

# EUROPEN bulletin

The European Organisation for Packaging and the Environment - [www.europen.be](http://www.europen.be)

*The Cross Sectoral Voice for Packaging and Packaged Goods*

## *SPECIAL EDITION OF THE EUROPEN BULLETIN - REVISION OF THE PACKAGING AND PACKAGING WASTE DIRECTIVE*

# Dear Colleagues

This special edition of the EUROPEN Bulletin, issued to coincide with the release of the Commission's proposal to revise the Packaging and Packaging Waste Directive, 94/62/EC, is devoted to the past, present and future of this legislation.

The Commission's proposal for a first revision of the Directive sets new targets for the second five-year phase and seeks to clarify some of the definitions in the text. Further changes may well follow later, but these will emerge from new regulations deriving from the 6th Environmental Action Programme and are therefore expected in two or three years time at the earliest.

Confucius advised that we should study

the past in order to define the future. With this in mind, in addition to providing a comprehensive summary of the new proposal, this special edition of the EUROPEN Bulletin takes a look back at the original intentions of regulators when the Directive was introduced and how it came to take the form it did. We also take the opportunity to discuss what has been achieved under the Directive so far, the costs of implementing it, and the effects it will have on the Central and Eastern European countries which have applied to join the EU.

EUROPEN is currently in the process of considering its reaction to the Commission's proposal, and has set up a Future Policy Task Force to consider what should be the future of Europe's

Packaging and Packaging Waste Directive. Naturally, our views will evolve as the proposal itself develops through discussions within the Council of Ministers and the European Parliament level, and readers can keep in touch with our latest thinking by both logging on to the EUROPEN website ([www.europen.be](http://www.europen.be)) and by continuing to read the regular monthly updates provided by the Bulletin.

Best regards

**Julian Carroll**

Managing Director

**Special**  
December 2001

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## The Commission's proposal in summary

The present Directive, which dates back to December 1994, set recovery and recycling targets to be achieved by each member state by 30 June 2001, a date five years after the deadline for transposition of the Directive into national law. The Directive contains a review requirement, which is that targets must be set for a second five-year phase which will run to 30 June 2006.

As expected, the Commission's proposed revision of the Directive includes not only new targets but also amended definitions.

### Targets

*The overall recovery target will be 60%-75%.*

The existing Directive required member states to recover between 50% and 65% of their packaging waste by mid-2001. "Recovery" is any operation which produces further value from the material - principally through recycling, composting or incineration with energy recovery.

The Commission explains that 'for the

majority of the packaging waste, recycling is environmentally superior and justified from a cost/benefit perspective. Therefore, energy recovery should be seen only as an add-on to recycling of packaging waste.' Thus 'any additional Community target for recovery [can] not be much higher than the recycling target.' Nevertheless, the Commission's proposal says that 'member states shall encourage energy recovery, where preferable to material recycling for environmental and cost-benefit reasons.'

*There is an overall recycling target of 55%-70%.*

The existing Directive set the minimum target at 25% and the maximum at 45%.

As in the current Directive, member states may set themselves targets higher than the upper levels proposed, but only if they have appropriate reprocessing capacity and the measures taken do not distort the internal market or hinder other member states' ability to comply with the Directive.

*Material-specific targets have*

*been introduced.*

Previously a minimum recycling rate of 15% had to be achieved for each material and member states were free to set material-specific targets. However, the new proposal has introduced the following material-specific targets:

- *60% glass recycling* - an exception from this may be made for countries which consume more green glass than they produce, but this will be left until the later stages of the legislative procedure, when evidence from such countries can be considered;
- *55% recycling of paper and board* - the Commission comments that there is a case for imposing the same legal requirements on packaging and on graphic paper (e.g. newspapers) as both are recycled using the same process and they are frequently collected together, but to avoid changing the scope of the present Directive, this will be deferred for consideration as part of the Thematic Strategy on Recycling, which will be part of the 6th Environmental Action Programme;



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- 50% recycling of metal packaging - there will not be separate targets for steel and aluminium;

- 20% mechanical and chemical recycling of plastics. Other plastics recycling processes, known as 'feedstock recycling', will count towards the overall recycling target but not towards the 20% plastics recycling target. In principle, the Commission regards mechanical and chemical recycling as environmentally superior to feedstock recycling processes;

- Material recycling targets for other materials have not been included in the proposal as insufficient information is as yet available, but the Commission suggests that it might be appropriate to add them during the later stages of the legislative process.

## Derogations from the targets

Greece, Ireland and Portugal were given

an extended deadline for meeting the present targets by the end of 2005. They will be granted a shorter extension for meeting the revised targets: 30 June 2009 rather than 30 June 2006.

