EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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DIRECTIVE 2004/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

AMENDING DIRECTIVE 94/62/EC

ON PACKAGING AND PACKAGING WASTE

DIRECTIVE 2004/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 February 2004

amending Directive 94/62/EC on packaging and packaging waste

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the Opinion of the European Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 17 December 2003 [3],

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1 OJ C 103 E, 30.4.2002, p. 17.
2 OJ C 221, 17.9.2002, p. 31.
3 Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 30), Council Common Position of 6 March 2003 (OJ C 107 E, 6.5.2003, p. 17), Position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of .... and Council Decision of 26 January 2004.

Whereas:

(1) Pursuant to Directive 94/62/EC [1] 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) The definition of "packaging" laid down in Directive 94/62/EC should be further clarified through the introduction of certain criteria and an annex containing illustrative examples. It is necessary, in order to achieve the ambitious recycling targets, to encourage the development of innovative, environmentally sound and viable recycling processes. An evaluation of the different recycling methods should be made with a view to drawing up definitions for these methods.

(3) Recycling targets for each specific waste material should take account 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 should improve the coherence of the internal market for the 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.

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[1] OJ L 365, 31.12.1994, p. 10. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

(6) The European Parliament, the Council and the Commission agree on the need for temporary derogations for the acceding States with respect to the targets of this Directive. This should be decided on the basis of the requests from the acceding States for derogations to run in principle until not later than 2012 for Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Slovakia and Slovenia; 2013 for Malta; 2014 for Poland and 2015 for Latvia.

(7) This agreement will be finalised in accordance with the appropriate legal procedure before the expiry of the deadline for the transposition of this directive.

(8) The management of packaging and packaging waste requires the Member States to set up return, collection and recovery systems. Such systems should be open to the participation of all interested parties and be designed to avoid discrimination against imported products and barriers to trade or distortions of competition and to guarantee the maximum possible return of packaging and packaging waste, in accordance with the Treaty. Discrimination against materials on the basis of their weight should be avoided. The operators in the packaging chain as a whole should shoulder their shared responsibility to ensure that the environmental impact of packaging and packaging waste throughout its life cycle is reduced as far as possible.

(9) Annual Community-wide data on packaging and packaging waste, including on waste exported for recycling and recovery outside the Community, are needed in order to monitor the implementation of the objectives of this Directive. This requires a harmonised reporting technique and clear guidelines for data providers.

(10) The Commission should examine and report on the implementation of this Directive and its impact on both the environment and the internal market. This report should also cover the issues of essential requirements, waste prevention measures, a possible packaging indicator, waste prevention plans, reuse, producer responsibility and heavy metal and should, as appropriate, be accompanied by proposals for revision.

(11) Member States should promote relevant consumer information and awareness campaigns and encourage other prevention instruments.

(12) In addition to the environmental and internal market objectives of this Directive, recycling may also have the effect of providing jobs which have declined elsewhere in society, and may thus help prevent exclusion.

(13) Since the objectives of the proposed action, namely to harmonise national targets for the recycling of packaging waste, taking into account individual circumstances of each Member State, 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 at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(14) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(15) 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) the following subparagraphs shall be added to point (1) of Article 3:

"The definition of "packaging" shall be further based on the criteria set out below. The items listed in Annex I are illustrative examples of the application of these criteria.

(i) Items shall be considered to be packaging if they fulfil the abovementioned definition without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together.

(ii) Items designed and intended to be filled at the point of sale and "disposable" items sold, filled or designed and intended to be filled at the point of sale shall be considered to be packaging provided they fulfil a packaging function.

[1] OJ L 184, 17.7.1999, p. 23.

(iii) Packaging components and ancillary elements integrated into packaging shall be considered to be part of the packaging into which they are integrated. Ancillary elements hung directly on, or attached to, a product and which perform a packaging function shall be considered to be packaging unless they are an integral part of this product and all elements are intended to be consumed or disposed of together."

The Commission shall, as appropriate, in accordance with the procedure referred to in Article 21, examine and, where necessary, review the illustrative examples for the definition of packaging referred given in Annex I. As a priority, the following items shall be addressed: CD and video cases, flower pots, tubes and cylinders around which flexible material is wound, release paper of self-adhesive labels and wrapping paper."

