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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags

(Text with EEA relevance)

{SWD(2013) 443 final}
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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. General Context

The same properties that have made plastic carrier bags commercially successful – low weight and resistance to degradation – have also contributed to their proliferation. It is estimated that in 2010 every EU citizen used 198 plastic carrier bags, some 90% of which were estimated to be lightweight bags; these are less frequently re-used than thicker bags and more prone to littering. In a business-as-usual scenario the consumption of plastic bags is expected to increase further.

Estimates also suggest that in 2010, over 8 billion plastic carrier bags were littered in the EU. They escape waste management streams and accumulate in our environment, especially in the form of marine litter, which is increasingly recognized to be a major global challenge. There also is documented evidence indicating large debris accumulation in European seas. The problem of plastic bag waste in water ecosystems does not affect only countries with a marine coastline, as a considerable amount of the waste from land reaches the sea through rivers. Once discarded, plastic carrier bags can last for hundreds of years, mostly in fragmented form. The very high and still increasing consumption of such bags is also sub-optimal from a resource efficiency perspective.

In the EU, plastic carrier bags are considered as packaging under the Packaging and Packaging Waste Directive (Directive 94/62/EC). However, there is no EU legislation or policy specifically targeting plastic carrier bags. Some Member States have already developed policies to reduce their use, for instance by means of pricing measures, agreements with the retail sector or awareness campaigns, with variable results. Following attempts by some Member States to ban plastic carrier bags, the Environment Council of 14 March 2011 discussed the issue and invited the Commission to analyse possible EU action against plastic bag consumption.

1.2. Grounds for and objectives of the proposal

The general objective of this proposal on plastic carrier bags is to limit negative impacts on the environment, in particular in terms of littering, to encourage waste prevention and a more efficient use of resources, while limiting negative socio-economic impacts. More specifically, the proposal aims at reducing the consumption of plastic carrier bags with a thickness of below 50 microns (0.05 milimeters) in the European Union.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation and expertise

2.1.1. Studies

A study on the production and consumption patterns of plastic carrier bags, their impacts and the impacts of different policy options to reduce their use was performed

in 2011[1]. An additional study to assess the socio-economic impacts of different policy options in more detail was carried out in 2012.[2]

2.1.2. Internal consultation

An Interservice Steering Group (ISG) with representatives of DGs ENV, ENTR, SG, SJ and SANCO was created in June 2011. This ISG followed the preparation of the Impact Assessment.

2.1.3. External consultation

A public consultation took place between 17 May and 9 August 2011, in line with existing minimum standards for consultation.

15,538 responses were submitted, reflecting high public concern about the unsustainable consumption of plastic carrier bags and high expectations for EU action in this area.

2.2. Impact assessment

An impact assessment report and an executive summary are published together with the present proposal. The impact assessment evaluates the main environmental, social and economic impacts of various policy options to reduce the consumption of plastic carrier bags. Various levels of ambition are assessed and compared to a "baseline scenario" in order to identify the most appropriate instruments minimizing costs while maximizing benefits.

The Commission's Impact Assessment Board delivered a positive opinion on the impact assessment on 15 March 2013, while making a number of recommendations to fine-tune the report. Commenting on the option to establish a common, EU-wide target to reduce the consumption of plastic bags, the Board requested to assess to what extent the plastic bags littering problem could be addressed by action at Member State level.

Further consideration of the policy options available has led to the conclusion that it would be difficult to design and implement an EU-wide reduction target applying to all Member States. Instead of establishing a common EU target, it is therefore preferable to introduce in Directive 94/62/EC the obligation for all Member States to reduce the consumption of lightweight plastic carrier bags, while allowing them to set their own national reduction targets and to choose the measures to reach those targets. At a later stage the establishment of an EU-wide reduction target could however be considered.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposal amends article 4 (prevention) of Directive 94/62/EC by requiring Member States to take measures to reduce the consumption of lightweight plastic carrier bags. It stipulates that these measures may include the use of economic instruments as well as marketing restrictions in derogation of Article 18 of the

[1] BioIntelligence Service, 2011. Assessment of impacts of options to reduce the use of single-use plastic carrier bags, Final Report.

[2] Eunomia 2012. Assistance to the Commission to complement an assessment of the socio-economic costs and benefits of options to reduce use of single-use plastic carrier bags in the EU, Final Report.

Directive. The latter provision thus broadens the range of instruments available to Member States to address the unsustainable consumption of plastic bags.

For the purpose of this Directive a definition of "lightweight plastic carrier bags" is introduced in Article 3 (definitions).

3.2. Legal basis and right to act

The proposal takes the same legal basis as Directive 94/62/EC (article 100a, now article 114 TFEU).

