

Manual of European Environmental Policy

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Packaging and packaging waste

Formal references	
94/62/EC	Directive on packaging and packaging waste
Proposed 15.7.92 – COM(92)278	
and 9.9.93 – COM(93)416	
Legal base	Article 114 TFEU (originally Article 100a EEC Treaty)
Amended by	
2004/12/EC	Setting new targets for 2008
2005/20/EC	Amending Directive relating to derogations for new Member States
Regulation (EC) No 219/2009	Adaptation to the regulatory procedure with scrutiny
Supplemented by	
97/129/EC	Decision establishing identification system for packaging materials
97/138/EC	Decision establishing formats for packaging database system
1999/177/EC	Decision establishing conditions for a derogation for plastic crates and plastic pallets
2001/171/EC	Decision establishing conditions for derogation for glass packaging
2001/681/EC	Decision relating to standards for packaging
Decision 2005/270/EC	Decision on reporting requirements
Decision 2009/292/EC	Decision replacing Decision 99/177/EC establishing conditions for a derogation for plastic crates and plastic pallets
Binding dates	
94/62/EC	
Entry into force	31 December 1994
Formal compliance	30 June 1996
Development of a system of marking	1 January 1997
Compliance with essential requirements	1 January 1998
Compliance with five-year targets	30 June 2001; 31 December 2008
2004/12/EC	
Entry into force	18 February 2004

Formal compliance	18 August 2005
2005/20/EC	
Entry into force	5 April 2005
Formal compliance	9 September 2006

Note: Directive [85/339/EEC](#) on containers of liquids for human consumption was repealed on 30 June 1996.

Purpose of the Directive

Directive 94/62/EC, commonly known as the Packaging and Packaging Waste Directive, has three main objectives: to reduce the impact of packaging on the environment; to harmonize national measures in order to prevent distortions to competition; and to ensure the free movement of packaged goods. The environmental objective is to limit the amount of packaging waste going to final disposal through reuse and recovery. The Directive seeks to achieve its objectives in three main ways: by requiring Member States to establish return, collection and recovery systems; by setting a number of targets for recovery and recycling; and by guaranteeing free circulation within the EC of packaging which meets certain essential requirements.

Summary of the Directive

The Directive is concerned with all products made of any material which is used for the 'containment, protection, handling, delivery and presentation of goods'. The Directive covers the three main types of packaging: sales or primary packaging, which is normally acquired by the purchaser or consumer; grouping or secondary packaging, which is generally removed by the distributor or retailer at or near the point of sale; and tertiary packaging, which may be designed to facilitate bulk handling as well as transport.

The Directive approaches the management of packaging and packaging waste by requiring Member States to establish return, collection and recovery systems to provide for:

- The return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives.
- The reuse or recovery including recycling of the packaging and/or packaging waste collected (Article 7).

It is stipulated that these systems must apply to imported products under 'non-discriminatory' conditions and shall be designed 'so as to avoid barriers to trade or distortion to competition'. In addition, Article 14 of the Directive states that a specific chapter on the management of packaging and packaging waste is to be included in waste management plans drawn up in accordance with Article 17 of the then Waste Framework Directive [75/442/EEC](#).

The Directive sets targets to be achieved five years after the formal compliance date (i.e. by 30 June 2001) (Article 6). The Directive requires that between 50 and 65 per cent of packaging waste be recovered; 'recovered' is defined as any of the applicable operations provided for in Annex II.B of Directive 75/442/EEC which includes recycling, regeneration and the use of waste as a fuel. Of the material recovered, between 25 and 45 per cent must be recycled. A minimum recycling target of 15 per cent by weight for each packaging material is also set. The Directive required the Commission to propose a further set of targets for the five-year period between 2001 and 2006 on the basis of an interim report. New targets must be adopted by the Council acting by qualified majority, and this process is to be repeated every five years.

