



EUROPEAN COMMISSION

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2012/0070 (NLE)

Proposal for a

COUNCIL DIRECTIVE

**amending Annex I to European Parliament and Council Directive 94/62/EC on
packaging and packaging waste**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

Article 3 (1) of Directive 94/62/EC on packaging and packaging waste provides a generic definition of packaging and criteria for interpretation of what is packaging and what is not. Annex I of the Directive provides a list of illustrative examples of the application of these criteria. Following the requirements of Article 3 (1) of Directive 94/62/EC, the Commission shall examine, and where necessary review, the list of illustrative examples for the definition of packaging given in Annex I. In order to further harmonise the interpretation of the definition of packaging in the EU, Annex I of Directive 94/62/EC is reviewed to add new illustrative examples that have been discussed with the Member States.

The measure is required to clarify cases where the borderline between what is packaging and what is not, remains unclear. The aim is to facilitate the implementation and enforcement of the packaging legislative framework and create a level playing field for economic operators across the EU's internal market.

Accordingly, the Commission submitted a draft Directive for vote in the Committee established under Article 21 of the directive. The Committee did not deliver an opinion on the draft Directive in its meeting on 12 December 2011. In the light of the position taken by the Committee, the item 'release paper of self adhesive labels' has been deleted from the proposal.

Thus, in accordance with the procedure set out in Article 5a of Decision 1999/468/EC a Proposal for a Council Directive is submitted to Council and forwarded to the European Parliament.

Proposal for a

COUNCIL DIRECTIVE

amending Annex I to European Parliament and Council Directive 94/62/EC on packaging and packaging waste

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste¹, and in particular Article 3(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 3(1) of Directive 94/62/EC defines 'packaging' by setting out a number of criteria. The items listed in Annex I to that Directive are illustrative examples of the application of those criteria.
- (2) For reasons of legal certainty and harmonisation of the interpretation of the definition of 'packaging', it is necessary to review and amend the list of illustrative examples to clarify additional cases where the borderline between what is packaging and what is not, remains unclear. The review follows calls from the Member States and the economic operators to reinforce the implementation of the Directive and create a level playing field in the internal market.
- (3) Directive 94/62/EC should therefore be amended accordingly.
- (4) The Committee established by Article 21 of Directive 94/62/EC has not delivered an opinion on the measures provided for in this Directive and the Commission therefore submitted to the Council a proposal relating to the measures and forwarded it to the European Parliament.

¹ OJ L 365, 31.12.1994, p. 10.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 94/62/EC is replaced by the text set out in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 2013 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

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

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

ANNEX I

ILLUSTRATIVE EXAMPLES FOR THE CRITERIA REFERRED TO IN ARTICLE 3(1)

Illustrative examples for criterion (i)

Packaging

Sweet boxes

Film overwrap around a CD case

Mailing pouches for catalogues and magazines (with a magazine inside)

Cake doilies sold with a cake

Rolls, tubes and cylinders around which flexible material (e.g. plastic film, aluminium, paper) is wound, except rolls, tubes and cylinders intended as parts of production machinery and not used to present a product as a sales unit

Flower pots intended to be used only for the selling and transporting of plants and not intended to stay with the plant throughout its life time

Glass bottles for injection solutions

CD spindles (sold with CDs, not intended to be used as storage)

Clothes hangers (sold with a clothing item)

Matchboxes

Sterile barrier systems (pouches, trays and materials necessary to preserve the sterility of the product)

Beverage system capsules (e.g. coffee, cacao, milk) which are left empty after use

Refillable steel cylinders used for various kinds of gas, excluding fire extinguishers

Non-packaging

Flower pots intended to stay with the plant throughout its life time

Tool boxes

Tea bags

Wax layers around cheese

Sausage skins

Clothes hangers (sold separately)

Beverage system coffee capsules, coffee foil pouches, and filter paper coffee pods disposed together with the used coffee product

Cartridges for printers

CD, DVD and video cases (sold together with a CD, DVD or video inside)

CD spindles (sold empty, intended to be used as storage)

Soluble bags for detergents

Grave side lights (containers for candles)

Mechanical quern (integrated in a refillable recipient, e.g. refillable pepper mill)

Illustrative examples for criterion (ii)

Packaging, if designed and intended to be filled at the point of sale

Paper or plastic carrier bags

Disposable plates and cups

Cling film

Sandwich bags

Aluminium foil

Plastic foil for cleaned clothes in laundries

Refillable steel cylinders used for various kinds of gas, excluding fire extinguishers

Non-packaging

Stirrer

Disposable cutlery

Wrapping paper (sold separately)

Paper baking cases (sold empty)

Cake doilies sold without a cake

Illustrative examples for criterion (iii)

Packaging

Labels hung directly on or attached to a product

Part of packaging

Mascara brush which forms part of the container closure

Sticky labels attached to another packaging item

Staples

Plastic sleeves

Device for measuring dosage which forms part of the container closure for detergents

Mechanical quern (integrated in a non-refillable recipient, filled with a product, e.g. pepper mill filled with pepper)

Non-packaging

Radio frequency identification (RFID) tags'