

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 22 December 1998

confirming the measures notified by Austria pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste

(notified under document number C(1998) 3940)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/42/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste<sup>(1)</sup>, and in particular Article 6(6) thereof,

Having consulted the committee set up by Directive 94/62/EC,

Whereas:

## I. PROCEDURE

## 1. Directive 94/62/EC

Directive 94/62/EC, based on Article 100a of the Treaty, aims to harmonise national measures concerning the management of packaging and packaging waste in order to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and to ensure the functioning of the

internal market and to avoid obstacles to trade as well as distortions and restrictions of competition within the Community. To this end, Article 6(1) of the Directive lays down, *inter alia*, quantified targets to be achieved by Member States for recovery and recycling of packaging waste.

Article 6(1)(a) establishes that, no later than 30 June 2001, between 50 % as a minimum and 65 % as a maximum by weight of the packaging waste will be recovered. Pursuant to Article 6(1)(b), within this general target, and within the same time limit, between 25 % as a minimum and 45 % as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled with a minimum of 15 % by weight for each packaging material.

Article 6(6) introduces a monitoring procedure to ensure coherence between the different strategies chosen by Member States, particularly with a view to ensure that targets set in one Member State do not hinder compliance by other Member States with the Directive or represent distortions of the internal market.

Under that provision, the Commission is to confirm such measures after appropriate verification.

<sup>(1)</sup> OJ L 365, 31. 12. 1994, p. 10.

## 2. The measures notified

On 23 December 1994 the Austrian Government notified to the Commission, under Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>(1)</sup>, a draft of national measures to be adopted in the field of packaging and packaging waste (notification 94/9059/A). The draft measures were intended to bring Austrian legislation (Ordinance 645 of 1992 on packaging waste and Ordinance 646 of 1992 setting targets for packaging waste) in line with the contents of Directive 94/62/EC, which was to be transposed into national legislation before 30 June 1996. On 29 May 1995, in the context of the correspondence with the Commission regarding this notification, the Austrian Government communicated its intention to exceed the recycling target laid down in Article 6(1)(b) of Directive 94/62/EC. In this communication, the Austrian Government announced that the maximum target for recycling was already exceeded in 1994 and statistical findings showed that this target would be exceeded in 1995 as well. Since programmes had been established to exceed such targets in the following years, the Austrian Government sought confirmation by the Commission. In particular, in light of the amendment of the Austrian packaging legislation, the Austrian Government referred to the year 1998 as well as to the year 2001 (the legislation provides for a revision or increase of the recycling target for 2001 by the year 1999).

On 17 July 1995 the draft amendment to the Austrian legislation on packaging and packaging waste was notified once more to the Commission under Article 16 of Directive 94/62/EC. That Article provides that Member States are to notify the drafts of measures that they intend to adopt within the framework of Directive 94/62/EC to the Commission, excluding measures of a fiscal nature, but including technical specifications linked to fiscal measures which encourage compliance with such technical specifications, in order to permit the latter to examine them in the light of existing provisions following in each case the procedure under Directive 83/189/EEC.

In a letter to the Austrian authorities dated 19 October 1995, sent in the context of notification 94/9059/A, the Commission took note of the intention of Austria to make use of Article 6(6) and requested additional information concerning, in particular, the expected recycling rate, the appropriate capacities provided for in order to achieve this target and the measures taken in order to avoid distortions of the internal market as well as compliance problems of other Member States with Directive 94/62/EC. The answer to this letter was received on 20 June 1996. No precise expected recycling rate was in-

dicated, although Austrian authorities mentioned that a slight exceeding of the maximum recycling target was expected for the next years, concerning mainly paper and glass packaging. It was added that the availability of appropriate recycling capacities was demonstrated by a report ordered by the Federal Ministry for Environment, and which was subsequently transmitted to the Commission in September 1996. This report contains figures on recycling of the different packaging materials for the year 1994. As regards the measures envisaged in order to avoid market distortions and compliance problems for other Member States with the Directive, the letter indicated that the implementation of the legislation had shown that such problems did not arise.