Provisions and timetables for the accession countries will be negotiated later.

## Definitions

It is proposed to add the following definitions:

- "mechanical recycling" shall mean the reprocessing of waste material, for the original purpose or for other purposes excluding energy recovery or disposal, without changing the chemical structure of the processed material";

- "chemical recycling" shall mean the reprocessing, other than organic recycling, of waste material, for the original purpose or for other purposes excluding energy recovery or disposal, by changing the chemical structure of

the waste material and recycling the chemical constituents into the original material of the waste";

- "feedstock recycling" shall mean the reprocessing, other than organic recycling, of waste material, for the original purpose or for other purposes excluding energy recovery or disposal, by changing the chemical structure of the waste material and recycling the chemical constituents into materials other than the original material of the waste".

The Commission's proposal also contains an Annex setting out "indicative and non-binding guidelines on the interpretation of the definition of packaging." The aim is to create a common EU definition of what constitutes 'packaging' and encourage national governments to take the same view of items such as carrier bags, plant pots, games boxes, hang-tags and staples, which may or may not be regarded as packaging.

The full text of the Commission's proposal, and the accompanying explanatory memorandum, can be found on the DG Environment website at <http://europa.eu.int/eur-lex/en/com/pdf/2001/com2001-0729en01.pdf>



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## Why was a Packaging and Packaging Waste Directive needed?

The EU's first legislation in the field of packaging was established after eleven years of discussion. The Directive on containers of liquids for human consumption (85/339) was adopted in June 1985. Although it did not set any quantified targets for recycling and recovery, the Directive instructed EU member states to draw up national programmes to reduce the environmental impact of beverage containers by encouraging a reduction in the consumption of energy and raw materials, reducing the amount of beverage containers in household waste, and encouraging recycling and refilling as well as technological innovation.

The first test of the legal effectiveness of this Directive came three years later. In a landmark ruling, the Commission lost a court case it brought against Denmark for its ban on non-refillable beer and

soft drink bottles. Although the Commission had argued that the ban contravened the Treaty of Rome, the European Court of Justice ruled that the resulting restrictions on the free movement of goods were a price worth paying for the environmental benefits deemed to result.

The ruling opened the floodgates, and further national measures followed (see Table 1 in the Annex for further details): Germany, for instance imposed a punitive DM 0.50 (€0.26) deposit on plastic beverage containers. When the Belgian and French governments immediately complained that this would destroy their mineral water exports to Germany, the Commission argued that as Community law stood - thanks to the "Danish bottles case" - the impediments to trade resulting from deposit systems were justified because of the "high level

of environmental protection" that resulted.

One of the major problems for both industry and policy makers was that existing European legislation did not establish with any clarity where the right balance lay between environmental protection and the free movement of goods. Directive 85/339 was so loosely worded that member states were free to do as much or as little as they wanted. Thus industry agreed with the Commission that a new Directive was needed to end the legal uncertainty, though companies had many misgivings about the possibility of finding enough common ground.

For further details on why a new legal base was felt to be necessary, see point 1 in the Annex to this Bulletin.



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## How the legal structure evolved

The Commission's first thought was to amend the Liquid Food Containers Directive to fix quantitative waste prevention and reduction targets, but its proposed redraft met with little enthusiasm. Denmark, Germany and the Netherlands thought it was too weak; other member states thought it was too interventionist, or that there was no justification for singling out beverage containers rather than dealing with all packaging. For further details on national views on target setting, please see point 5 in the Annex.

Further drafts followed, the intention

being to start work on an overall Packaging Directive as soon the proposed amendment to Directive 85/339 had been published. However, the projected amendment had already failed in its original purpose, which was to put European legislation in place to stop the introduction of unilateral national restrictions. Thus the Commission decided to abandon its proposed amendment, revive a moribund proposal for a Plastics Waste Directive (including plastic packaging - further details in point 2 of the Annex) and draft a General Packaging Directive in parallel with it.

Commission officials started work on what subsequently became the draft Packaging and Packaging Waste Directive in the autumn of 1990. It was apparent that wide differences between member states' approaches to the management of packaging waste would make it impossible to harmonise what they were already doing. As a consequence, the Commission decided that the Directive would set targets and give individual countries the freedom to develop their own ways of achieving them.

## How the targets evolved

### Waste reduction targets and waste disposal limits

The Commission's first shot at a Packaging Directive said that by 2000, the total weight of packaging waste must be at least 10% below the 1990 figure; only 10% of the weight of packaging entering the waste stream may be landfilled; at least 50% by weight of

packaging waste must be recycled; and a maximum 40% of packaging waste may be used for energy recovery.

