



Council of the
European Union

Brussels, 9 November 2016
(OR. en)

14198/16

Interinstitutional File:
2015/0276 (COD)

LIMITE

ENV 698
IND 233
CODEC 1604

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	14976/16 ENV 772 IND 202 CODEC 1663 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste - Presidency compromise text

With a view to the Working Party on Environment on 14 and 15 November 2016, delegations will find in the Annex a Presidency compromise text on the above.

Amendments to the Commission proposal are indicated in **bold underlined** and deletions in **[...]**.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Waste management in the Union should be improved, with a view to protecting, preserving and improving the quality of the environment, protecting human health, ensuring prudent and rational utilisation of natural resources and promoting a more circular economy.
- (2) The targets laid down in Directive 94/62/EC of the European Parliament and of the Council² for the recovery and recycling of packaging and packaging waste should be amended by increasing the [...] re-use and recycling of packaging waste in order to better reflect the Union's ambition to move towards a circular economy.

¹ OJ C , , p. .

² Directive 94/62/EC of European Parliament and Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

- (3) Furthermore, in order to ensure greater coherence in waste legislation, the definitions in Directive 94/62/EC should be aligned to those of Directive 2008/98/EC of the European Parliament and of the Council³ applicable to waste in general.

(3a) Waste prevention is the most efficient way to improve resource efficiency and to reduce the environmental impact of waste. It is therefore important that Member States take appropriate measures to encourage to increase the share of re-usable packaging placed on the market and the re-use of packaging. Such measures may include the use of deposit return systems and other incentives, such as setting quantitative targets, including combined reuse and recycling targets, and differentiated financial contributions for reusable packaging under extended producer responsibility schemes for packaging.

- (4) Clear environmental, economic and social benefits would be derived from further increasing the targets laid down in Directive 94/62/EC for [...] recycling of packaging waste.
- (5) Through a progressive increase of the existing targets on [...] recycling of packaging waste, it should be ensured that economically valuable waste materials are progressively and effectively recovered through proper waste management and in line with the waste hierarchy. That way it should be ensured that valuable materials found in waste are returned into the European economy, thus making progress in the implementation of the Raw Materials Initiative⁴ and the creation of a circular economy.
- (6) Many Member States have not yet completely developed the necessary waste management infrastructure. It is therefore essential to set clear policy objectives in order to avoid locking recyclable materials at the bottom of the waste hierarchy.
- (7) With the combination of recycling targets and landfill restrictions laid down in Directives 2008/98/EC and 1999/31/EC, the Union targets for energy recovery and the recycling targets for packaging waste laid down in Directive 94/62/EC are no longer necessary.

³ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

⁴ COM(2013) 442 final.

- (8) This Directive sets long-term objectives for the Union's waste management and gives the economic operators and the Member States a clear direction for the necessary investments to attain the objectives of this Directive. In developing their national waste management strategies and planning investments in waste management infrastructure, Member States should make a sound use of the European Structural and Investment Funds in line with the waste hierarchy by promoting prevention, re-use and recycling.
- (9) Targets for the recycling of plastic packaging waste for 2025 have been set taking into account what was technically feasible at the time of the revision of the Directive; the Commission may propose revised levels of the targets for plastics for 2030 based on a review of progress made by Member States towards reaching those targets, taking into account the evolution of the types of plastics placed on the market and the development of new recycling technologies and the demand for recycled plastics.
- (10) Separate recycling targets should be set for ferrous metals and aluminium in order to achieve significant economic and environmental benefits because more aluminium would be recycled leading to significant energy and carbon dioxide savings. The existing preparing for re-use and recycling target for metal packaging should therefore be split into separate targets for those two types of waste.
- (11) [...]
- (12) In order to ensure the reliability of the data [...] it is important to lay down more precisely the rules according to which Member States should report what is effectively recycled and can be counted towards the attainment of the recycling targets. To that effect, as a general rule, the reporting on the attainment of the recycling targets must be based on the input to the final recycling process. In order to limit administrative burdens, Member States should be allowed, under strict conditions, to report recycling rates on the basis of **the weight of separately collected waste which needs no further sorting or of** the output of **a sorting [...] operation**. Losses in weight of materials or substances due to physical and/or chemical transformation processes inherent to the final recycling process should not be deducted from the weight of the waste reported as recycled.

