

**Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste**

(2002/C 103 E/03)

(Text with EEA relevance)

COM(2001) 729 final — 2001/0291(COD)

*(Submitted by the Commission on 7 December 2001)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 paragraph 1 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Pursuant to Directive 94/62/EC <sup>(1)</sup> the Council is required, no later than six months before the end of a five-year phase starting from the date by which that Directive should have been implemented in national law, to fix targets for the next five-year phase.

(2) It is necessary to clarify the definition of 'packaging' laid down in Directive 94/62/EC through the introduction of an annex containing interpretative guidelines. Furthermore, development of new recycling technologies has led to the need to add new definitions.

(3) Recycling targets for each specific waste material should be introduced on the basis of life-cycle assessments and cost-benefit analysis, which have indicated clear differences both in the costs and in the benefits of recycling the various packaging materials, and which shall improve the coherence for the internal market for recycling of these materials.

(4) Recovery and recycling of packaging waste should be further increased to reduce its environmental impact.

(5) Certain Member States which, on account of their special circumstances, were allowed to postpone the date fixed for achievement of the recovery and recycling targets set in Directive 94/62/EC should be granted a further, but limited, postponement.

(6) In view of the enlargement of the European Union, due attention needs to be paid to the specific situation in the future Member States, in particular in relation to the attainment of the recycling target of Article 6(1), taking

into account their current low level of packaging consumption.

(7) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to harmonise national targets for the recycling of packaging waste and to provide further clarification on definitions, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(8) Since the measures necessary for the implementation of Directive 94/62/EC are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(2)</sup>, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

(9) Directive 94/62/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 94/62/EC is hereby amended as follows:

1. Article 3 is amended as follows:

(a) in point 1 the following subparagraph is added:

'The definition of "packaging" shall be further interpreted in accordance with the guidelines set out in Annex I;'

(b) the following points 9a, 9b and 9c are inserted:

'9a. "mechanical recycling" shall mean the reprocessing of waste material, for the original purpose or for other purposes excluding energy recovery or disposal, without changing the chemical structure of the processed material;

<sup>(1)</sup> OJ L 365, 31.12.1994, p. 10.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

9b. "chemical recycling" shall mean the reprocessing, other than organic recycling, of waste material, for the original purpose or for other purposes excluding energy recovery or disposal, by changing the chemical structure of the waste material and recycling the chemical constituents into the original material of the waste.

9c. "feedstock recycling" shall mean the reprocessing, other than organic recycling, of waste material, for the original purpose or for other purposes excluding energy recovery or disposal, by changing the chemical structure of the waste material and recycling the chemical constituents into materials other than the original material of the waste.'

2. Article 6 is replaced by the following:

*'Article 6*

1. In order to comply with the objectives of this Directive, Member States shall take the necessary measures to attain the following targets no later than 30 June 2006 covering the whole of their territory:

(a) between 60 % as a minimum and 75 % as a maximum by weight of packaging waste will be recovered;

(b) between 55 % as a minimum and 70 % as a maximum by weight of packaging waste will be recycled;

(c) the following minimum recycling targets for materials contained in packaging waste will be attained:

— 60 % by weight for glass;

— 55 % by weight for paper and board;

— 50 % by weight for metals;

— 20 % by weight for plastics, exclusively by mechanical and/or chemical recycling.

2. Member States shall encourage energy recovery, where preferable to material recycling for environmental and cost-benefit reasons. This could be done by considering a sufficient margin between national recycling and recovery targets.

3. Member States shall, where appropriate, encourage the use of materials obtained from recycled packaging waste for the manufacturing of packaging and other products.

4. Not later than 31 December 2005, the European Parliament and the Council shall, acting by qualified majority and on a proposal from the Commission, fix targets for the third five-year phase 2006 till 2011, based on the practical experience gained in the Member States in the pursuit of the targets laid down in paragraph 1 and the findings of scientific research and evaluation techniques such as life cycle assessments and cost-benefit analysis.