A revised version of the packaging Ordinance and of the Ordinance setting targets for packaging waste was notified under Directive 83/189/EEC and under Article 16 of Directive 94/62/EC on 26 August 1996 (notification 96/332/A) and on 25 March 1997 (notification 97/156/A). These Ordinances have been published respectively on 29 November 1996 (numbers 648 and 649) and on 13 August 1997 (number 232).

Paragraph 11(7) of Ordinance 648/96 lays down targets for economic operators (manufacturers, importers, fillers and distributors) which take part in a collection and recycling system agreed by public authorities. The target for recycling for these economic operators is 25 % by weight of the packaging waste (with a minimum of 15 % for each packaging material) starting from the year 1997, to be achieved every calendar year. These targets correspond to the minimum targets for recycling set by Directive 94/62/EC.

Paragraph 10 of Ordinance 648/96 lays down recycling targets for economic operators not participating in an agreed system. These targets, to be achieved in every calendar year, are, by weight:

Paper, board, cardboard, corrugated cardboard	90 %
Glass	93 %
Ceramic	95 %
Metals	95 %
Plastics	40 %
Beverage composites	40 %
Other composites	15 %

Percentages are calculated out of the total amount of each packaging material.

<sup>(1)</sup> OJ L 109, 26. 4. 1983, p. 8; Directive replaced by Directive 98/34/EC (OJ L 204, 21. 7. 1998, p. 37).

Each economic operator not participating in an agreed system has to collect or take back 90 % of the packaging material he has put on the market. If he actually collects or takes back a proportion of less than 90 % but more than 50 % of the packaging material he has put on the market, he is obliged to participate in an agreed collection and recycling system in respect of the difference between that proportion and 90 %. For this amount, the targets of paragraph 11(7) apply. If he collects or takes back a proportion of less than 50 % of the packaging material he has put on the market, he is obliged to participate in an agreed collection and recycling system in respect of the difference between that proportion and 100 %.

For this amount also the targets of paragraph 11(7) apply.

Further targets for drinks packaging are set out by Ordinance 649/96, as follows.

Paragraph 2 establishes that, in order to prevent and recover waste from drinks packaging, the following ratios of drinks packaging as a proportion of the bottling volume sold on the domestic market is to be met through re-filling, environmentally compatible recycling and energy recovery:

	(%)			
	1993	1994	1997	2000
Mineral water, table water, soda water	90	92	92	96
Beer	90	91	92	94
Alcohol-free refreshment drinks (such as lemonade), including alcohol-free hop and malt drinks	80	80	80	83
Fruit juices, fruit-juice drinks, nectars	40	45	60	80
Milk and liquid milk products	25	40	60	80
Wine	60	65	80	80
Champagne-type drinks and spirits	60	65	70	80

Targets are expressed in weight and percentages are calculated out of the totality of all packaging material used for each product.

In addition, paragraph 3 establishes absolute maximum quantities of residues of other packaging waste (packaging waste other than drink packaging) that may be treated in waste treatment facilities, other than material recycling or thermal recovery facilities.

(tonnes)

	1994	1998	2001
Glass	70 000	54 000	38 000
Plastics	160 000	90 000	60 000
Paper, card, cardboard, corrugated cardboard	209 000	140 000	99 000
Metals	55 000	36 000	17 000
Composites	81 000	50 000	30 000

### 3. Opinions

Article 6(6) states that the Commission is to take a decision, after a verification of the measures in cooperation with Member States. To this end, the Commission consulted the Member States on the notification in question in the context of the Committee established by Article 21 of Directive 94/62/EC. This procedure was deemed to be the most appropriate and no Member State expressed disagreement in this respect. A first exchange of views took place during the Committee meeting of 21 April 1997. Member States were then invited to send written comments to the Commission by 31 May 1997. Austria, Belgium, Denmark, France, Ireland, the Netherlands and the United Kingdom submitted written contributions. The matter was discussed again during the Committee meeting of 4 September 1997.

No Member State contended that the Austrian measures could create internal market distortions or hinder compliance by other Member States with the Directive.