- (13) In order to ensure better, timelier and more uniform implementation of this Directive and anticipate implementation weaknesses, an early warning system should be established to detect shortcomings and allow taking action ahead of the deadlines for meeting the targets.
- (14) Statistical data reported by Member States are essential for the Commission to assess compliance with waste legislation across the Member States. The quality, reliability and comparability of statistics should be improved by introducing a single entry point for all waste data, deleting obsolete reporting requirements, benchmarking national reporting methodologies and introducing a data quality check report.
- (15) Implementation reports prepared by Member States every three years have not proved to be an effective tool for verifying compliance and ensuring good implementation, and are generating unnecessary administrative burden. It is therefore appropriate to repeal provisions obliging Member States to produce such reports and for compliance monitoring purposes use exclusively the statistical data which Member States report every year to the Commission.
- (16) Reliable reporting of statistical data concerning waste management is paramount to efficient implementation and to ensuring comparability of data among Member States. Therefore, when preparing the reports on compliance with the targets set out in Directive 94/62/EC, Member States should be required to use the most recent methodology developed by the Commission and the national statistical offices of the Member States.
- (17) In order to supplement or amend Directive 94/62/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of Articles [6a(2), 6a(5), 11(3), 19(2) and 20]. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level [...], **and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.**

- (18) In order to ensure uniform conditions for the implementation of Directive 94/62/EC, implementing powers should be conferred on the Commission in respect of Articles 12(3d) and 19. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁵.
- (19) Directive 94/62/EC should therefore be amended accordingly.
- (20) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (21) Since the objectives of this Directive, namely on the one hand, to prevent any impact from packaging and packaging waste 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 Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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,

⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28/02/2011, p. 13).

⁶ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 94/62/EC is amended as follows:

(1) Article 3 is amended as follows:

(a) in point 1, the following text is deleted:

'The Commission shall, as appropriate, examine and, where necessary, review the illustrative examples for the definition of packaging 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. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 21(3).';

(b) point 2 is replaced by the following:

'2. 'packaging waste' shall mean any packaging or packaging material covered by the definition of waste laid down in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council⁷;

(c) points 3 to 10 are deleted;

(d) the following second paragraph is added:

'In addition, the definitions of 'waste', 'waste producer', 'waste holder', 'waste management', 'collection', 'separate collection', 'prevention', 're-use', 'treatment', 'recovery', 'preparing for re-use', 'recycling', 'final recycling process' and 'disposal' laid down in Article 3 of Directive 2008/98/EC shall apply.';

⁷ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).'

- (2) in the second subparagraph of Article 4(1), the first sentence is replaced by the following:

'Such other measures may consist of national programmes, incentives through extended producer responsibility schemes 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).';

(2a) Article 5 is replaced by the following:

Article 5

Reuse

1. Member States shall take measures to increase the share of re-useable packaging placed on the market and to encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty. Such measures may include:

(a) the use of deposit return schemes;

(b) the setting of quantitative targets;

(c) the use of economic incentives.

2. By 31 December 2024 the Commission shall examine data on reuse provided by Member States in accordance with Article 12 and Annex III with a view to considering the feasibility of setting quantitative targets on reuse of packaging and any further measures to promote reuse of packaging. To this end, a report of the Commission, accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.

