

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 204 final COD 436

Brussels, 25.05.1994

OPINION OF THE COMMISSION

pursuant to Article 189b(2)(d) of the EC Treaty
on the European Parliament's amendments to the Council's common position
regarding the proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

ON PACKAGING AND PACKAGING WASTE

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189a(2) of the EC Treaty

EXPLANATORY MEMORANDUM

As a consequence of the entry into force of the Treaty on European Union on 1 November 1993 this proposal for a Directive is subject to the co-decision procedure (Article 189B of the EC Treaty).

Article 189B, paragraph 2, point D, foresees that the Commission presents its opinion on the amendments proposed by the European Parliament in the second reading.

The Commission explains here its opinion on the 19 amendments proposed by the European Parliament. The Commission also presents, in accordance with Article 189A, paragraph 2 of the EC Treaty, a modified proposal which includes all the amendments from the EP since the Commission can accept all of them.

1. BACKGROUND

- (a) The Proposal (COM (92) 278 final-SYN 436 of 15 July 1992) was presented to the Council and European Parliament under Article 100A of the Treaty on 24 August 1992 and published in the Official Journal on 12 October (O.J. C 263)
- (b) The Social and Economic Committee adopted its opinion on 24 March 1993.
- (c) The European Parliament voted in its 1st reading during the Plenary Session of 21-25 June 1993. The opinion was published in the Minutes of the sitting of 23 June 1993 (document PE.173.750 PV.17) and included the 80 amendments adopted.
- (d) The Commission formally adopted the amended proposal (COM (93) 416 final-SYN 436 of 9 September 1993) which was transmitted to the Council on 10 September 1993 and published in the Official Journal on 21 October 1993 (O.J. C 285). The amended proposal included 40 of these amendments, either totally or in part.
- (e) The Common Position of the Council was formally adopted on 4 March and presented to the European Parliament during the Plenary Session of 7/11 March 1994.
- (f) The European Parliament voted in its 2nd reading during the Plenary session of 2/6 May 1994 and adopted a favourable resolution which includes 19 amendments to the Common Position. The opinion was published in the Minutes of the sitting of 4 May 1994. (Document PE 181.137, PV 14)

2. SUBJECT OF THE DIRECTIVE

This Directive covers all packaging placed on the market in the Community and all packaging waste, and aims to harmonise national measures concerning the management of packaging and packaging waste, in order to

- provide a high level of environmental protection
- to ensure the functioning of the internal market.

The Directive includes specific articles on preventive measures and re-use systems and sets quantitative targets for recovery and recycling of packaging waste.

Member States shall take the necessary measures to establish specific return, collection and recovery systems in order to reach the objectives of the Directive. In compliance with the principle of subsidiarity Member States are free to develop their own management schemes which have to be in conformity with Treaty provisions.

The proposal, in line with the "new approach" of Council Resolution 85/C 136/01 of 7 May 1985, lays out an important number of areas for standardisation, regarding the essential requirements on the composition of re-usable and recoverable, including recyclable, packaging.

The conditions for a marking and identification system are to be decided by the Council at a later stage.

As a monitoring mechanism for the implementation of the objectives set out in this Directive, harmonised national databases have to be established.

OPINION OF THE COMMISSION ON THE AMENDMENTS
OF THE EUROPEAN PARLIAMENT

1. INTRODUCTION

The Commission can accept all the 19 Amendments adopted by the Parliament and has made a modified proposal herewith in order that these amendments can be examined by the Council.

2. EXPLANATION ON ALL THE AMENDMENTS

Amendment No. 1 (Recital No. 1(a) new) indicates that the reduction of the overall volume of packaging is the best means of preventing the creation of packaging waste.

Prevention is presented in Article 1 as the first priority for the measures laid down in the Directive and at the same time there is an article relating specifically to prevention (Art. 4). This recital corresponds to the emphasis placed on prevention, insisting on the essential aspect of the volume of packaging which is in line with the definition in Article 3 and with the direct link between production of packaging and packaging waste.

Amendment No. 2 (Recital No 2(a) new) indicates that the reduction of waste is essential to sustainable growth as called for by the Treaty on European Union.

This recital presents a general consideration on waste which is pertinent since it corresponds to the Treaty and the 5th Environment Action Programme. It contributes to putting the scope of the Directive in the perspective of the general issue of waste.

Amendment No. 3 (Recital No. 6) indicates that until progress is made on recovery processes, re-use and recycling should be considered preferable and that life-cycle analyses are to be completed so as to justify a clear hierarchy.

This amendment introduces a controversial element as it insists on the preference for re-use and recycling.