### The "standstill principle"

The next text amended the balance between recycling (at least 60%), energy recovery (no more than 30%) and landfilling (no more than 10%), and the

aim was now to achieve "standstill" in the average packaging waste generated per capita each year. The thinking was that maintaining waste at the 1990 level across the Community - the "standstill principle" - would allow for packaging growth in Southern Europe, if balanced by source reduction in the North.

Despite criticisms of the "standstill



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clause" from industry and national governments for its lack of certainty and its failure to take account of the trade-off between packaging waste and product wastage, the proposal was retained in the Commission's first official draft, "Draft 1", and was later quantified at 150 kg of packaging waste per capita per annum, which was believed to be the European average consumption.

*Industry's counter-proposal was for a single target - an 80% reduction in the weight of packaging going to landfill within ten years of the Directive's adoption, a proposal made on the explicit assumption that the public authorities would establish the framework for efficient material recycling and energy recovery.*

## **A ten-year recovery target and material-specific targets for recycling**

When the Commission formally published its proposal for a Directive in 1992, there was no "standstill clause". Instead, *within five years* of the

Directive's coming into force, member states were to set up systems to provide for the return or separate collection of used packaging, and to ensure that it is effectively reused or recovered. *Within ten years*, 90% by weight of used packaging waste was to be recovered and 60% of *each packaging material* recycled (for an explanation, see point 3 of the Annex). Final disposal of packaging waste would be limited to the residues from collection and sorting, and must be no more than 10% of the packaging waste output. These targets would be reviewed within six years of the Directive's entry into force.

## **National input via the Article 21 Committee**

To accommodate lingering doubts in some member states, the draft Directive said that if it were proved that other recovery processes were to show greater environmental advantages, the recycling targets may be modified. This would be done through the "Article 21 Committee" (then the "Article 17 Committee") of national officials meeting under the Commission's chairmanship. (For national opinions on these Commission proposals, see point

4 of the Annex.)

By the time the Commission finalised its proposal, it had settled on ten-year targets of a 90% recovery rate and 60% recycling of each material, and also required member states to specify in their waste management plans when they would reach intermediate targets of 60% recovery and 40% recycling of each material. Following a European Parliament amendment at First Reading, the Commission then introduced a five-year deadline for the achievement of these intermediate targets.

## **The first signs of pragmatism: five-year targets and more flexibility on recycling**

When the Commission issued its amended proposal following completion of the Parliament's First Reading, a number of member states were still arguing that the targets were unrealistic. There was a growing view that the five-year targets should be the only targets for the time being, though Portugal and others argued that those countries starting from a low base needed ten years to build up their infrastructure.



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The Belgian Presidency proposed introducing greater flexibility to the five-year targets by replacing the Commission's 40% recycling target for each material by a 40% across-the-board recycling target plus a minimum recycling rate for any material of 25%. At one point the Presidency was treating composites as a separate material stream with its own minimum recycling target, but this category was later dropped. The idea of setting a single target covering both recycling and reuse was floated, as had already been done in Austria, but Germany and the Commission were opposed to this.

## More flexibility: upper and lower limits

With no agreement on the targets in sight, the energetic Belgian Presidency then came up with a new idea - target ranges of 50% plus 10% or 15% for recovery and 30% plus 10% or 15% for recycling. These were to be met within five years and the Directive would provide for a review to decide on targets for the five years following that.

The upper levels would mark a threshold above which harmonisation might be jeopardised. Member states which wanted to go further than the upper

limits would have to justify this with regard to the single market provisions of the Treaty. With a little modification of the percentages, this principle was accepted on a qualified majority vote and was adopted in the Council's Common Position, and the targets in the Common Position were carried forward into the final Directive.

For an overview of how the targets set out in the original Directive evolved, see Table 2 in the Annex.

*The idea of allowing member states to set their own targets within a maximum and minimum laid down in the Directive, was first put forward by EUROPEN during a meeting with the Commission in 1990 for an exchange of views on the way forward. EUROPEN suggested banded targets not for recovery and recycling but for waste reduction, which was then top of the agenda.*

*In addition, EUROPEN suggested that "overall recycling targets of 40%, 50% or 60% are no more than a series of abstractions. Nobody knows what would be involved in achieving any of them." EUROPEN suggested starting from the other end, by requiring the installation of an effective recycling infrastructure in densely-populated areas where large quantities of waste are generated, and then progressively expanding the recycling requirement to other areas as the infrastructure and funding built up and end-use markets for the collected materials developed. "It takes time to develop collection and reprocessing technology, to put the necessary equipment in place and build markets: swamping the market with an over-supply of collected material would not be helpful."*

