European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 94/62/EC

of 20 December 1994

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 100a thereof,

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

Having regard to the opinion of the Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 189b of the Treaty[(3)],

Whereas the differing national measures concerning the management of packaging and packaging waste should be harmonized in order, on the one hand, to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community;

Whereas the best means of preventing the creation of packaging waste is to reduce the overall volume of packaging;

Whereas it is important, in relation of the objectives of this Directive, to respect the general principle that measures taken in one Member State to protect the environment should not adversely affect the ability of other Member States to achieve the objectives of the Directive;

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

Whereas this Directive should cover all types of packaging placed on the market and all packaging waste; whereas; therefore, Council Directive 85/339/EEC of 27 June 1985 on containers of liquids for human consumption[(4)] should be repealed;

Whereas packaging has a vital social and economic function and therefore measures provided for in this Directive should apply without prejudice to other relevant legislative requirements affecting quality and transport of packaging or packaged goods;

Whereas, in line with the Community strategy for waste management set out in Council resolution of 7 May 1990 on waste policy[(5)] and Council Directive 75/442/EEC of 15 July 1975 on waste[(6)], the management of packaging and packaging waste should include as a first priority, prevention of packaging waste and, as additional fundamental principles, reuse of packaging, recycling and other forms of recovering packaging waste and, hence, reduction of the final disposal of such waste;

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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; whereas life-cycle assessments should be completed as soon as possible to justify a clear hierarchy between reusable, recyclable and recoverable packaging;

Whereas prevention of packaging waste shall be carried out through appropriate measures, including initiatives taken within the Member States in accordance with the objectives of this Directive;

Whereas Member States may encourage, in accordance with the Treaty, reuse systems of packaging which can be reused in an environmentally sound manner, in order to take advantage of the contribution of such systems to environmental protection;

Whereas from an environmental point of view recycling should be regarded as an important part of recovery with a particular view to reducing the consumption of energy and of primary raw materials and the final disposal of waste;

Whereas energy recovery is one effective means of packaging waste recovery;

Whereas targets set in Member States for the recovery and recycling of packaging waste should be confined within certain ranges so as to take account of the different situations in Member States and to avoid creating barriers to trade and distortion of competition;

Whereas, in order to achieve results in the medium term and to give economic operators, consumers and public authorities the necessary perspective for the longer term, a medium-term deadline should be set for attaining the aforementioned targets and a long-term deadline set for targets to be determined at a later stage with a view to substantially increasing those targets;

Whereas the European Parliament and 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;

Whereas Member States which have, or will set, programmes going beyond such target ranges should be permitted to pursue those targets in the interest of a high level of environmental protection on condition shat such measures avoid disturbances on the internal market and do not prevent other Member States from complying with this Directive; whereas the Commission should confirm such measures after appropriate verification;

Whereas, on the other hand, certain Member States may be allowed to adopt lower targets because of the specific circumstances in those Member States, on condition that they achieve a minimum target for recovery within the standard deadline, and the standard targets by a later deadline;

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;

Whereas the issue of Community marking of packaging requires further study, but should be decided by the Community in the near future;

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;

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 landfilled); 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;

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;

Whereas the requirements for the manufacturing of packaging should not apply to packaging used for a given product before the date of entry into force of this Directive; whereas a transition period for the marketing of packaging is also required;

Whereas the timing of the provision on the placing on the market of packaging which meets all essential requirements should take account of the fact that European standards are being prepared by the competent standardization body; whereas, however, the provisions on means of proof of conformity of national standards should apply without delay;

Whereas the preparation of European standards for essential requirements and other related issues should be promoted;

Whereas the measures provided for in this Directive imply the development of recovery and recycling capacities and market outlets for recycled packaging materials;

Whereas the inclusion of recycled material in packaging should not contradict relevant provisions on hygiene, health and consumer safety;

Whereas Community-wide data on packaging and packaging waste are needed in order to monitor the implementation of the objectives of this Directive;

Whereas it is essential that all those involved in the production, use, import and distribution of packaging and packaged products become more aware of the extent to which packaging becomes waste, and that in accordance with the polluter-pays principle they accept responsibility for such waste; whereas the development and implementation of the measures provided for in this Directive should involve and require the close cooperation of all the partners, where appropriate, within a spirit of shared responsibility;

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Whereas consumers play a key role in the management of packaging and packaging waste and thus have to be adequately informed in order to adapt their behaviour and attitudes;

Whereas the inclusion of a specific chapter on the management of packaging and packaging waste in the waste management plans required pursuant to Directive 75/442/EEC will contribute to the effective implementation of this Directive;

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

Whereas Member States should, without prejudice to 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[7], notify the Commission of drafts of any measures they intend to adopt before adopting them, so that it can be established whether or not they comply with the Directive;

Whereas the adaptation to scientific and technical progress of the packaging identification system and the formats relating to a database system should be ensured by the Commission under a committee procedure;

Whereas it is necessary to provide for specific measures to be taken to deal with any difficulties encountered in the implementation of this Directive in accordance, where appropriate, with the same committee procedure,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives

1 This Directive aims to harmonize national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

[[F1]2 To that end, this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, therefore, at reducing the final disposal of such waste in order to contribute to the transition towards a circular economy.**]**

Textual Amendments

F1 Substituted by Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste (Text with EEA relevance).

Article 2

Scope

1 This Directive covers all packaging placed on the market in the Community and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.

2 This Directive shall apply without prejudice to existing quality requirements for packaging such as those regarding safety, the protection of health and the hygiene of the packed products or to existing transport requirements or to the provisions of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste[8].

Article 3

Definitions

For the purposes of this Directive:

1. ‘packaging’ shall mean 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.

   ‘Packaging’ consists only of:

   (a) sales packaging or primary packaging, i. e. packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

   (b) grouped packaging or secondary packaging, i. e. packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;

   (c) transport packaging or tertiary packaging, i. e. packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage. Transport packaging does not include road, rail, ship and air containers**[**F2.**]**

   [F3The 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.