Notwithstanding the above, it is acceptable as this recital is to be interpreted as a general consideration which does not allow for discrimination amongst packaging and packaging waste systems, materials and alternatives. At the same time the preference given is conditional to progress on recovery processes. It may therefore be altered according to this progress and to the existing particular conditions, so that an additional element of flexibility is incorporated. Finally, the relative importance of recycling in relation to other recovery options is given in practical terms by Art. 6 on recovery and recycling targets.

The reference to the need for life-cycle analysis to justify a clear hierarchy is relevant and does not rule out a flexibility in suiting the different existing situations while introducing a new element of flexibility to the above-mentioned preference.

Amendment No. 4 (to Recital No. 13) establishes that not only the Council but also the European Parliament should examine the practical experience gained.

This indication is acceptable and logical from an institutional point of view and does not prejudge the relevant decision making procedures.

Amendment No. 5 (to Recital No. 16) indicates that the systems to be set up by the Member States should guarantee the maximum possible return of packaging and packaging waste.

This concept was included in the amended proposal and should not be interpreted in a maximalist way but as a guarantee of the appropriate working of the systems which as indicated in Article 7 are established in order to meet the objectives laid down in the Directive.

Amendment No. 7 (to Recital 18) and Amendment 8 (Recital 18a (new)) transform Recital 18 on essential requirements and heavy metals into separate recitals while reinforcing the one (Am. 8) on heavy metals, placing it in the general context of reducing toxicity due to noxious substances.

These amendments constitute a more coherent and complete presentation of the elements included in Recital 18, and are more in line with Annex II.

Amendment No. 9 (recital 18b (new)) indicates that sorting at source is essential for a high level of recycling and that health and safety problems are to be avoided.

The reference in the recital of sorting at source is to be interpreted as an acknowledgement of the recognised importance of this option while not interfering with the flexibility for Member States to establish the systems which are better suited to their own individual conditions. A mention to the health and safety problems of those employed to manage packaging waste is pertinent as this is an essential element and does not rule out the appropriate provisions in the relevant legislation in this area.

Amendment No. 11 (Recital 28) precises that not only Member States, but also the European Union may use economic instruments and that new forms of protectionism are to be avoided.

This amendment is in line with Am. 31 (to Article 15) and insists on the important fact of a possible adoption of instruments at Community level. The specific reference to new forms of protectionism emphasises one of the essential potential dangers relating to these instruments.

Amendment No. 14 (to Article 3(1) first subparagraph) incorporates "non-returnable items" to the definition of packaging.

Non-returnable items used for the same purpose of packaging should be considered as constituting packaging since they comprise a substantial and similar source of waste production. At the same time this facilitates the interpretation of the definition, while completing the scope of the Directive.

Amendment No. 16 (to Article 3(5)) incorporates the notion of refilling support products to the definition of "re-use" and indicates a "minimum", instead of a "certain" number of trips.

The reference to supporting auxiliary products which enable packaging to be refilled is a good provision in clarifying the "re-use" concept and thus avoiding the exclusion of an expanding packaging sector which is relevant to the consumer.

The concept of "minimum" is more explicit than "certain" and reflects better the objectives of the re-use systems.

Amendment No. 40 (to Article 3(9)) introduces a new definition on "organic recycling" instead of the one on "composting" while incorporating the elements relating to that of "biomethanisation".

The definition on "organic recycling" constitutes a clear and technically coherent solution to the problems encountered as a result of the inconsistencies and overlapping relating to the two previous definitions on composting and biomethanisation.

Amendment No. 18 (to Article 3(12)) introduces authorities and statutory organisations in the definition of "economic operators".

This completes the definition with two important actors. Formally, in order to be in line with Art. 7.1, par. 2 public authorities are to be considered in this context as distinct from economic operators, but this is not counter to the pertinence of completing this definition with the concept of authorities in a generic sense.

Amendment No. 19 (Article 3(12a) new) introduces a definition of "voluntary agreement".

This definition is considered appropriate from a technical point of view and in particular the element which indicates that it is to be open to all partners. The concept of "voluntary agreement", which does not appear and any other article of the Directive, is to be considered just as a guideline definition on a specific kind of measure which may be taken by Member States in the context of the Directive.

Amendment No. 20 (to Article 4(1)) introduces the concept of measures to prevent the formation of packaging waste.

This element replaces the more generic one of "preventive measures". It is a rather semantic question which is acceptable as it constitutes a more explicit description of the same concept.

Amendment No. 24 (to Article 6(3)(b)) establishes that the process of revision of targets is to be repeated every five years.

This is an appropriate and logical new element which reinforces the idea that this Directive constitutes a process with progressive steps towards increasing convergence and at the same time is in line with the established provision for the second phase.