*The nature of the systems to be adopted should not be specified - this was a matter for local decisions - and there could be exemptions for towns where recycling would be particularly difficult, for instance large towns or islands with a strong tourist trade.*



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## The Directive and the single market

### Bans and mandatory deposits

"Draft Zero", the Commission's first text, contained quite specific provisions to prevent fragmentation of the single market. It said that mandatory deposits may not be imposed on imported products (a recognition that refill/return systems are not suitable for interstate trade), and that bans may not be introduced for reasons other than the protection of public health and must be approved at European level. However these safeguards disappeared from the next text, which relied on the notification procedure to give the Commission and the other member states a chance to recommend changes when the notified measures were deemed to be in conflict with the single market.

At Second Reading MEPs put down amendments to impose mandatory minimum recycled content, mandatory deposits and restrictions on PVC, but none of these was passed.

For details on deposits and the use of other economic instruments in policy making, please see point 6 of the Annex.

### The Essential Requirements

The single market provisions were soon strengthened by the incorporation of the principles of the New Approach to harmonisation. Packaging would be allowed on the market only if it complies with the "Essential Requirements" which would be elaborated further in CEN standards. Packaging not in line with the Essential Requirements would be banned.

The Commission's formal proposal for a Directive stipulated that to be suitable for energy recovery, packaging must have a calorific value of at least 13 MJ/kg, "the approximate energy value of paper and board", the Commission explained. Some MEPs wanted 10 MJ/kg, but the final Directive contained no figure. The absence of a "minimum inferior calorific value" from the CEN energy recovery standard was the main reason for the Commission's refusal to endorse it in its present form.

The Packaging and Packaging Waste Directive is the first and so far the only instance of Essential Requirements being written for environmental objectives:

they were originally intended for less subjective issues such as engineering standards.

### Slow progress towards standards

In some respects, however, the Essential Requirements may create more problems than they solve. CEN has duly produced European standards, but as the Commission has declined to publish the references to most of the standards until they have been amended - which will take some time - the automatic presumption of conformity for packaging produced in accordance with the standards applies only to packaging minimisation and to suitability for organic recovery. Member states are free to make their own judgements on how the remainder of the Essential Requirements are to be interpreted.

For further details of national responses to the Essential Requirements of the Directive, please see point 7 in the Annex.



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*The "New Approach" to technical harmonisation was introduced by a Council Resolution of 7 May 1985 in order to speed up the harmonisation process. The EU institutions agreed Essential Requirements which define the results to be attained and the risks to be dealt with, but they delegate to the European standards organisations the task of specifying the technical solutions needed.*

*These technical specifications are not mandatory; they remain voluntary standards. However if companies do not follow the standards, they will have to satisfy the enforcement authorities that the packaging they place on the market is indeed in line with the Essential Requirements.*

*Once the references to the standards have been published in the Official Journal, national authorities are obliged to presume that products manufactured in accordance with these standards are in conformity with the Essential Requirements in the Directive.*

*The Packaging and Packaging Waste Directive is the first and so far the only instance of Essential Requirements being written for environmental objectives.*

## **Has the Directive settled the single market issues?**

At the time the Directive was adopted, there were two national measures which EUROPEN and others regarded as trade barriers - Denmark's ban on beverage cans, and Germany's market share quotas which reserved 72% of the national beverage market for products packed in refillables.

## **No decision yet on the key issues**

It has to be said that the Directive did

not produce the results EUROPEN was hoping for, as both measures are still in place today. Worse, Portugal has also introduced market share quotas for refillable beverage containers. Even though the Danish can ban and the German market share quotas have been challenged by the Commission, there are no results as yet. (See point 8 in the Annex for further details).

There is one encouraging sign, though. The Court's Advocate General recently delivered his opinion on the facts and legal aspects of the case as background for the judges' ruling in the Danish case.

Rejecting Denmark's claim that the Directive is too imprecise, the Advocate General said that Denmark must respect not only the Directive's environmental objective, but also the equally important second objective of removing barriers to trade and avoiding distortion or restriction of competition. The Advocate General's opinion carries great influence with the judges making the final decision.



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## Two modest successes and one failure

To date, the Directive has succeeded in preventing the establishment of a number of new barriers to trade in the field of packaging and packaged goods. Two key examples are provided by proposals for eco-taxes on beverage packaging in Luxembourg and a ban on beverage cans in the Canary Islands, both of which were dropped after successful arguments were made that these would unfairly favour local producers.

