulation, even though the operators are key players. The research project "Development of the basis for the evaluation of the Commercial Waste Ordinance" (UBA-Texte 47/2023, p. 119 et seq.) also supports the inclusion of energy recovery plants in the scope of application. On the one hand, as part of their duty of care, operators are obliged to inspect the waste delivered at least on a random basis. On the other hand, the inclusion constitutes an additional efficient control mechanism alongside administrative enforcement. The competent authorities may adopt more targeted control and sanction measures through the upstream controls. In addition, the scope of control by the competent authorities is reduced with similar effectiveness, as there are significantly fewer operators of energy recovery plants compared to producers of commercial waste and operators of pre-treatment plants. Overall, this strengthens the pre-treatment of mixtures. For the avoidance of doubt, it should be noted that according to Section 9(4) KrWG, waste that is collected by type cannot be used for thermal recovery.

The aim of the random incoming checks carried out by operators of waste energy recovery plants is to prevent pre-treatment from being circumvented and recyclable waste from

ending up directly in incineration. If there is evidence of infringements of the Commercial Waste Ordinance, the authority may take action against the suppliers or subsequently against the producers and owners.

The information referred to in points 1 to 3 of (2) is necessary in particular for traceability.

In the case of waste with waste code 19 of the Annex to the Waste Catalogue Ordinance, the determination of whether the waste has been pre-treated in accordance with (2) point 4 can, in principle, be carried out as a paper check by using the register in accordance with Section 13. This is because only waste from waste treatment plants receives the waste code 19 of the Annex to the Waste Catalogue Ordinance. Accordingly, the pre-treatment carried out can only be assumed if the supplier has received the waste from a registered pre-treatment facility.

In the case of waste with waste code 20 in accordance with the Annex to the Waste Catalogue Ordinance, a check shall be carried out in accordance with point 5 of (2). The operators of the energy recovery plants must verify whether there are indications that the waste is evidently not pre-treated. Obvious indications of pre-treatment are, for example, the chunkiness of the delivered waste or the presence of metal parts. As a rule, the appearance of the waste changes when it passes through pre-treatment. In addition, it can be assumed that valuable and easily sortable substances such as metals are no longer contained in the mixture after pre-treatment. Such a visual inspection is also recommended on a random basis for waste with waste code 19, in order to rule out incorrect declaration of the waste.

Sampling can only verify whether the waste has obviously not been pre-treated and not why it has not been pre-treated. Anomalies in the sample check do not mean that waste may not be recovered, but that the authority must investigate if it has required the operator of the plant to submit the documentation. Further identification of exceptions to separate collection by the operators is not possible. The regulation is not intended to replace official enforcement, but to secure information for official enforcement.

Overall, the sample checks are intended to strengthen the pre-treatment of mixtures.

### **Re point 12 (Section 15 Administrative Offences)**

Point 12 makes the necessary consequential changes and adds four new administrative offences.

### **Re point 13 (Sections 14 and 15 old)**

Point 13 contains a necessary consequential amendment.

### **Re point 14 (Annexes 1 and 2 new)**

Point 14 introduces two new Annexes 1 and 2 before the previous Annex. This will introduce uniform forms for the documentation of producers and holders of commercial municipal waste, to be used for both paper and electronic documentation. The given values for the conversion of mass into volume are taken from evaluations of the Bavarian State Office for Statistics, in which conversion factors for waste types have been determined according to the keys of the Waste Catalogue Ordinance ([www.statistik.bayern.de/service/surveys/bauen\\_wohnen/waste/waste\\_types/index.php](http://www.statistik.bayern.de/service/surveys/bauen_wohnen/waste/waste_types/index.php)).

### **Re point 15 (Annex 3)**

Point 15 first assigns a number to the existing Annex, as further Annexes are added to the documentation obligations. The amendment is intended to adapt to technical progress. Letter a initially adds the possibility of having sorting carried out by a sorting robot. Letter

b specifies the requirements for near-infrared devices and supplements the minimum application rates for wood and paper. The minimum application rate refers to the technical capabilities of the aggregate.

### **Re point 16 (Annexes 4 and 5 new)**

Point 16 inserts the new Annexes 4 and 5. This will introduce uniform forms for the documentation of producers and holders of construction and demolition waste, to be used for both paper and electronic documentation. The given values for the conversion of mass into volume are taken from evaluations of the Bavarian State Office for Statistics, in which conversion factors for waste types have been determined according to the keys of the Waste Catalogue Ordinance ([www.statistik.bayern.de/service/surveys/bauen\\_wohnen/waste/waste types/index.php](http://www.statistik.bayern.de/service/surveys/bauen_wohnen/waste/waste%20types/index.php)).

## **Article 2 Amendment to the Landfill Ordinance**

### **Re point 1 (Section 2, points 38 and 39, new definitions)**

The new Section 8(1) GewAbfV obliges waste producers to collect non-hazardous asbestos-containing waste separately from the other waste fractions and to dispose of it properly and without damage. The implementation of the obligation requires corresponding follow-up adjustments in the Landfill Ordinance concerning the disposal of waste. Letter a contains the necessary consequential amendment to introduce the new definitions in point (b). The new point 38 serves to define non-hazardous asbestos-containing construction and demolition waste. The value of 0.1 M% as a limit value below which the waste containing asbestos is not hazardous results from Annex III to the Waste Framework Directive in conjunction with Table 3 index number 650-013-00-6 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council. The definition is based on the definition of non-hazardous asbestos-containing waste in LAGA M23 (see above for Article 1 point 8 letter a double letter cc). In contrast to this definition, however, the assessment of the technical possibility and the economic reasonableness is already included in the examination by Section 8(1) sentence 4 and Section 8(2) GewAbfV (see above). Explanatory memorandum to Article 1 point 8 letter a, triple letter ccc. The definition is therefore legally correctly limited to the determination of the hazard criterion. Furthermore, it is clarified that only asbestos-containing waste can be classified as non-hazardous if it has a non-hazardous mirror entry in the Waste Catalogue Ordinance. This makes it clear that the asbestos mass content is not relevant for waste containing asbestos that is assigned to an absolutely hazardous waste key in accordance with the Annex to the Waste Catalogue Ordinance, e.g. 170601 or 170605.

The new point 39 contains a definition of non-hazardous asbestos-containing soil material.

### **Re point 2 (Section 6 Requirements for the deposition)**

The amendment in point 2 letter a is a correction. The Ordinance amending the Substitute Building Materials Ordinance and the Fuel Change Gas Deficiency Ordinance lays down the obligations for the examination and classification of unprocessed soil material and unprocessed dredging material in Section 3, Subsection 3.

Letters b and c are consequential changes resulting from the newly created obligation to separate the collection and storage of non-hazardous construction and demolition waste, including soil material. It serves to transpose UMK Decision 55/2021 and the contents of LAGA M23 into national law. This will enable the disposal of non-hazardous asbestos-containing construction and demolition waste and non-hazardous asbestos-containing soil material outside mono-areas. This facilitates the disposal of non-hazardous asbestos-containing construction and demolition waste as well as non-hazardous asbestos-containing soil material and spares landfill capacity.

**Re point 3 (Section 8 Acceptance Procedure)**

The amendments are intended to clarify and strictly implement the amendment introduced under Section 6(3).

**Re point 4 (Annex 5)**

The amendment is a consequential amendment.

**Article 3 (entry into force)**

Article 3 lays down the entry into force of the Ordinance. This shall enter into force uniformly on 1 July 2026, so that the persons concerned have sufficient time to adapt to the new legal situation.