Amendment No. 29 (To Article 12(1) and (2)) indicates that databases are established on a harmonised basis and that they should include information on toxicity or danger.

The indication that databases be established on a harmonised basis is pertinent as it is in line with both the intention and the contents of Article 12 and Annex III.

The inclusion of the information on toxicity is of interest to keep a control on its evolution. This is a precautionary provision.

Amendment No. 30 (Article 12 (5a)(new)) incorporates a provision on Member States requiring reliable data to all economic operators.

This is a good element to ensure compliance with the information system requirements and also that Member States dispose of the appropriate means.

Amendment No. 31 (to Article 15) constitutes a new formulation of the article incorporating the adoption of economic instruments by the Council, as well as a number of conditions to them.

The adoption of specific measures by the Council is always a possibility and the Amendment provides for this, but it does not prejudice the legal procedures established for this adoption. The drafting of the provision is to be changed in the sense that the Council, on the basis of a proposal of the Commission, adopts economic instruments. There is no indication of a time limit for their adoption and it is not possible to rule out future Council decisions.

The conditions incorporated into the economic instruments constitute a good equilibrium amongst relevant elements relating to Articles 30 to 36, and 95 of the Treaty. The reference to the "polluter pays" principle is pertinent due to its appropriateness in this context.

3. CONCLUSION

The Commission accepts the 19 Amendments proposed by the European Parliament. The modified proposal incorporates these amendments.

**MODIFIED PROPOSAL CONCERNING
PARLIAMENT AND COUNCIL DIRECTIVE
ON PACKAGING AND PACKAGING WASTE**

**PRESENTED BY THE COMMISSION
ACCORDING TO ARTICLE 189A, PARAGRAPH 2
OF THE EC TREATY**

EXPLANATORY MEMORANDUM

As a result of the entry into force of the Treaty on the European Union on 1 November 1993 the present proposal is subject to the co-decision procedure (Article 189B of the EC Treaty).

Article 189B, paragraph 2, point (d) of the EC Treaty requires the Commission to present its opinion on the amendments which the European Parliament proposes to introduce in the Common Position of the Council.

The Commission here presents, according to Article 189A, paragraph 2, of the EC Treaty, a modified proposal which incorporates the 19 amendments adopted by the Parliament into the Common Position.

1a. Whereas the best means of preventing the creation of packaging waste is to reduce the overall volume

Recital 2a (new)

2a. Whereas the reduction of waste is essential for the sustainable growth specifically called for by the Treaty on European Union;

Recital 6

6. Whereas, for such time as evaluation techniques such as eco-balances, which should be encouraged further, do not generally warrant a more precise hierarchy of management methods, reuse, recycling and recovery can be considered as equivalents for the purposes of reducing the environmental impact of packaging;

6. Whereas, until scientific and technological progress is made with regard to recovery processes, reuse and recycling should be considered preferable in terms of environmental impact; whereas this requires the setting up in the Member States of systems guaranteeing the return of used packaging and/or packaging waste; and whereas life-cycle assessments should be completed as soon as possible to justify a clear hierarchy between reusable, recyclable and recoverable packaging;

Recital 13

13. Whereas the Council should, on the basis of reports by the Commission, examine the practical experience gained in Member States in working towards the aforementioned targets and the findings of scientific research and evaluation techniques such as eco-balances;

13. Whereas the Council and the European Parliament should, on the basis of reports by the Commission, examine the practical experience gained in Member States in working towards the aforementioned targets and the findings of scientific research and evaluation techniques such as eco-balances;

Recital 16

16. Whereas the management of packaging and packaging waste requires the Member States to set up return, collection and recovery systems; whereas 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 or competition, in accordance with the Treaty;

16. Whereas the management of packaging and packaging waste requires the Member States to set up return, collection and recovery systems; whereas 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;

Recital 18

18. Whereas, in order to minimize the impact of packaging and packaging waste on the environment and to avoid barriers to trade and distortion of competition, it is also necessary to define the essential requirements governing the composition and the reusable and recoverable (including recyclable) nature of packaging and to set concentration levels for heavy metals present in packaging together with appropriate exemptions which should be determined by the Commission in specific cases under a Committee procedure;

18. Whereas, in order to minimize the impact of packaging and packaging waste on the environment and to avoid barriers to trade and distortion of competition, it is also necessary to define the essential requirements governing the composition and the reusable and recoverable (including recyclable) nature of packaging;

Recital 18a (new)