However, plans in Norway to introduce an eco-tax on non-refillable beverage containers were challenged by the EFTA Surveillance Authority (ESA), but the case was eventually dropped, "in view of the development of EEA legislation and EU

Commission policy". Further details on these national cases can be found in point 9 of the Annex.

The message seems to be this. Where a possible trade barrier is already in place, the member state will want to defend it. As yet there is insufficient case-law to persuade a recalcitrant government that defence of its measure is pointless - indeed, if the member state is prepared to fight its case, it will be several years before the European Court gets to make a ruling. On the other hand, Commission objections to proposed measures which have not yet come into effect have been enough to get them abandoned.

The Commission has been reluctant to take cases to the Court because of the consequences of defeat. Just as Denmark's victory in the "Danish bottles case" of 1988 prompted a chain of actions and reactions which brought chaos to the single market for a time, so a new defeat for Brussels could undo everything the Directive was trying to achieve. It does not help that the Essential Requirements are still not being properly enforced - though this may change if the European Court of Justice follows its Advocate General's advice.



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## The Directive and the accession countries

The applicant countries have made a commitment to adoption of the *acquis communautaire* - the body of existing EU legislation, including the Packaging and Packaging Waste Directive - so negotiations really centre on the timetable for adoption. The Czech Republic and Hungary have secured agreement that the deadline for full implementation of the Packaging and Packaging Waste Directive can be set for the end of 2005, for Lithuania it will be the end of 2006 and for Latvia, Poland and Slovenia, the end of 2007. In this first phase they will be allowed the same derogation as Greece, Ireland and Portugal, namely a 25% recovery target.

Meeting the Directive's targets will be quite a challenge. In 1999, some 84% of all waste generated in the region was landfilled. There were only seven large municipal waste incinerators and three small ones in operation, and these do not meet EU emission limits. Without

major investment to replace or modernise them, dependence on landfilling will increase.

Who pays for the necessary investment? In April 2000, Jean François Verstryngne, Deputy Director-General of DG Environment, suggested that even with long transitional periods, the countries in question will not be able to pay for the necessary investments. Funding was therefore an industry obligation that could possibly be turned into profitable business in the long run. At the same meeting, Environment Commissioner Wallström commented that "for several accession countries, eco-taxes and environmental fees and charges play an important role in the financing of environmental policy. This is something we have a lot to learn from."

Industry is already contributing very substantial sums to packaging waste management in the existing member

states, and will expect to do the same when the EU is enlarged. But with the low level of purchasing power in the new member states, there is a limit as how much can be passed on to consumers. (See Table 3 in the Annex for further details.)

It is essential therefore that when the accession countries set up their systems, they learn from the experience already gained. In a seminar on managing the rising cost of producer responsibility for packaged products which EUROPEN organised in October 1996, it was shown that there are certain "cost magnifiers" whose effects can be minimised by careful design of the system. EUROPEN has been working with DG Enlargement's TAIEX programme (Assistance for Private Sector Associations in the Candidate Countries) to reinforce this message to the people responsible.



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## Conclusion: costs, benefits and the future

Implementation of the Directive has resulted in a substantial increase in recycling rates across the European Economic Area, the development of new techniques and infrastructure for sorting, collecting and reprocessing packaging waste, and the emergence of a number of funding models, which offer positive and negative lessons on the organisation of packaging waste management.

Extrapolating from a SOFRES study on the impacts of the Packaging and Packaging Waste Directive in four member states, DG Environment suggests that the total financing need for the packaging recycling systems across the EU amounts to somewhere between €5 billion and €8 billion per annum. This represents around 0.1% of European GDP, 5% of total environmental expenditure and 15% of total waste management expenditure. DG Environment goes on to say that the waste disposal costs avoided as a result of the Directive are of the same order of magnitude.

These estimates are fairly tentative, but

there has clearly been a massive transfer of costs from the public sector to the packaging and packaged goods industry. Municipal waste management costs are passed on to the householder; industry's costs will be passed on to the consumer if market conditions allow, but may have to be absorbed in part where price increases are not possible.

### What happens next?

EUROPEN welcomes the Commission's decision to make a proposal on revised targets now and to take more time to consider the feasibility of a more fundamental review of the Directive. The Directive has succeeded in promoting high levels of recycling, and EUROPEN believes that it is time to address the broader environmental objective of sustainability.

In EUROPEN's view, EU legislation should no longer concentrate solely on packaging waste minimisation, since maintaining a narrow policy focus will not in the long run best achieve the goals of the Directive.