(3) Article 6 is amended as follows:

(a) [...];

(b) in paragraph 1, the following points (f) to (i) are added:

(f) no later than 31 December 2025 a minimum of 65 % by weight of all packaging waste will be [...] recycled;

(g) no later than 31 December 2025 the following minimum targets by weight for [...] recycling will be met regarding the following specific materials contained in packaging waste:

(i) 50 % of plastic;

(ii) 50 % of wood;

(iii) 75 % of [...] metals;

(iv) [...];

(v) 75 % of glass;

(vi) 75 % of paper and cardboard;

(h) no later than 31 December 2030 a minimum of 75% by weight of all packaging waste will be [...] recycled;

(i) no later than 31 December 2030 the following minimum targets by weight for [...] recycling will be met regarding the following specific materials contained in packaging waste:

(i) 55 % of wood;

(ii) 85% of [...] metals;

(iii) [...];

(iv) 85% % of glass;

(v) 85% of paper and cardboard';

(ba) the following paragraph 1a is inserted:

'1a. By 31 December 2024 at the latest, the Commission shall examine the targets laid down in paragraph 1 points (f) to (i) with a view to reviewing them. To this end, a report of the Commission accompanied by a proposal, if appropriate, shall be sent to the European Parliament and the Council.'

(c) paragraphs 2 and 3 are replaced by the following:

'2. Packaging waste exported from the Union shall only be counted towards the attainment of the targets laid down in paragraph 1 by the Member State in which the packaging waste was collected if the requirements of Article 6a (4) are met and if, in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council⁸, the exporter can prove that the shipment of waste complies with the requirements of that Regulation and that the treatment of waste outside the Union took place in conditions that are equivalent to the requirements of the relevant Union environmental legislation.

'3. Packaging waste sent to another Member State for the purposes of preparing for reuse, recycling or recovery in that other Member State may only be counted towards the attainment of the targets laid down in paragraph 1(f) to (i) by the Member State in which the packaging waste was collected.

(d) paragraphs 5, 8, and 9 are deleted;

⁸ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).'

- (4) the following Article 6a is inserted:

'Article 6a

Rules on the calculation of the attainment of the targets laid down in Article 6

- '1. For the purpose of calculating whether the targets laid down in Article 6(1)(f) to (i) have been attained:
- (a) the weight of the packaging waste recycled shall be understood as the weight of [...] **waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances;**
 - (b) [...]
 - (c) [...]
2. [...]
3. By way of derogation from paragraph 1(a), the weight of separately collected waste which needs no further sorting or of the output of any sorting operation may be reported as the weight of the packaging waste recycled provided that:
- (a) such output waste is [...] subsequently recycled;
 - (b) the weight of materials or substances that are [...] removed by further operations preceding the actual recycling operation and are not subsequently recycled is not included in the weight [...] of waste reported as recycled.

4. Member States shall establish an effective system of quality control and traceability of the packaging waste to ensure that conditions laid down in paragraphs **1(a) and 3(a) and (b)** are met. The system may consist of either electronic registries set up pursuant to Article 35(4) of Directive 2008/98/EC, technical specifications for the quality requirements of sorted waste, **standard average loss rates for separately collected waste which needs no further sorting, or sorted waste for various waste types and waste management practices** or any equivalent measure to ensure the reliability and accuracy of the data gathered on recycled waste.

4a. The amount of waste materials that have ceased to be waste as a result of a preparatory operation before being actually reprocessed may be counted as recycled provided that such materials are subsequently reprocessed into products, materials or substances to be used for the original or other purposes but not to be used as fuels.

5. For the purposes of calculating whether the targets laid down in Article 6(1)(f) to (i) have been achieved Member States may take into account the recycling of metals **[...]** **separated after waste** incineration in proportion to the share of the packaging waste incinerated provided that the recycled metals meet certain quality requirements. Member States shall use the common methodology established in accordance with Article 11a(6) of Directive 2008/98/EC.;

- (5) the following Article 6b is inserted:

'Article 6b

Early warning report

1. The Commission shall, in cooperation with the European Environment Agency, draw up reports on the progress towards the achievement of the targets laid down in Article 6(1)(f) to (i) three years before each time-limit laid down in those provisions at the latest.