2) Article 4 shall be replaced by the following:

"Article 4
Prevention

1. Member States shall ensure that, in addition to the measures to prevent the formation of packaging waste taken in accordance with Article 9, other preventive measures are implemented.

Such other measures may consist of national programmes, projects to introduce producer responsibility to minimise the environmental impact of packaging or similar actions adopted, if appropriate in consultation with economic operators, and designed to bring together and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1(1).

2. The Commission shall help to promote prevention by encouraging the development of suitable European standards, in accordance with Article 10. The standards shall aim to minimise the environmental impact of packaging in accordance with Articles 9 and 10.

3. The Commission shall, as appropriate, present proposals for measures to strengthen and complement the enforcement of the essential requirements and to ensure that new packaging is put on the market only if the producer has taken all necessary measures to minimise its environmental impact without compromising the essential functions of the packaging."

3) Article 6 shall be replaced by the following:

"Article 6
Recovery and recycling

1. In order to comply with the objectives of this Directive, Member States shall take the necessary measures to attain the following targets covering the whole of their territory:

(a) no later than 30 June 2001 between 50% as a minimum and 65% as a maximum by weight of packaging waste will be recovered or incinerated at waste incineration plants with energy recovery;

(b) no later than 31 December 2008 60% as a minimum by weight of packaging waste will be recovered or incinerated at waste incineration plants with energy recovery;

(c) no later than 30 June 2001 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;

(d) no later than 31 December 2008 between 55% as a minimum and 80% as a maximum by weight of packaging waste will be recycled;

(e) no later than 31 December 2008 the following minimum recycling targets for materials contained in packaging waste will be attained:

(i) 60% by weight for glass;

(ii) 60% by weight for paper and board;

(iii) 50% by weight for metals;

(iv) 22,5% by weight for plastics, counting exclusively material that is recycled back into plastics;

(v) 15% by weight for wood.

2. Packaging waste exported out of the Community in accordance with Council Regulation (EEC) No 259/93 *, Council Regulation (EC) No 1420/1999 ** and Commission Regulation (EC) No 1547/1999 *** shall only count for the achievement of the obligations and targets of paragraph 1 if there is sound evidence that the recovery and/or recycling operation took place under conditions that are broadly equivalent to those prescribed by the Community legislation on the matter.

3. Member States shall, where appropriate, encourage energy recovery, where it is 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.

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

(a) improving market conditions for such materials;

(b) reviewing existing regulations preventing the use of those materials.

5. Not later than 31 December 2007, 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 2009 until 2014, based on the practical experience gained in the Member States in 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.

6. 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.

7. Greece, Ireland and Portugal may, because of their specific situations, namely respectively the large number of small islands, the presence of rural and mountain areas and the current low level of packaging consumption, decide to:

(a) attain, no later than 30 June 2001, lower targets than those fixed in paragraphs 1(a) and (c), but shall at least attain 25% for recovery or incineration at waste incineration plants with energy recovery;

(b) postpone at the same time the attainment of the targets in paragraphs 1(a) and (c) to a later deadline which shall not, however, be later than 31 December 2005;

(c) postpone the attainment of the targets referred to in paragraphs 1(b), (d) and (e) until a date of their own choice which shall not be later than 31 December 2011.

8. The Commission shall, as soon as possible and no later than 30 June 2005, present a report to the European Parliament and the Council on the progress of the implementation of this Directive and its impact on the environment, as well as on the functioning of the internal market. The report shall take into account individual circumstances in each Member State. It shall cover the following:

(a) an evaluation of the effectiveness, implementation and enforcement of the essential requirements;

(b) additional prevention measures to reduce the environmental impact of packaging as far as possible without compromising its essential functions;

(c) the possible development of a packaging environment indicator to render packaging waste prevention simpler and more effective;

(d) packaging waste prevention plans;

(e) encouragement of re-use and, in particular, comparison of the costs and benefits of re-use and those of recycling;

(f) producer responsibility including its financial aspects;

(g) efforts to reduce further and, if appropriate, ultimately phase out heavy metals and other hazardous substances in packaging by 2010.