The EU's right to act stems from the fact that the high consumption rates of plastic carrier bags represent both a common and a trans-boundary challenge, and an EU-wide initiative is necessary to tackle the problem in a more coherent and effective way. At present, the measures taken by individual Member States to address the issue lack coherence with respect to the objectives pursued. Also, unilateral measures entailing marketing restrictions raise questions in terms of their compatibility with Directive 94/62/EC in its current form. At the same time, the positive experiences made in a number of Member States demonstrate that it is indeed possible to reduce plastic bag consumption considerably.

EU action to reduce the use of plastic carrier bags is fully in line with the objectives of Directive 94/62/EC on Packaging and Packaging Waste, in particular that of preventing and reducing the environmental impacts of packaging and packaging waste.

Given its specific nature and background, the present proposal is submitted as a self-standing initiative, ahead of the more general review of EU waste policy that the Commission will present in the spring of 2014.

3.3. Subsidiarity and proportionality principle

The proposal is in conformity with the subsidiarity and proportionality principle set out in Article 5 of the Treaty on the European Union. It is limited to amending Directive 94/62/EC by providing a framework establishing shared objectives, while leaving Member States free to decide about precise implementation methods.

4. BUDGETARY IMPLICATION

The proposal will not have an impact on the European Union budget and is therefore not accompanied by the financial statement provided for under Article 31 of the Financial Regulation (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002).

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission[3],

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[4],

After consulting the Committee of the Regions[5],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 94/62/EC of the European Parliament and of the Council[6] was adopted in order to prevent or reduce the impact of packaging and packaging waste on the environment. Although plastic carrier bags constitute packaging within the meaning of that Directive, its provisions do not contain specific measures relating to the consumption of such bags.

(2) Consumption of plastic carrier bags results in high levels of littering and an inefficient use of resources and is expected to increase if no action is taken. Littering of plastic carrier bags contributes to the problem of marine litter that threatens marine eco-systems worldwide.

(3) Plastic carrier bags with a thickness below 50 microns, which represent the vast majority of the total number of plastic carrier bags consumed in the Union, are less frequently re-used than thicker plastic carrier bags and more prone to littering.

(4) Consumption levels of plastic carrier bags vary considerably across the Union due to differences in consumption habits, environmental awareness, as well as the effectiveness of policy measures taken by Member States. Some Member States have managed to reduce consumption levels of plastic carrier bags significantly, with the average consumption level in the seven best performing Member States amounting to only 20% of the EU average consumption.

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3 OJ C , , p. .
4 OJ C , , p. .
5 OJ C
6 OJ L 365, 31.12.1994, p. 10.

(5) To promote similar reductions of the average consumption level of lightweight plastic carrier bags, Member States should take measures to reduce the consumption of plastic carrier bags with a thickness below 50 microns in line with the overall objectives of the Union's waste policy and the Union's waste hierarchy as provided for in Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[7]. Such reduction measures should take account of current consumption levels of plastic carrier bags in individual Member States, with higher levels requiring more ambitious efforts. To monitor progress in reducing the use of lightweight plastic carrier bags national authorities will provide data on their use under article 17 of Directive 94/62/EC.

(6) Measures to be taken by Member States may involve the use of economic instruments such as taxes and levies, which have proved particularly effective to reduce the use of plastic carrier bags, as well as marketing restrictions such as bans in derogation of Article 18 of Directive 94/62/EC, subject to the requirements laid down in Articles 34 to 36 of the Treaty on the Functioning of the European Union.

(7) Measures to reduce the consumption of plastic carrier bags should not lead to an overall increase in the generation of packaging.

(8) The measures provided for by this Directive are consistent with the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the Roadmap to a Resource Efficient Europe[8] and should contribute to actions against littering undertaken in accordance with Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive[9]).

(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) In Article 3, a new point 2a is inserted:

'2a. "lightweight plastic carrier bags" shall mean bags made of plastic materials as defined in Article 3(1) of Commission Regulation (EU) No 10/2011* with a wall thickness below 50 microns and which are supplied to consumers at the point of sale of goods or products.

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* OJ L 12, 15.01.2011, p. 1.'

(2) In Article 4, the following paragraph 1a is inserted:

'1a Member States shall take measures to achieve a reduction in the consumption of lightweight plastic carrier bags on their territory within two years of entry into force of this Directive.

[7] OJ L 312, 22.11.2008, p. 3.
[8] COM(2011)571 final
[9] OJ L 164, 25.6.2008, p. 19–40

These measures may include the use of national reduction targets, economic instruments as well as marketing restrictions in derogation from Article 18 of this Directive.

Member States shall report on the effects of these measures on the overall formation of packaging waste when reporting to the Commission in accordance with Article 17 of this Directive.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by twelve months after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   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.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*