This process shall be repeated every five years thereafter.

5. The measures and targets referred to in paragraph 1 shall be published by the Member States and shall be the subject of an information campaign for the general public and economic operators.

6. Greece, Ireland and Portugal may, in view of their specific situation, postpone the attainment of the targets referred to in paragraph 1 until the date of their own choice which shall not be later than 30 June 2009.

7. Member States which have, or will, set programmes going beyond the target of paragraph 1(a) and which provide to this effect appropriate capacities for recycling and recovery, are permitted to pursue those targets in the interest of a high level of environmental protection, on condition that these measures avoid distortions of the internal market and do not hinder compliance by other Member States with the Directive. Member States shall inform the Commission thereof. The Commission shall confirm these measures, after having verified, in cooperation with the Member States, that they are consistent with the considerations above and do not constitute an arbitrary means of discrimination or a disguised restriction on trade between Member States.'

## 3. Article 8(2) is replaced by the following:

'2. To facilitate collection, reuse and recovery including recycling, packaging shall indicate for purposes of its identification and classification by the industry concerned the nature of the packaging material(s) used.

This shall be done on the basis of Commission Decision 97/129/EC.'

## 4. Article 19 is replaced by the following:

'The amendments necessary for adapting to scientific and technical progress the identification system — as referred to in Article 8(2) and Article 10, last indent —, the formats relating to the database system — as referred to in Article 12(3) and Annex III as well as the guidelines on the interpretation of the definition of packaging — as referred to in Annex I — shall be adopted in accordance with the procedure laid down in Article 21.'

## 5. Annex I is replaced by the text shown in the Annex to this Directive.

## 6. Article 21 is replaced by the following:

'1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be no more than three months.'

*Article 2*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after the date of adoption] at the latest. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

## ANNEX

## 'ANNEX I

**GUIDELINES ON THE INTERPRETATION OF THE DEFINITION OF PACKAGING**

1. The definition of packaging refers to packaging functions without prejudice to other functions which the packaging might also perform, unless it complies with rules 6 and 7 below.
2. An item which has a primary or secondary packaging function and which is designed and aimed, in general, for being filled at the point of sale, is considered as packaging.

Illustrative examples:

*Packaging:*

Paper or plastic carrier bags

*Not packaging:*

Cling film

Sandwich bags

Aluminium foil

3. Packaging components are part of the packaging to which they are attached; they are not independent packaging items.

Illustrative examples:

*Packaging:*

Mascara brush which forms part of the container closure

Sticky labels attached to another packaging item

Labels hung directly on or attached to the product

4. Ancillary elements integrated into packaging or a packaging component and/or performing any function in relation to a packaging component, including strengthening or embellishment, are part of the packaging and not separate packaging items.

Illustrative examples:

*Packaging:*

Staples

Tape

Plastic sleeves (e.g. around drink bottles)

5. Disposable items sold filled or designed and aimed for being filled at the point of sale are packaging provided they fulfil a packaging function.

Illustrative examples:

*Packaging:*

Disposable plates,

Disposable cups, etc.

*Not packaging:*

Chips fork

6. An item which complies with the above conditions is nonetheless not packaging if the item's function in relation to the product clearly outweighs its packaging function.

It also applies, however, to items which represent an integral and inseparable part of a durable product at the time of purchase and which are necessary to contain, support or preserve that product throughout its lifetime.

This does not apply to items integrated with a packaging component.

Illustrative examples:

*Packaging:*

Cases

Sweets boxes

Film overwrap around a CD case

*Not packaging:*

Flower pots intended to stay with the plant throughout its life

Ink cartridges

Tool boxes

7. An item which complies with rules 1-5 is nonetheless not packaging if the item is both part of the manufacturing process and part of the product.

Illustrative examples:

*Not packaging:*

Tea bags

Wax layers (e.g. around cheese)

Sausage skins'

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