Directive 2004/12 was intended to set targets for the second five-year period (2001–2006). However, the proposal was issued almost 12 months later than planned, hence the dates to meet future targets were extended to 2008. The adopted targets for 31 December 2008 were:

- 60 per cent as a minimum by weight of packaging waste to be recovered or incinerated at waste incineration plants with energy recovery.
- Between 55 per cent as a minimum and 80 per cent as a maximum by weight of packaging waste to be recycled.
- Minimum recycling targets for materials contained in packaging waste:
 - 60 per cent by weight for glass;
 - 60 per cent by weight for paper and board;
 - 50 per cent by weight for metals;
 - 22.5 per cent by weight for plastics; and
 - 15 per cent by weight for wood.

On the issue of whether incineration with energy recovery is classified as recovery, the requirement for 'recovery' in the original Directive has been amended to read 'to be recovered or incinerated at waste incineration plants with energy recovery', therefore broadening the definition of what is classed as recovery in this context. The decision followed judgements of the European Court of Justice. The three institutions, however, issued a tripartite statement agreeing to review the issue, and propose amending legislation where relevant.

The Directive provides a derogation from the targets for Greece, Portugal and Ireland for a number of reasons including their 'current low level of packaging consumption' (Article 6(5)). These Member States are required, however, as a minimum to achieve a 25 per cent recovery target. Member States will be allowed to set more stringent targets 'in the interest of a high level of environmental protection' providing 'that these measures avoid distortions to the internal market and do not hinder compliance by other Member States'. By a Decision dated December 1998 the Commission confirmed a request by Austria to exceed the 45 per cent recycling target set by the Directive. Similar Decisions have been made in the case of the Netherlands and Belgium.

The Directive provides for the Council to decide, within two years of adoption (by January 1997) on a system of marking and identification of packaging in order to assist its collection, reuse and recovery, including recycling (Article 8). The Directive required the Commission to propose a system, within 12 months of adoption (before the end of 1995), with the assistance of the usual Technical Advisory Committee. The Commission and the Committee will consider cases where technical difficulties are encountered in application of the Directive's provisions and will determine whether special arrangements or exemptions are required. In fact, the Commission was late in putting forward its proposal and the January 1997 deadline was missed, although some progress has been made. Commission Decision 97/129/EC establishes the initial numbering and abbreviation system for specifying the different packaging materials on which the identification system is to be based.

The Directive prohibits the placing on the market of packaging which does not comply with certain essential requirements on the 'composition and the reusable and recoverable nature of packaging' (Article 9). Packaging which meets the essential requirements three years after the adoption date (by the start of 1998) must be guaranteed free circulation within the EC (Article 18). Member States are required to develop national standards to implement the essential requirements which are set out in Annex II of the Directive. The Commission is required to promote European standards for a number of parameters, and in particular, criteria and methodologies for life-cycle analysis of packaging and methods for measuring and verifying the presence of heavy metals (Article 10). This work has been undertaken by CEN (the European standards agency). These standards will enable companies to check whether their packaging meets the 'essential requirements' criteria in the Directive. By Decision 99/177/EC the Commission provided that, subject to certain restrictions, plastic crates and pallets would be allowed to contain heavy metal concentrations in excess of the limits to be applied to packaging in general. A further Decision 2001/171/EC allows greater concentrations of heavy metals in glass packaging.

Member States are required to develop databases on packaging and packaging waste in order to assist the Member States and the Commission in monitoring compliance with the requirements of the Directive (Article 12). In particular, the databases shall hold 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 in their manufacture)'. Commission Decision 97/138/EC establishes a standard format for the annual provision of the data in order to harmonize its characteristics and presentation.

With regard to the use of economic instruments, if the Community fails to adopt economic instruments the Member States are allowed, in accordance with the polluter-pays principle, to adopt measures to implement the objectives set out in the Directive (Article 15).