EUROPEN shall react at each stage of the development of the proposal for revised targets, but at the same time EUROPEN has started longer-term thinking on a new policy structure and will begin discussing their suggestions with the Commission and other stakeholders early in 2002. To help achieve the wider goals of sustainable development EUROPEN would like to explore with the Commission the potential for a new long-term policy structure to build on the achievements of the current Directive. We will propose that packaging design and performance is addressed within environmental standards or product policy, while packaging waste is addressed within a different legislative framework which deals with all solid wastes arising at the same location.



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**Table 1: National measures and the EU response**

1977-81	Danish beverage can ban dating from 1977 (carbonated soft drinks) and 1981 (beer) unaffected by ECJ ruling in the "Danish bottles case"
Sept 1988	Italian law on containers for liquids introduces recycling targets for beverage containers and provides for compulsory membership of material-specific "consortia" to fund recycling
Dec 1988	German law introduces mandatory deposits on plastic beverage containers
April 1989	German government announces recycling/refilling targets for beverage containers
Jan 1990	German government announces objectives and a timetable for various actions relating to non-beverage plastic packaging, and invites trade and industry to submit proposals for a takeback system by August 1990.
July 1990	Austrian Beverage Container Ordinance sets refilling and recycling targets and tonnage limits on the disposal of used beverage containers through landfill and incineration
1990-1	Voluntary agreements between industry and the Belgian Regional Governments include takeback commitments and recycling targets for 1995 and 2000.
Jan 1991	<i>Commission starts work on draft Packaging Directive</i>
June 1991	German Packaging Ordinance establishes a market share quota for refillables and takeback requirements and sets targets - the Dual System to operate nationwide by January 1993



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**Table 1: National measures and the EU response (ctd.)**

June 1991	First Dutch Packaging Covenant contains commitments to end the landfilling or incineration of packaging waste by 2000, reduce the weight of packaging placed on the market to below the 1986 level and meet recycling targets for 1995
April 1992	French Decree on used packaging from households introduces takeback requirements
July 1992	<i>Commission proposal for a Packaging and Packaging Waste Directive published</i>
Oct 1992	Austrian Packaging Ordinances establishes takeback requirement and sets targets - a recovery organisation to operate nationwide by October 1993
July 1993	Belgian law introduces packaging eco-taxes
July 1994	French decree on non-household packaging waste imposes recovery obligations on end-users
Dec 1994	<i>Packaging and Packaging Waste Directive adopted</i>



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**Table 2: Evolution of the targets**

Text	Targets	Deadline
"Draft Zero" (February 1991)	<ul style="list-style-type: none"> <li>Total weight of packaging waste must be at least 10% below the 1990 figure;</li> <li>Only 10% of the weight of packaging entering the waste stream may be landfilled;</li> <li>At least 50% by weight of packaging waste must be recycled; and</li> <li>A maximum 40% of packaging waste may be used for energy recovery.</li> </ul>	By 2000
"Outline proposal for a Packaging Directive" (April 1991)	<ul style="list-style-type: none"> <li>Average annual packaging waste per capita must not exceed the 1990 level;</li> <li>At least 60% by weight of packaging waste must be recycled;</li> <li>No more than 30% may be incinerated by energy recovery; and</li> <li>No more than 10% may be landfilled.</li> </ul>	Within 5 years of adoption
"Draft 1" (May 1991)	<ul style="list-style-type: none"> <li>Average annual packaging waste per capita must not exceed the 1990 level; and</li> <li>60% by weight of packaging waste to be recycled.</li> </ul>	Within 5 years of adoption
Commission proposal for a Packaging and Packaging Waste Directive (July 1992)	<ul style="list-style-type: none"> <li>90% by weight of packaging waste to be recovered; and</li> <li>60% of each <i>packaging material</i> to be recycled.</li> </ul>	Within 10 years of adoption
European Parliament First Reading amendments (June 1993) and	<ul style="list-style-type: none"> <li>minimum 90% recovery; and</li> <li>minimum 60% of each <i>packaging material</i> to be recycled.</li> </ul>	Within 10 years of adoption
Commission's amended proposal (September 1993)	<ul style="list-style-type: none"> <li>minimum 60% recovery; and</li> <li>minimum 40% recycling.</li> </ul>	Within 5 years of adoption

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**Table 2: Evolution of the targets (ctd.)**

