



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.9.2003
COM(2003) 536 final

2001/0291 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

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

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

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

1. BACKGROUND

Procedure

- On 7 December 2001 the Commission submitted a proposal for a Directive of the European Parliament and of the Council¹ amending Directive 94/62/EC on packaging and packaging waste² for adoption by co-decision procedure as laid down in Article 251 of the EC Treaty.
- The European Economic and Social Committee delivered its Opinion on 29 May 2002.
- The Committee on Industry, External Trade, Research and Energy of the European Parliament voted on its report on 22 May 2002.
- The Committee on the Environment, Public Health and Consumer Policy of the European Parliament voted on its report on 12 July 2002.
- The European Parliament adopted its position on first reading on 3 September 2002.
- The Council adopted its Common Position on 6 March 2003.
- The European Parliament adopted its position on second reading on 2 July 2003.

Objective of the Commission proposal

The Commission proposal of 7 December 2001, which is based on Article 95(1) of the EC Treaty, sets out to amend Directive 94/62/EC. This revision is limited in scope and aims to further increase the recovery and recycling targets for the next five-year phase and thus further reduce the environmental impact of packaging waste. It also introduces material-specific recycling targets for a number of specific packaging waste materials. The proposed targets are based on an extended cost-benefit analysis. The proposed revision also introduces definitions for mechanical, chemical and feedstock recycling and clarifies the definition of

¹ COM(2001)729 final (2001/0291 (COD))

² OJ L 365/10, 31 December 1994.

‘packaging’ through the introduction of a non-binding annex containing interpretation guidelines.

No proposal has been made for revising other aspects of the Directive, such as prevention, reuse or producer responsibility, since the Commission is of the opinion that it is too early to embark on a broader revision of that kind.

2. COMMISSION COMMENTS

2.1. General

At its plenary session of 2 July 2003, the European Parliament adopted 12 amendments.

The Commission can accept 5 amendments in full, 2 in principle and 3 in part. More specifically, the Commission agrees in full with amendments 1, 3, 22, 23 and 31. The Commission agrees in principle to amendments 28 and 30. Amendments 15, 24 and 25 can be accepted in part. The remaining 2 amendments (amendments 29 and 32) cannot be accepted.

The Commission notes that there is now a high degree of agreement between the European Parliament and the Council. The position of the Commission aims to facilitate a rapid resolution of the outstanding issues.

2.2. Detailed comments

2.2.1. Amendments accepted

The Commission agrees to the following amendments concerning recitals: amendments **1** (encouragement of environmentally sound recycling processes), **3** (provision of annual data on packaging) and **22** (need to avoid discrimination against materials on the basis of their weight).

The Commission accepts amendment **23**. This amendment adds certain inert packaging materials to the list of packaging items for which implementation problems can be addressed through technical adaptation. It also accepts amendment **31** allowing the transposition of Article 7 through voluntary agreements, subject to certain conditions.

2.2.2. Amendments accepted in part

The Commission can accept the first paragraph of amendment **15**. This paragraph adds a reference to certain elements of the 6th Environment Action Programme to the list of issues to be considered in a Commission report foreseen for June 2005. The second paragraph of this amendment obliges the Commission and the Member States to encourage the initiation and evaluation of pilot projects in order to base that report on practical experience. Obliging the Commission and all Member States to encourage such pilot projects risks duplicating efforts and will depend on the availability of resources. Furthermore, taking into account the necessary procedures and time required to set up pilot projects, it is very unlikely that any such pilot project could be concluded in time for the preparation of the June 2005 report. Therefore, this paragraph is rejected. The Commission could, however, accept the following formulation: “*In order to promote the objectives of this report, the Commission and the Member States shall, as appropriate, initiate and evaluate studies and pilot projects.*”

The first part of amendment **24** adds new elements to the conditions under which an item despite having a packaging function is nevertheless not considered packaging. This part of the amendment can be accepted in principle. The Commission considers, however, that the following formulation would provide more clarity. *“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 consumed or disposed of together.”* It should be noted that this definition also covers short-lived items such as sausage skins. Restricting the exemption from the term “packaging” to durable items could be interpreted in a way that sausage skins and similar items would be classified as packaging. The second part of this amendment is rejected as it affects the Commission’s right of initiative and duplicates the revised article 19.

In amendment **25**, the first paragraph states that measures to prevent packaging waste may, in addition to an existing list of options, consist of projects to introduce producer responsibility. The second paragraph states that standards promoted by the Commission shall aim to minimise the environmental impact of packaging. The Commission can accept these two paragraphs. The third paragraph provides that the Commission shall, by 30 June 2005, present proposals to strengthen and complement the enforcement of the essential requirements. This part of the amendment is rejected as it affects the Commission’s right of initiative. Furthermore, Article 6(8), as revised by the Common Position, and amendment 30 already foresee a report on the implementation and enforcement of the essential requirements, as appropriate, accompanied by proposals.

2.2.3. Amendments accepted in principle

The Commission can agree in principle to amendment **28** and advancing the deadlines for Greece, Ireland and Portugal to a limited extent. In amendment **30** on elements to be reviewed in a Commission report, the evaluation of different recycling methods should be done in horizontal waste legislation, as this also concerns other waste streams. In point (g) the wording *“if appropriate”* should be retained to underline the need for further analysis.

2.2.4. Amendments not accepted

Amendment **29** states that the deadline for the implementation of the new targets in the Accessing States shall be determined by a new proposal under Article 251 of the Treaty. The Commission cannot accept this amendment, as it affects its right of initiative. In amendment **32**, the Commission considers that adding “tubes and cylinders around which flexible material is wound” and “release paper of self-adhesive labels” to a list of examples of non-packaging contradicts Article 3 of the Directive. This article defines packaging as items which are used for the containment, protection, handling, delivery and presentation of goods. As both the tubes and the release paper are used for these purposes, they are packaging according to this definition and cannot be an example for non-packaging. The Commission can in principle accept the addition of “CD and video cases for short-term use” and of “wrapping and gift paper sold as a separate product” as well as the new formulation on flower pots. However, the Commission considers that, in case of doubt, this matter should be discussed by technical experts within the framework of the procedure according to Article 21 of the Directive.

2.3. Amended proposal

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.