



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 October 2003

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COVER NOTE

Subject : Proposal for a Directive of the European Parliament and of the Council amending
 Directive 94/62/EC on packaging and packaging waste
 – Working document

Delegations will find attached a working document in view of the Trialogue on 21 October 2003.

EUROPEAN PARLIAMENT

COUNCIL

15 October 2003

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

2001/0291(COD)

WORKING DOCUMENT

Triologue on 21 October 2003

Highlighting in the tables

Bold italics

In the second column, changes and additions to the wording of the common position are shown in ***bold italics***.

Normal italics

Highlighting in *normal italics* is for the specialist departments concerned. It is a mode of communication between the two institutions' specialist departments. It concerns parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

Underlining

In the third and fourth columns underlining is used to indicate changes to a reference text.

The sign '[...]' is used only in the third and fourth columns: it shows where text has been deleted.

COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
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Amendment 1

RECITAL 2

(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 and viable recycling processes, as for instance the chemical recycling of plastics.	(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, <i>environmentally sound</i> and viable recycling processes.	Accept EP compromise text as outlined in column 4 (linked to amendment 30).	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. <u>An evaluation of the different recycling methods should be made with a view to drawing up definitions for these methods.</u> linked to proposed compromise on EP amendment 30
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
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Amendment 22

RECITAL 6

(6) 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. 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.	(6) 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. <i>Discrimination against materials on the basis of their weight should be avoided.</i> 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.	Accept EP amendment	
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
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Amendment 3

RECITAL 7

(7) 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.	(7) <i>Annual</i> 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.	Accept EP amendment	
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p align="center">Amendment 24 ARTICLE 1, POINT 1 Article 3, point 1 (Directive 94/62/EC)</p>			
<p>1. the following subparagraph shall be added to point (1) of Article 3:</p> <p>"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.</p> <p>(i) Items shall be considered to be packaging if they fulfil the definition above without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a product and all elements are intended to be consumed or disposed of together.</p>	<p>1. the following <i>paragraphs</i> shall be added to point (1) of Article 3:</p> <p>"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.</p> <p>(i) Items shall be considered to be packaging if they fulfil the definition above without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a <i>durable</i> product <i>that is necessary to contain, support or preserve that product throughout its lifetime</i> and all elements are intended to be <i>utilised for their intended purpose</i>, or disposed of together.</p>	<p>Accept EP compromise text as outlined in column 4 (linked to amendment 32)</p>	<p>1. the following subparagraph shall be added to point (1) of Article 3</p> <p>"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.</p> <p>(i) Items shall be considered to be packaging if they fulfil the definition above 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 <u>used</u>, consumed or disposed of together.</p>

<p>(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.</p> <p>(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 directly hung 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."</p>	<p>(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.</p> <p>(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 directly hung 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.</p>		
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	<p><i>The Commission shall as soon as practicable, in accordance with the procedure laid down in Article 21, examine and, where necessary, revise the illustrative examples for the definition of packaging referred to in Annex I."</i></p>		<p>The Commission shall, as appropriate, in accordance with the procedure laid down in Article 21, examine and, where necessary, review the illustrative examples on the definition of packaging referred to in Annex I. <u>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.</u></p>
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p align="center">Amendment 25 ARTICLE 1, POINT 1a (new) Article 4 (Directive 94/62/EC)</p>			
	<p><i>1a. Article 4 shall be replaced by the following:</i></p> <p><i>"Article 4</i> <i>Prevention</i> <i>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.</i> <i>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</i></p>	<p>Accept EP compromise text with the following change:</p>	

	<i>many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1(1).</i>		
	<i>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.</i>		
	<i>3. The Commission shall present at the latest by 30 June 2005 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 measures to minimise its environmental impact without compromising the essential functions of the packaging.</i>	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 [...] <u>adequate</u> measures to minimise its environmental impact without compromising the essential functions of the packaging.	3. The Commission shall, <u>as appropriate</u> , 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 measures to minimise its environmental impact without compromising the essential functions of the packaging.

COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p style="text-align: center;">Amendment 28 ARTICLE 1, POINT 2 Article 6, paragraph 7, point (c) (Directive 94/62/EC)</p>			
(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 2012.	(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 30 June 2010.	Maintain common position	Maintain EP amendment.

COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p align="center">Amendment 29 ARTICLE 1, POINT 2 Article 6, paragraph 7a (new) (Directive 94/62/EC)</p>			
	<p><i>7a. Member States acceding to the European Union by virtue of the Accession Treaty of 16 April 2003 may postpone the attainment of the targets referred to in paragraph 1(b), (d) and (e) until a date of their own choosing which shall not be later than a date to be established at the latest by * in accordance with the procedure set out in Article 251 of the Treaty.</i></p> <p><i>*18 months after the date of entry into force of this Directive.</i></p>	<p>Maintain the common position.</p> <p>As a compromise, the Presidency invited the Commission to prepare a declaration clarifying its intention to submit a proposal on the deadlines for the acceding States, so that the necessary measures are in place before the deadline for transposition of the current revision Directive expires.¹</p>	<p>Maintain EP amendment.</p>

¹ The proposed Commission declaration was presented to Coreper on 10/10/2003 and reads as follows:

"Following a request by certain acceding States for consultation on the proposal to revise Directive 94/62/EC, in accordance with the interim arrangements for the period preceding accession, the Commission concluded that the requests by the acceding countries for transitional periods with respect to the targets of Article 1(2) were justified.

In line with this conclusion, the Commission will put forward a proposal with a view to putting in place the necessary provisions before the deadline for transposition of the current revision directive expires".

COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p align="center">Amendment 30 ARTICLE 1, POINT 2 Article 6, paragraph 8, subparagraph 1, points (a) to (g) (Directive 94/62/EC)</p>			
<p>(a) an evaluation of the effectiveness of the implementation of the essential requirements;</p> <p>(b) additional prevention measures to reduce the impact of packaging as far as possible without compromising its essential functions;</p> <p>(c) the possible development of a packaging indicator to render packaging prevention simpler and more effective;</p> <p>(d) possible packaging waste prevention plans;</p> <p>(e) encouragement of re-use;</p>	<p>(a) an evaluation of the effectiveness, implementation and enforcement of the essential requirements <i>(aa) an evaluation of the different recycling methods with a view to drawing up definitions for these methods;</i></p> <p>(b) additional prevention measures to reduce the overall environmental impact of packaging as far as possible without compromising its essential functions;</p> <p>(c) the possible development of a packaging environment indicator to render packaging <i>waste</i> prevention simpler and more effective;</p> <p>(d) packaging waste prevention plans;</p> <p>(e) re-use and, in particular, comparison of ecological benefits of re-use and those of recycling;</p>	<p>(a) an evaluation of the effectiveness, implementation and enforcement of the essential requirements</p> <p>(b) additional prevention measures to reduce the environmental impact of packaging as far as possible without compromising its essential functions;</p> <p>(c) the possible development of a packaging environment indicator to render packaging prevention simpler and more effective;</p> <p>(d) packaging waste prevention plans;</p> <p>(e) encouragement of re-use and, in particular, comparison of the costs and benefits of re-use and those of recycling;</p>	<p><i>Accept Council proposal, provided that the text of point aa) of EP amendment is moved to recital 2</i> (see proposal under EP amendment 1)</p>

<p>(f) producer responsibility including its financial aspects;</p> <p>(g) efforts to reduce further and, if appropriate, ultimately phase out heavy metal in packaging by 2010.</p>	<p>(f) producer responsibility including its financial aspects;</p> <p>(g) efforts to reduce further and ultimately phase out <i>hazardous substances</i> in packaging by 2010.</p>	<p>(f) producer responsibility including its financial aspects;</p> <p>(g) efforts to reduce further and, if appropriate, ultimately phase out heavy metals and other hazardous substances in packaging by 2010.</p>	
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p align="center">Amendment 15 ARTICLE 1, POINT 2 Article 6, paragraph 8a (new) (Directive 94/62/EC)</p>			
	<p><i>8a. 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.</i></p> <p><i>In order to base the report on practical experience, the Commission and the Member States shall encourage the initiation and evaluation of pilot projects concerning points 8 (b), (c), (d) and (f) and other prevention instruments such as consumer watchdogs and complaints procedures. The participation of all stakeholders shall be ensured.</i></p>	<p>8a. 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.</p> <p>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.</p> <p><u>Recital 9:</u> Member States should promote relevant consumer information and awareness campaigns and encourage other prevention instruments [...]</p>	<p>8a. 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.</p> <p>[...] <u>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.</u></p> <p><i>Introduce the last part of EP amendment in recital 9 as follows:</i></p> <p><u>recital 9:</u> Member States should promote relevant consumer information and awareness campaigns <u>and encourage other prevention instruments such as consumer watchdogs and complaints procedures.</u></p>

COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
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Amendment 23

ARTICLE 1, POINT 5a (new)

Article 20, paragraph 1 (Directive 94/62/EC)

	<p><i>5a. Article 20(1) shall be replaced by the following:</i> <i>'1. The Commission, in accordance with the procedure laid down 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, the quantities of which do not exceed 0,1% of all packaging put on the market in the European Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.'</i></p>	<p>5a. Article 20(1) shall be replaced by the following: '1. The Commission, in accordance with the procedure laid down 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 (ie approximately 0,1% <u>by weight</u>) in the European Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.'</p>	<p>5a. Article 20(1) shall be replaced by the following: '1. The Commission, in accordance with the procedure laid down 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 (<u>ie approximately 0,1%</u>) in the European Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.'</p>
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
Amendment 31/rev ARTICLE 1, POINT 6a (new) Article 22, paragraph 3a (new) (Directive 94/62/EC)			
	<p><i>6a. In Article 22, the following paragraph shall be inserted:</i></p> <p><i>'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.</i></p> <p><i>Such agreements shall meet the following requirements:</i></p> <p><i>(a) agreements shall be enforceable;</i></p> <p><i>(b) agreements shall specify objectives with the corresponding deadlines;</i></p> <p><i>(c) agreements shall be published in the national official journal or an official document equally accessible to the public, and transmitted to the Commission;</i></p>	Accept EP amendment	

	<p><i>(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;</i></p> <p><i>(e) the competent authorities shall ensure that the progress achieved under the agreement is examined;</i></p> <p><i>(f) in case of non-compliance with the agreement, Member States must implement the relevant provisions of this Directive by legislative, regulatory or administrative measures."</i></p>		
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
<p align="center">Amendment 32 ANNEX Annex I, illustrative examples for criterion (i) (Directive 94/62/EC)</p>			
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	Packaging: Sweet boxes Film overwrap around a CD case <i>CD and video cases for short-term use</i> Non packaging: Flower pots intended to stay with the plant throughout <i>a significant part of</i> its life Tool boxes Tea bags Wax layers around cheese Sausage skins	Maintain Common position (with acceptance of proposed compromise on amendment 24)	<i>See proposed compromise on amendment 24.</i>

	<p><i>Tubes and cylinders around which flexible material is wound</i></p> <p><i>Release paper of self-adhesive labels</i></p> <p><i>Wrapping and gift wrapping paper sold as a separate product</i></p>		
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COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
ARTICLE 1, POINT 2 Article 6, paragraph 1(a) and (b) (Directive 94/62/EC)			
		<p>(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 <u>or incinerated at waste incineration plants with energy recovery</u>;</p> <p>(b) no later than 31 December 2008 60% as a minimum by weight of packaging waste will be recovered <u>or incinerated at waste incineration plants with energy recovery</u>;</p>	

Nota Bene: In order to reach an overall agreement on this dossier, it will be essential to solve the questions posed by the European Court of Justice in the recent judgements in cases C-458/00, C-228/00 and C-116/01. In fact, the Common Position was agreed under the assumption that recovery includes incineration at waste incineration plants with energy recovery. Although this question was not addressed by the common position and has not been the subject of an amendment by the European Parliament in second reading, it is crucial that an appropriate common solution be established in the context of the conciliation procedure. The proposed text clarifies that this type of incineration should be counted for the targets of subparagraphs (a) and (b).

COUNCIL COMMON POSITION	EP AMENDMENTS (SECOND READING)	COUNCIL'S POSITION (Coreper on 10.10.2003)	RAPPORTEUR'S POSITION
ARTICLE 1, POINT 2 Article 6, paragraph 7 (a) (Directive 94/62/EC)			
		(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 <u>or incineration at waste incineration plants with energy recovery</u> ;	

Nota Bene: In order to reach an overall agreement on this dossier, it will be essential to solve the questions posed by the European Court of Justice in the recent judgements in cases C-458/00, C-228/00 and C-116/01. In fact, the Common Position was agreed under the assumption that recovery includes incineration at waste incineration plants with energy recovery. Although this question was not addressed by the common position and has not been the subject of an amendment by the European Parliament in second reading, it is crucial that an appropriate common solution be established in the context of the conciliation procedure. The proposed text clarifies that this type of incineration should be counted for the target of subparagraph (a).