<b>Taxt</b>	<b>Targets</b>	<b>Deadline</b>
Belgian Presidency proposal (November 1993)	<ul style="list-style-type: none"> <li>• minimum 50%, maximum 60-70% recovery;</li> <li>• minimum 30%, maximum 40-50% recycling; and</li> <li>• no material to be recycled at less than 20% (including composites).</li> </ul>	Within 5 years of adoption
Common Position agreed by Council of Ministers (March 1994)	<ul style="list-style-type: none"> <li>• minimum 50%, maximum 65% recovery;</li> <li>• minimum 25%, maximum 45% recycling; and</li> <li>• no material to be recycled at less than 15% (no mention of composites).</li> </ul>	Within 5 years of adoption
Directive adopted (December 1994)	<ul style="list-style-type: none"> <li>• minimum 50%, maximum 65% recovery;</li> <li>• minimum 25%, maximum 45% recycling; and</li> <li>• no material to be recycled at less than 15%.</li> </ul>	Within 5 years of adoption



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**Table 3: Purchasing power in the accession countries**

**GDP per capita - % of EU average, 1998**  
*(source: Commission database on enlargement, October 1999)*

21%-30%	Bulgaria, Latvia, Romania
31%-40%	Estonia, Lithuania, Poland, Turkey
41%-50%	Hungary, Slovak Republic
51%-60%	Czech Republic
61%-70%	Slovenia
71%-80%	Cyprus



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## Point 1: Legal Certainty

For the member states, the need for a Directive establishing a general legal framework for packaging waste management policy became even more apparent when the German government adopted its 'Packaging Ordinance' in June 1991. This led to the establishment of the Dual System (DSD), a scheme which guaranteed to consumers that certain packaging materials would be recycled, and set ambitious recycling targets.

However, there was a fear that this system would allow Germany to dominate the markets for secondary raw materials in Europe and that exports of German packaging waste - whose collection had been subsidised by DSD - would undermine collection and reprocessing in neighbouring countries. Those countries responded by preparing their own producer responsibility legislation or by challenging industry to come up with proposals.

The Directive on Packaging and Packaging Waste which eventually emerged (94/62/EC) represented a trade-off in which the Directive gave industry the right to distribute packaging and packaged goods freely throughout the EU's single market in return for accepting obligations to achieve high recovery and recycling rates across Europe.

## Point 2: The Plastics Waste Directive

The revised draft of the Plastics Waste Directive appeared first, setting a target of recycling 70% of used plastics packaging within five years. However, by the end of 1990 the Commission had again decided to abandon this project

and to include plastics with other materials in a series of "priority waste stream" projects. These resulted in, among other things, the Directive on End-of-Life Vehicles (the "ELV Directive") adopted in September 2000 and the

June 2000 proposal for a Directive on Waste Electrical and Electronic Equipment (the "WEEE Directive") which is still working its way through the EU's legislative process.

## Point 3: Ten year targets

The difference between the 60% recycling target and the 90% recovery target could be made up by incineration with energy recovery. But if 30% energy recovery were not possible, the effective recycling target would be rather much higher. In any case, energy cannot be

recovered from glass and metal packaging.

Even at that time, when the practical limitations on recycling were not widely understood, it was recognised that a 90% recycling rate would not be

possible in countries with a scattered rural population and no energy recovery facilities. This was the origin of the derogation eventually granted to Greece, Ireland and Portugal.



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## Point 4: National views on setting targets in the additional Directive

The UK government objected in principle to the implicit limit on energy recovery in the Directive, on the grounds that it had not been proved that recycling was invariably better for the environment than energy recovery. The British also argued that it was wrong that materials which may be difficult and costly to recycle must meet the same target as materials capable of achieving very high recycling rates. The UK wanted the main target to be a "realistic" reduction in the total amount of packaging waste going to final disposal. This would allow member states the flexibility to favour material recycling or energy recovery as appropriate and to pursue material recycling for those materials for which it was best suited. It would also

give credit for source reduction and reuse, waste reduction options would which not contribute towards achievement of the Commission's proposed targets.

Denmark had a different problem with the proposals. The Danes were concerned that the Directive would overturn their can ban and that sales of non-refillables would eventually undermine the economic viability of the Danish refillable bottle system. Moreover, the Directive gave no credit for reuse. With at least 75% of their household waste incinerated and used for district heating, the Danes were worried that they would have to close down some of these facilities if they were

to meet the 60% recycling target. Finally, Danish trade unions were opposed to the manual sorting of household waste, which they said was unhygienic and degrading, which was why Denmark's recycling activities had so far concentrated on glass and on transport packaging. Thus Denmark supported the view that any recycling target should apply across the board rather than material by material.

France was arguing that national targets should be linked to each member state's reprocessing capacity (an idea later taken up in Japanese legislation), but Belgium, Germany and the Netherlands were happy with the targets and were looking to tighten up the Directive.