This report shall, as appropriate, be accompanied by proposals for revision of the related provisions of this Directive, unless such proposals have, by that time, been presented.

9. The report shall address the issues in paragraph 8 as well as other relevant issues in the framework of the different elements of the 6th Environmental Action Programme, in particular the Thematic Strategy on Recycling and the Thematic Strategy on the Sustainable Use of Resources.

The Commission and the Member States shall, as appropriate, encourage studies and pilot projects concerning points 8(b), (c), (d), (e) and (f) and other prevention instruments.

10. Member States which have, or will, set programmes going beyond the maximum targets of paragraph 1 and which provide to this effect appropriate capacities for recycling and recovery shall be 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 this Directive. Member States shall inform the Commission of such measures. The Commission shall confirm these measures, after having verified, in cooperation with the Member States, that they are consistent with the abovementioned considerations and do not constitute an arbitrary means of discrimination or a disguised restriction on trade between Member States.

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* OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

** OJ L 166, 1.7.1999, p. 6. Regulation as last amended by Commission Regulation (EC) No 2118/2003 (OJ L 318, 3.12.2003, p. 5).

*** OJ L 185, 17.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 2118/2003."

4) Article 8(2) shall be replaced by the following:

"2. To facilitate collection, reuse and recovery including recycling, packaging shall indicate for the purposes of its identification and classification by the industry concerned the nature of the packaging material(s) used on the basis of Commission Decision 97/129/EC*.

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* OJ L 50, 20.2.1997, p. 28.".

5) The following paragraph shall be added to Article 13:

"Member States shall also promote consumer information and awareness campaigns.".

6) Article 19 shall be replaced by the following:

"Article 19

Adaptation to scientific and technical progress

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

7) Article 20(1) shall be replaced by the following:

"1. The Commission, in accordance with the procedure referred to in Article 21, shall determine the technical measures necessary to deal with any difficulties encountered in applying the provisions of this Directive in particular to inert packaging materials, put on the market in very small quantities (i.e. approximately 0,1% by weight) in the European Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging."

8) Article 21 shall be replaced by the following:

"Article 21

Committee procedure

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC * shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

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* OJ L 184, 17.7.1999, p. 23.".

9) The following paragraph shall be inserted in Article 22:

"3a. Provided that the objectives set out in Article 6 are achieved, Member States may transpose the provisions of Article 7 by means of agreements between the competent authorities and the economic sectors concerned.

Such agreements shall meet the following requirements:

(a) agreements shall be enforceable;

(b) agreements shall specify objectives with the corresponding deadlines;

(c) agreements shall be published in the national official journal or an official document equally accessible to the public, and transmitted to the Commission;

(d) the results achieved shall be monitored regularly, reported to the competent authorities and the Commission and made available to the public under the conditions set out in the agreement;

(e) the competent authorities shall ensure that the progress achieved under the agreement is examined;

(f) in the event of non-compliance with the agreement, Member States shall implement the relevant provisions of this Directive by legislative, regulatory or administrative measures."

10) Annex I shall be replaced by the annex which appears in the Annex hereto.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by .....*. They shall immediately inform the Commission thereof.

When Member States adopt those measures, 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 day of its publication in the Official Journal of the European Union.

* 18 months after the date of entry into force of this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

ANNEX

"ANNEX I

ILLUSTRATIVE EXAMPLES FOR CRITERIA REFERRED TO IN ARTICLE 3(1)

Illustrative examples for criterion (i)

Packaging

Sweet boxes

Film overwrap around a CD case

Non-packaging

Flower pots intended to stay with the plant throughout its life

Tool boxes

Tea bags

Wax layers around cheese

Sausage skins

Illustrative examples for criterion (ii)

Packaging, if designed and intended to be filled at the point of sale

Paper or plastic carrier bags
Disposable plates and cups
Cling film
Sandwich bags
Aluminium foil

Non-packaging

Stirrer
Disposable cutlery

Illustrative examples for criterion (iii)

Packaging

Labels hung directly on or attached to a product

Part of packaging

Mascara brush which forms part of the container closure
Sticky labels attached to another packaging item
Staples
Plastic sleeves
Device for measuring dosage which forms part of the container closure for detergents."