Several Member States made the point that a specific procedure, laying down the kind of information that Member States should provide when notifying a measure under Article 6(6), should be agreed upon between them and the Commission. However, a number of difficulties were recognised, particularly pertaining to the assessment of recovery and recycling capacities which exist on the open international market and to the fact that it is not always possible to foresee whether certain measures will have as an effect that the maximum targets of Directive 94/62/EC will be exceeded.

France considered it difficult for the Commission and for Member States to take a position on this matter in the absence of the common methodology to be used for setting up the database (in accordance with Article 12 of Directive 94/62/EC), since until that moment there will

be difficulties in calculating the achieved targets. France therefore suggested to wait until the common methodology was available in order to take a decision on the notification from Austria <sup>(1)</sup>.

In the Committee-meeting there was a general consensus on the need to constantly monitor the effect of measures in order to identify and face possible trade distortions, should any arise. The United Kingdom indicated that providing information on economic aspects such as past-levels and projections of reprocessing and of reprocessing capacities, of imports and exports of packaging waste, as well on historical prices over time would be useful. However, there was also general consensus on the fact that, in the procedure, a primary role was to be played by Member States which feared their compliance with the Directive would be hindered by measures which were adopted by other Member States. Should a measure exceeding the maximum targets of the Directive result in compliance problems for another Member State, it was primarily up to the latter to make this situation known so that appropriate counter-measures could be taken. The Commission invites Member States to immediately submit any information on adverse effects as set out in Article 6(6) on their territory, whenever such a situation arises.

The United Kingdom also suggested that the effects of any higher target in existence should be examined during the planned review of Article 6(1) targets, to be completed no later than 1 January 2001.

## II. ASSESSMENT

In view of the delay which would be caused if the Commission was to wait for the data in accordance with Commission Decision 97/138/EC <sup>(2)</sup>, and taking into account the fact that no adverse effect concerning the elements mentioned in Article 6(6) has been reported, the Commission considers it unnecessary to postpone the present decision as suggested by France.

Article 6(6) of Directive 94/62/EC allows Member States to go beyond targets set in Article 6(1)(a) and 6(1)(b) if the Member State provides to this effect appropriate capacities for recycling and recovery. The measures must be taken in the interest of a high level of environmental protection and on the condition that they avoid distortions of the

internal market and do not hinder compliance by other Member States with the Directive. Nor may they constitute an arbitrary means of discrimination or a disguised restriction on trade between Member States.

In this case, Austria has asked for a derogation from Article 6(1)(b).

The Commission has consulted the Member States and no objections to the Austrian measures have been raised.

### (a) Appropriate capacities for recycling

This requirement is interpreted by the Commission as not imposing on Member States total self-sufficiency with respect to recycling and recovery. Member States may also have recourse to capacities located in other Member States and third countries in order to fulfil their recycling and recovery targets. This, however, makes it difficult to carry out a precise quantification of available capacities, since recycling takes place in an open international market.

This criterion serves also the purpose of ensuring that measures taken in one Member State do not result in problems of compliance with the Directive for other Member States; therefore it should be seen in conjunction with the other criteria laid down in Article 6(6). In practice, compliance with this criterion is a signal for compliance with criteria (b) and (c) below. In particular, if targets are set exceeding those laid down in Article 6(1), it should be ensured that this is not to the detriment of collection and recycling schemes in other Member States.

As regards the Austrian notified measures, the Austrian Government stated that exceeding the maximum target for recycling in 1998 would primarily depend on paper recycling (paper accounts for 44 % of the total packaging in circulation). At present, over-capacities exist for recycling paper and glass as well as primary metal and plastic packaging and commercial packaging. Austria estimated that capacities for recycling will remain available, despite the increase in the collection/recycling of used packaging. This information appears in the report provided to the Commission in September 1996 and which the Commission circulated to all other Member States. This report shows that in 1994 about 55 % of packaging waste put in circulation was recovered (481 000 tonnes out of 876 300 — 52 % in the form of material recycling (456 700 tonnes) and 3 % in the form of energy recovery — but drinks packaging is not taken into account in these calculations. The recovery rate for glass was 69 %, paper and cardboard 72 %, metal 44 %, plastics 25 % and

<sup>(1)</sup> As regards this question, it is established that the completion of databases is to be developed in line with Commission Decision 97/138/EC to ensure compliance with the objectives of the Directive and the future setting up of a common methodology, but this is not a condition for confirming measures in the context of Article 6(6).