Development of the Directive

Directive 94/62/EC replaced and repealed Directive [85/339/EEC](#) on containers of liquid for human consumption, which had as its objective the reduction of beverage containers in waste for disposal. One of the main influencing factors in the development of Directive 85/339/EEC had been the Danish Government's decision to introduce legislation establishing a mandatory return and refilling scheme for beverage containers. The scheme had a number of trade implications for exporters of beverages to Denmark and the European Commission received a number of complaints. This prompted the Commission to begin drafting an EC Directive on 'containers of liquids for human consumption' which was intended to prevent the Member States from introducing schemes which restricted imports. The earliest drafts of this Directive would have required a ban on ring pull cans and the introduction of mandatory recycling measures. In its final form, however, Directive 85/339/EEC was far less prescriptive and allowed Member States to adopt their own national programmes.

Concern was expressed at the time that national schemes might be adopted under Directive 85/339/EEC which would still present barriers to trade. In fact, there was a wide variety of responses to the Directive and it did not achieve harmonization of national schemes. It did not rule out the use of mandatory measures to promote refilling or recycling and the Danish scheme remained intact, apart from a few minor concessions to importers. As a result, in 1988 the Commission brought a case against Denmark before the European Court of Justice¹ for erecting barriers to trade (Case C-306/86). The Court ruled that the trade barriers arising from the Danish laws, requiring most beer and soft drinks to be sold in returnable bottles, were not disproportionate to their environmental objectives. However, the ruling did require Denmark to drop provisions requiring prior approval of bottle designs.

From 1988 there was a general trend in the Member States towards the introduction of mandatory or voluntary initiatives to deal with packaging generally. A number of factors prompted the development of these initiatives, including the decreasing number of suitable landfill sites, the increasing public awareness of environmental issues and the growing proportion of packaging in the domestic and industrial waste streams. Events in Central and Eastern Europe also have created pressures, since some Member States previously exported large quantities of municipal waste to these countries for disposal. The former East Germany was a major recipient of waste for example. Against this background, the European Commission identified priority waste streams and proposed a Directive on packaging.

The German Ordinance on the Avoidance of Packaging Waste (Verpackungsverordnung) was the most stringent of the packaging initiatives introduced and provided a powerful pressure for the Directive. It placed a responsibility on producers of packaging waste to take back packaging after use and to reuse or recycle it. It set stringent targets, to which industry responded by establishing Duales System Deutschland (DSD) which set up an independent collection and separation system for packaging waste. Manufacturers which belonged to the scheme paid a fee to DSD to place a green dot on their packaging to

guarantee that it would be collected and sorted. The effect of the German scheme on trade and the market in secondary materials for recycling was one of the key influencing factors in the development of Directive 94/62/EC. In this way, the Commission's hand was forced to some extent by developments in a Member State.

During its development, Directive 94/62/EC was the focus of considerable debate. One of the fundamental questions to be addressed was whether the proposed Directive was concerned with regulating trade or whether it was an environmental protection measure. In proposing the Directive the Commission suggested that it dealt with both subjects. A number of Member States, however, including Germany and Denmark, recommended that the legal base be changed from the then Article 100a (internal market) (now Article 114 TFEU) to the then Article 130s (environment) (now Article 192 TFEU) to ensure that sufficient emphasis was placed on environmental protection. Article 130s would have allowed the Member States to adopt stricter environmental standards for packaging, but as it is the Directive requires essential requirements for packaging to be standardized, so that the free movement of packaged goods within the EC is guaranteed. Denmark was the first Member State to feel the impact of the Directive's dual legal objective. In July 1997, the Commission launched a second round of legal action against Denmark for its ban on the use of metal cans for beer and soft drinks (see above for details of the first case). The Commission argued that the ban was overly protectionist and contravened Articles 5, 7, 9 and 18 of the Directive which aim to prevent barriers to trade; in his opinion published in September 2001, the Advocate-General supported the Commission. In a letter of 11 July 2002 the Commission informed the Court that it was discontinuing the proceedings and requested that the Court order Denmark to pay the costs; the Court agreed with this request.