2. The reports referred to in paragraph 1 shall include the following:

- (a) an estimation of the achievement of the targets by each Member State;
- (b) a list of Member States at risk of not achieving the targets within the respective time limits accompanied by appropriate recommendations for the Member States concerned.';

(6) Article 11(3) is replaced by the following:

'3. The Commission shall [...] adopt **implementing** acts [...] to determine the conditions under which the concentration levels referred to in paragraph 1 are not to apply to recycled materials and to product loops which are in a closed and controlled chain, as well as to determine the types of packaging which are exempted from the requirement laid down in the third indent of paragraph 1. **Those implementing acts shall be adopted in accordance with the procedure referred to in Article 21 (2).**';

(7) Article 12 is amended as follows:

(a) the title is replaced by 'Information systems and reporting';

(b) paragraph 2 is replaced by the following:

'2. The databases provided for in paragraph 1 shall include the data listed in Annex III and 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.';

(c) paragraph 3 is deleted;

(d) the following paragraphs 3a, 3b, 3c and 3d are inserted:

'3a. Member States shall report the data **listed in Annex III, including data** concerning the attainment of the targets laid down in Article 6(1)(a) to (i) **and data on reuse of packaging**, for each calendar year to the Commission. They shall report this data electronically within 18 months of the end of the reporting year for which the data are collected.

The data shall be reported in the format established by the Commission **on the basis of Annex III** in accordance with paragraph 3d. The first reporting shall cover data for the period from 1 January [*enter year of entry into force of this Directive + 1 year*] to 31 December [*enter year of entry into force of this Directive + 1 year*].

3b. The data reported by the Member States in accordance with this Article shall be accompanied by a quality check report and a report on the implementation of Article 6a(4).

3c. The Commission shall review the data reported in accordance with this Article and publish a report on the results of its review. The report shall cover an assessment of the organisation of the data collection, the sources of data and the methodology used in Member States as well as the completeness, reliability, timeliness and consistency of that data. The assessment may include specific recommendations for improvement. The report shall be drawn up every three years.

3d. The Commission shall adopt implementing acts laying down the format for reporting data in accordance with paragraph 3a. Those implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article 21(2).';

(e) paragraph 5 is deleted;

(8) Article 17 is deleted;

(9) Article 19 is replaced by the following:

'1. The Commission shall adopt implementing acts necessary for adapting the identification system referred to in Article 8(2) and Article 10, second paragraph, sixth indent, to scientific and technical progress. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 21(2).

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 21a to amend the illustrative examples for the definition of packaging listed in Annex I.';

(10) Article 20 is replaced by the following:

'Article 20

Specific measures

The Commission shall be empowered to adopt delegated acts in accordance with Article 21a necessary to deal with any difficulties encountered in applying the provisions of this Directive, in particular, to inert packaging materials placed on the market in very small quantities (i.e. approximately 0.1 % by weight) in the Union, primary packaging for medical devices and pharmaceutical products, small packaging and luxury packaging.';

(11) Article 21 is replaced by the following:

'Article 21

Committee procedure

1. For the purposes of Articles [12(3d) and 19(1)], the Commission shall be assisted by the Committee, established by Article 39 of Directive 2008/98/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.

2. When reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation 182/2011 shall apply.'

(12) the following Article 21a is inserted:

'Article 21a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article [6a(2), Article 11(3), Article 19(2) and Article 20] shall be conferred on the Commission for a [...] period of **5 years** from [*enter date of entry into force of this Directive*].

⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.02.2011, p. 13).'

3. The delegation of power referred to in Article 6a(2), Article 11(3), Article 19(2) and Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law Making of 13 April 2016.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article [6a(2), Article 11(3), Article 19(2) and Article 20] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'.

(13) Annex III to Directive 94/62/EC on packaging and packaging waste is amended as set out in the Annex to this Directive.

(14) Annex IV is added to Directive 94/62/EC on packaging and packaging waste as set out in the Annex to this Directive.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert date **twenty four** months after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, 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.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

ANNEX

ANNEX III is amended as follows:

(1) [...];

(1a) In Tables 1 and 2, additional columns need to be added to require information on primary, secondary and tertiary packaging separately.

(2) [...].

[...]