## Point 5: The minority position on the single market

Denmark, Germany and the Netherlands had always been hostile to any provisions that would force them to abandon measures they had already adopted at national level. They were keen that the Directive should only lay down minimum standards which member states should be entitled to exceed, and to bring that about they

wanted the Treaty base of the proposal changed from Article 100A (Single Market) to Article 130S (Environmental Protection).

Having failed to muster enough support for this, these three countries voted against adoption of the Directive on the grounds that it did not meet the essential

Treaty obligation of ensuring a high level of protection of the environment though adoption of the precautionary principle, and did not reflect the level of prevention, reuse, recycling and recovery achieved in these countries. The upper limits, they argued, would hamper further developments.



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These three member states declared that they reserved the right to invoke Article 100A (4) of the Treaty, which provided for the possibility of national measures conflicting with the provisions of single

market Directives, where the member states concerned can demonstrate that such measures are genuinely necessary for the protection of the environment and are not a disguised form of trade

protectionism.

*Following changes to the Treaty, Article 100A has been renumbered as Article 95 and Article 130S is now Article 175.*

## Point 6: Economic instruments

Early texts had a lot to say about economic instruments. Draft 1 said that member states were "requested" to introduce economic and fiscal instruments, but it did not say what they should be. They should however "encourage the use of returnable and recyclable packaging", "facilitate collection and recycling operations" and "be based on valid ecological and economic criteria".

levy administered from Brussels and disbursed wherever the money was needed to support the development of recycling. That implied a high level of cross-subsidy, from industry to industry and from country to country. It was politically unacceptable and the idea was dropped.

accordance with the Treaty. The Parliament wanted not only to provide for EU-wide instruments to be adopted by the Council on a proposal from the Commission, but also added a reference to the Polluter Pays Principle. The eventual compromise was to retain the reference to Council adoption of economic instruments (though this has never been a practical possibility) but to delete mention of the Polluter Pays Principle.

Another draft envisaged a packaging

The Common Position said that member states may adopt economic instruments to promote the objectives of the Directive, provided they were in

## Point 7: German and Danish legislation at the European Court of Justice

The cases take a long time to examine: the Commission notified Denmark back in February 1996 that a national ban on packaging which satisfies the Essential Requirements would probably breach EU

law, but infringement proceedings did not begin until June 1997 and the European Court of Justice will not issue its final ruling until the end of the year. In December 1998 the Commission

asked Germany to justify the quotas, but it did not refer the issue to the European Court until last March - and even then the case was limited to the quota on mineral water containers.



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## Point 8: National response to the Essential Requirements

In practice, although packaging not conforming to the Essential Requirements was supposed to be banned since January 1998, only France and the UK have set up an enforcement

regime and both fully accept the CEN standards. The question is whether the other member states will wait two or three years more until revised standards have been adopted and the references

published, or whether they will start to make their own unilateral interpretations. In particular, it will be interesting to see how Denmark reacts if it loses its case in the European Court.

## Point 9: The Directive in its national context

One key example is provided by the idea proposed by the Luxembourg government to introduce an eco-tax on beverage containers which would not be payable if market share targets for refillables and recycling targets for non-refillables were met. After the Commission wrote to the Luxembourg authorities in June 1996 warning that they had failed to present adequate justification for the resulting barrier to trade, this proposal was abandoned. Since Luxembourg producers used refillables to a much greater extent than imported products (90% and 30% respectively), the cost of complying with the preference given to refillable packaging would fall almost exclusively on foreign suppliers.

In 1995 the EFTA Surveillance Authority (ESA) initiated a challenge to the

preferential tax treatment given to refillables in Norway which, it argued, contravened European Economic Area rules. Most domestic production fell outside the scope of the tax whereas almost all imported beverages were subject to the tax. ESA said that a differentiated tax system would be compatible with EC/EEA law if it were based on objective criteria and if there were no discrimination, but the Norwegian tax exempted dairy products in non-refillables, which were exclusively or almost exclusively domestically produced. ESA decided not to pursue the issue until the Commission had finalised its position on the Danish and German beverage container legislation, and in June 1999 it informed Norway that "in view of the development of EEA legislation and EU Commission policy", it had decided to drop the case.

In 1999 the Parliament of the Canary Islands adopted a law banning the use of beverage cans by hotels and restaurants, except where alternative packaging could not be used for hygiene and health reasons, and except for products sold in vending machines. A number of industry sectors submitted complaints to the Commission, arguing that the main purpose of the legislation was to protect local beverage producers from foreign competition, and the Commission opened infringement proceedings. The Canary Islands Government first delayed implementation of the can ban to give themselves time to review the situation, and in October 2000 they conceded that the ban was contrary to EU law and cancelled it.