When it considered the proposal, the European Parliament's Committee on the Environment, Public Health and Consumer Protection put forward over 300 amendments of which 80 were voted through at its first reading in June 1993. The Commission did not, however, incorporate them all into its amended proposal. One of the Parliament's main recommendations was that the interim targets set in the Directive of 60 per cent recovery and 40 per cent recycling of packaging should be achieved within five years of the Directive coming into force, rather than at a date decided by each Member State as had been originally proposed. MEPs made no amendment, however, to the stringent ten-year targets which included a global 90 per cent recovery target for packaging and a 60 per cent recycling target for each recovered material.

The European Parliament had recommended that one way of stimulating markets in secondary materials (that is material collected for recycling) would be to require a minimum percentage of recycled material to be used in new packaging. But this proposal was resisted by industry groups and rejected by the Commission. The only other option was to reduce the targets and therefore the quantity of material requiring 'recovery'. In the event, this is what happened and only the five-year interim targets remained and these were reduced. However, the Directive allows the Member States to set more stringent recovery and recycling targets, providing they will not hinder the implementation of the Directive in other Member States.

The original proposal had sought to introduce a limit on the amount of packaging waste going to final disposal in landfills. The final Directive does not contain this limit. Drafts of the Directive had also included a limit to cap total packaging waste. The Commission argued, however, that the recovery and recycling targets and the essential requirements in the proposed Directive would have the desired effect of reducing packaging material and therefore the capping limit was dropped when the Directive was formally proposed.

The Directive was only adopted following intensive negotiations between the Council and the European Parliament in a Conciliation Committee in the framework of the co-decision procedure. Indeed, this Directive was one of the first tests of the co-decision procedure in the environmental sphere following the entry into force of the Maastricht Treaty. There had been disagreement between the two institutions on a number of points, including the use of economic instruments and the participation of the Parliament in the follow-up process, to be undertaken in conjunction with the Technical Advisory Committee. In the event, MEPs did win some concessions and the Parliament is to participate in the Directive's review mechanisms. The Council refused, however, to commit itself to sharing power with the Parliament in fixing the ten-year targets which will replace the five-year targets set in the Directive. The Council did, however, make minor concessions on all the 19 amendments passed by the Parliament at the Directive's second reading in May 1994.

Despite an attempt by MEPs in the Conciliation Committee to widen the negotiations to include amendments other than those agreed by the Parliament – including the establishment of strict waste management hierarchy and higher minimum recycling targets (a move rejected by the Council) – agreement in the Committee was finally reached on 8 November 1994. In its essential features, the Directive is the same as the Common Position agreed by the Council on 4 March 1994 (OJ C137 19.5.94).

Implementation of the Directive

A list of measures transposing the Directive in the Member States can be found in their national [execution measures](#).

In 2005 two major studies on the implementation of the packaging Directive were published. These reports by Perchards² and Ecolas/Pira³ tackled key issues in relation to waste packaging policy, notably prevention and reuse. The Commission was meant to present a report to the European Parliament and Council by the end of 2005, taking account of these findings, and potentially proposing further revision of the Packaging Directive. The Commission was also due to propose targets and deadlines for the period 2009–2014; these targets were to be agreed, through co-decision, by 31 December 2007.

In November 2009, the Commission published a consultants' report⁴ that surveyed Member State compliance with the essential requirements in the Directive and the accepted mechanisms followed by the economic operators to prove conformity, the use of the CEN Packaging and Environment Standards and the existing enforcement

mechanisms. The report concluded that industry was very much in favour of the essential requirements, but that authorities show little interest in enforcing them. The report suggested a series of policy options for implementation and inspection measures.

Member States must report regularly on the implementation of waste legislation. Reports are sent to the Commission every three years and cover several pieces of waste legislation. To date, three reports have been adopted by the Commission on implementation of the Packaging and Packaging Waste Directive: [COM\(2003\)250](#), adopted in July 2003 and covering the period 1998–2000; [COM\(2006\)406](#), adopted in July 2006 and covering the period 2001–2003; and [COM\(2009\)633](#), adopted in November 2009 and covering the period 2004–2006.