<sup>(2)</sup> OJ L 52, 22. 2. 1997, p. 22.

composites 4 %. On the basis of similar production in the coming years, Austria expects, disregarding drink packaging, a slight exceeding of the target set out in Article 6(1)(b) of Directive 94/62/EC. This mainly concerns glass and paper. This means that capacities are available within Austria. The Commission finds that Austria provides appropriate capacities for recycling.

**(b) Potential distortions of the internal market**

The Commission has assessed the measures as notified by Austria and finds that the collecting and recycling system imposed on the operators by the Austrian legislation does not cause distortions of the internal market.

The Austrian Government has declared that the application of these measures in the past has proved that there are no market distortions. The consultation of the other Member States revealed that no Member State considers that the Austrian measure could lead to market distortions. The Commission does not dispose of any other element showing that the Austrian measures would lead to market distortions.

**(c) Non-hindrance of compliance by other Member States with the Directive**

The purpose of this criterion is to avoid recycling and recovery capacities of Member States being filled up by packaging waste collected in other Member States. This is particularly relevant for those Member States which have not yet started recycling of packaging waste on a large scale and where the infrastructure for collection is still to be set up or completed.

The assessment of the notified measures in light of this criterion should primarily be made taking into account the opinion of the Member States whose compliance with the targets of the Directive could be endangered by measures set up in other Member States. No Member State expressed concern that the compliance with the Directive could be hindered by the measures notified by Austria. The Commission has not either become aware or been made aware of any compliance problem caused by the Austrian measures to other Member States.

In assessing whether exceeding the recycling target by Austria could result in recycling capacities in other Member States being exploited, thereby resulting in potential compliance problems by other Member States with the targets of the Directive, the Commission also takes into account the fact that Austria only produces about 1 % of the packaging waste produced in the Community. Therefore, in the Commission's view, there is no real risk that this would result in problems for other Member States in complying with the targets of Directive 94/62/EC.

**(d) No arbitrary means of discrimination**

The Austrian measures apply without distinction to all packaging waste, whether arising from domestic or imported products. The Commission has never received any complaint alleging that the Austrian legislation entails arbitrary discrimination. The Commission has consulted the Member States: the information obtained is not indicative of any discrimination.

**(e) No disguised restriction on trade between Member States**

This concept refers to possible restrictions on imports of products from other Member States and to indirect protection of domestic production. Wastes are goods which fall under the scope of Articles 30 to 36 of the Treaty and consequently measures taken in the field of waste management are also capable, in certain circumstances, of restricting trade or protecting domestic production. However, the content of the Austrian measures and the circumstances surrounding their application do not allow for such a conclusion to be drawn. The recycling targets apply to all packaging waste without distinction whether arising from domestic products or imported products. The conditions for participating in a system of collection and recycling agreed by public authorities apply to domestic and foreign producers without distinction. No complaint in this respect has ever been received by the Commission.

**III. CONCLUSION**

The Commission, in the light of the information provided by Austria and of the outcome of the consultation of the Member States described in the above considerations, concludes that the measures notified by Austria pursuant to Article 6(6) of Directive 94/62/EC should be confirmed since it has been verified that:

- appropriate capacities for recycling exist in Austria,
- the measures do not lead to distortions of the internal market,
- the measures do not hinder compliance by other Member States with the Directive,
- the measures do not constitute an arbitrary means of discrimination,
- the measures do not constitute a disguised restriction on trade between Member States,

HAS ADOPTED THIS DECISION:

*Article 1*

The measures notified by Austria which exceed the maximum recycling target laid down in Article 6(1)(b) of Directive 94/62/EC are hereby confirmed.

*Article 2*

This Decision is addressed to the Republic of Austria.

Done at Brussels, 22 December 1998.

*For the Commission*  
Ritt BJERREGAARD  
*Member of the Commission*

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