18a. Whereas the presence of noxious metals and other substances in packaging should be limited in view of their environmental impact (in particular in the light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is land-filled); whereas it is essential, as a first step towards reducing the toxicity of packaging waste, to prevent the addition of noxious heavy metals to packaging and ensure that such substances are not released into the environment, with appropriate exemptions which should be determined by the Commission in specific cases under a Committee procedure;

Recital 18b (new)

18b. Whereas, if a high level of recycling is to be attained and health and safety problems are to be avoided by those employed to collect and process packaging waste, it is essential for such waste to be sorted at source;

Recital 28

28. Whereas in order to facilitate the achievement of the objectives of this Directive, it may be appropriate for Member States to use economic instruments in accordance with the provisions of the Treaty;

28. Whereas in order to facilitate the achievement of the objectives of this Directive, it may be appropriate for the European Union and the Member States to use economic instruments in accordance with the provisions of the Treaty, so as to avoid new forms of protectionism;

Article 3(1) first subparagraph

1) 'packaging' means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer.

1) 'packaging' means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. 'Non-returnable' items used for the same purposes shall also be considered to constitute packaging.

Article 3(5)

5) 'reuse' means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a certain number of trips or rotations, is refilled or used for the same purpose for which it was conceived; such reused packaging will become packaging waste when no longer subject to reuse;

5) 'reuse' means any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled; such reused packaging will become packaging waste when no longer subject to reuse;

Article 3(9)

- 9) 'composting' means the aerobic or anaerobic treatment of the organic parts of packaging waste, which produces stabilized organic residues;
- 9) 'organic recycling' means the aerobic (composting) or anaerobic (biomethanization) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilized organic residues or methane. Landfill shall not be considered a form of organic recycling;

Article 3(12)

- 12) 'economic operators' in relation to packaging means suppliers of packaging materials, packaging producers and converters, fillers and users, importers, traders and distributors.
- 12) 'economic operators' in relation to packaging means suppliers of packaging materials, packaging producers and converters, fillers and users, importers, traders and distributors, authorities and statutory organizations.

Article 3(12a) (new)

- 12a) 'voluntary agreement' means the formal agreement concluded between the competent public authorities of the Member State and the economic sectors concerned, which has to be open to all partners who wish to meet the conditions of the agreement with a view to working towards the objectives of this Directive.

Article 4(1)

1. Member States shall ensure that in addition to the preventive measures taken in accordance with Article 9 on essential requirements other preventive measures are implemented. Such other measures may consist of national programmes or similar actions adopted, if appropriate in consultation with economic operators, and designed to collect 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).

1. Member States shall ensure that in addition to the measures to prevent the formation of packaging waste taken in accordance with Article 9 on essential requirements other preventive measures are implemented. Such other measures may consist of national programmes or similar actions adopted, if appropriate in consultation with economic operators, and designed to collect 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).

Article 6(3)(b)

(b) No later than six months before the end of the first five-year phase referred to in paragraph 1(a) the Council shall, acting by a qualified majority and on a proposal from the Commission, fix targets for the second five-year phase referred to in paragraph 1(c).

(b) No later than six months before the end of the first five-year phase referred to in paragraph 1(a) the Council shall, acting by a qualified majority and on a proposal from the Commission, fix targets for the second five-year phase referred to in paragraph 1(c). This process shall be repeated every five years thereafter.

Article 12(1) and (2)

1. Member States shall take the necessary measures to ensure that databases on packaging and packaging waste are established, where not already in place, in order to contribute to enabling Member States and the Commission to monitor the implementation of the objectives set out in this Directive.

1. Member States shall take the necessary measures to ensure that databases on packaging and packaging waste are established, where not already in place, on a harmonized basis in order to contribute to enabling Member States and the Commission to monitor the implementation of the objectives set out in this Directive.

2. To this effect, the databases shall provide in particular information on the magnitude, characteristics and evolution of the packaging and packaging waste flows at the level of individual Member States.

2. To this effect, the databases shall provide in particular information on the magnitude, characteristics and evolution of the packaging and packaging waste flows (including information on the toxicity or danger of packaging materials and components used for their manufacture) at the level of individual Member States.

Article 12(5a) (new)

5a. Member States shall require all economic operators involved to provide competent authorities with reliable data on their sector as required in this article.

Article 15

Member States may adopt economic instruments, in accordance with the provisions of the Treaty, to promote the objectives of this Directive.

The Council, on the basis of a Proposal from the Commission, adopts economic instruments. In the absence of Community measures, Member States may adopt measures in accordance with the provisions of the Treaty, to promote the objectives of this Directive.

Such economic instruments, adopted in accordance with the 'polluter pays' principle, shall not lead to distortion of competition, obstruct the free movement of goods or discriminate against imported goods.

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DOCUMENTS

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10

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