The 2009 report stated that the Directive had been properly transposed by all Member States and that the overall level of its implementation is satisfactory. While the Directive had brought about positive environmental effects from the stable recycling and recovery rates of packaging waste, eight Member States had failed to achieve one or more of the required recycling/recovery targets in 2006. Separate collection schemes for packaging waste were implemented throughout the EU (with differing degrees of efficiency), and all Member States were focusing efforts on raising consumer awareness about the need to manage packaging and packaging waste in an environmentally sound manner. The practical implementation and enforcement of the essential requirements was however questioned by some stakeholders and triggered a closer scrutiny of the situation by the Commission.

As regards the internal market impacts of the Directive, legal discussions had been held in recent years between the Commission and Member States on the compatibility of national measures to reduce the environmental impact of beverage packaging and the amount of waste which it generates with internal market rules. While having environmentally justifiable goals, certain national measures go beyond what is necessary and risk distorting the use and marketing of beverages and their packaging. In a move to prevent further internal market problems and to reduce the number of legal discussions with Member States, the Commission adopted a Communication on beverage packaging, deposit systems and free movement of goods which summarizes solutions found and developed so far ([2009/C 107/01](#)).

Enforcement and court cases

The following cases specifically concerning the Packaging and Packaging Waste Directive have been decided by the European Court of Justice:

- [C-123/99](#) 13. 4. 2000. This was a judgement against Greece for failure to adopt the laws, regulations and administrative provisions necessary to comply with the Directive within the prescribed period.
- [C-35/00](#) 24. 1. 2002. This was a judgement against the United Kingdom for failure to draw up waste management plans covering the whole of its territory and complying with all the provisions of the Packaging and Packaging Waste

Directive, the Waste Framework Directive 75/442/EEC and the Hazardous Waste Directive 91/689/EEC. Only 53 of the notified plans were deemed to satisfy all the conditions laid down by these three Directives. The United Kingdom did not dispute the submissions, but stated that the competent authorities were engaged in rectifying that situation.

- [C-466/99](#) 24. 1. 2002. This was a judgement against Italy for failure to forward information to the Commission concerning plans for the management of packaging and packaging waste in respect of all the Italian regions (or plans for the management and disposal of waste and hazardous waste in respect of the regions of Sicily and Basilicata).
- [C-292/99](#) 2. 5. 2002. This was a judgement against France that by failing to draw up waste management plans for the whole of its territory, and by failing to include a specific chapter relating to packaging waste in all of the waste management plans which it has adopted, France had failed to fulfil its obligations under Article 14 of the Packaging and Packing Waste Directive (as well as obligations under Directive 75/442/EEC and Article 6(1) of Directive 91/689/EEC). A claim by France that the incompleteness of the plans was due to exceptional circumstances was not accepted.
- [C-444/00](#) 19. 6. 2003. This was a judgement in a case that the United Kingdom referred to the Court following a UK High Court Case between Mayer Parry Recycling Ltd and the UK Environment Agency and Secretary of State for the Environment. The judgement related to clarification of the meaning of recycling and waste. The Court judged that 'recycling' within the meaning of Article 3(7) is to be interpreted as not including the reprocessing of metal packaging waste when it is transformed into a secondary raw material such as material meeting the specifications of Grade 3B, but as covering the reprocessing of such waste when it is used to produce ingots, sheets or coils of steel. The Court also judged that this interpretation would be no different if the concepts of 'recycling' and 'waste' referred to by the Waste Framework Directive 75/442/EEC were taken into account.
- [C-30/01](#) 23. 9. 2003. The Court dismissed an action against the UK that it had not implemented a number of Community Directives in Gibraltar. The action was dismissed as the Court accepted the United Kingdom's position that the exclusion of Gibraltar from the customs territory of the Community entails the inapplicability of the Treaty provisions on the free movement of goods, to which these Directives were related (Articles 28 EC to 30 EC). It was therefore not necessary to provide specifically in the Directives at issue for the exclusion of Gibraltar.
- [C-341/01](#) 29. 4. 2004. This was a judgement in a case between Plato Plastik Robert Frank GmbH and Caropack Handelsgesellschaft mbH. The ruling clarified that Article 3(1) must be interpreted as meaning that plastic carrier bags handed to customers in shops, whether free of charge or not, constitute packaging. It also clarified that in the same Article 'producer' refers to the producer of the goods, not the manufacturer of the packaging products.
- [C-309/02](#) 14. 12. 2004. This was a judgement in a case between Radlberger Getränkegesellschaft mbH & Co./S. Spitz KG and the Land Baden-Württemberg

- in Germany, concerning whether the Directive prohibits certain systems for reusing drinks packaging in Member States. The ruling stated that the Directive does not preclude such measures and that it does not give producers/distributors any right to continue to participate in a given packaging-waste management system. However, it does preclude the replacement of a global collection system with a deposit and return system if the new system is not equally appropriate for attaining the Directive's objectives or if the changeover to the new system does not take place without a break and without jeopardizing the ability of economic operators to participate in the new system as soon as it enters into force. The ruling also stated that Article 28 EC precludes national rules, such as those laid down in Paragraphs 8(1) and 9(2) of the Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen (Regulation on the Avoidance and Recovery of Packaging Waste), when they announce that a global packaging-waste collection system is to be replaced by a deposit and return system without the producers and distributors concerned having a reasonable transitional period to adapt and being assured that they will be able to participate in an operational system when the packaging-waste management system changes.
- [C-463/01](#) 14. 12. 2004. This was a ruling against Germany that declared that the establishment of a system seeking the re-use of packaging for products which must be bottled at source, through Paragraphs 8(1) and 9(2) of the Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen (Regulation on the Avoidance and Recovery of Packaging Waste), meant Germany had failed to fulfil its obligations under Article 5 of the Directive in conjunction with Article 28 EC.

The following case concerning Directive 2004/12/EC, which amended the Packaging and Packaging Waste Directive, has also been decided by the European Court of Justice:

- [C-90/07](#) 12. 7. 2007. This was a judgement against Belgium for failure to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/12/EC.

Further developments

In 2010 a committee of Member States was due to begin new discussions on a draft list of items to clarify what should and should not be considered packaging materials under the Directive. The aim of these discussions is to consider the status of items that have in the past posed interpretation problems, for example matchboxes, coat hangers sold with clothes, cosmetic applicators sold with make-up and CD spindles not intended for storage. The discussions are likely to lead to non-binding guidance to be published by the European Commission. The guidance will complement a list of illustrative examples of packaging and non-packaging items contained in the Directive; it is unclear as yet whether the new guidance will be included in the Directive or published separately.

Related legislation

The main EU Directive that has interactions with the Packaging and Packaging Waste Directive is:

- Directive on Waste ([2008/98/EC](#))

Directive 2008/98/EC sets the basic concepts and definitions related to waste management and lays down waste management principles such as producer responsibility and the 'waste hierarchy'. It also lays down requirements for waste management plans which must include measures on packaging.

References

1. For a discussion of case C-302/86 see: Pascale Kromarek (1990) Environmental protection and free movement of goods: the Danish Bottles Case: Commission of the European Communities (supported by the United Kingdom) v Kingdom of Denmark, *Journal of Environmental Law* 2 (1), pp 1990.
2. Pechards (2004) *Study on the Progress of the Implementation and Impact of Directive 94/62/EC on the Functioning of the Internal Market: Interim Report*, 22 October 2004
3. Ecolas and Pira (2004) Study on the implementation of Directive 4/62/EC on Packaging and Packaging Waste and options to strengthen prevention and re-use of packaging – Interim Report, 23 April 2004.
4. Arcadis (2009) *A Survey on Compliance with the Essential Requirements in the Member States, Final Report*, http://ec.europa.eu/environment/waste/packaging/pdf/report_essential_requirements.pdfhttp://ec.europa.eu/environment/waste/packaging/pdf/report_essential_requirements.pdf, Accessed 09.11.2009.