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Working Documents

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DOCUMENT 1-371/83

SECOND REPORT

drawn up on behalf of the Committee on the Environment, Public Health and Consumer Protection

on the proposal from the Commission of the European Communities to the Council (Doc. 1-223/81-COM(81) 187 final) for a Directive on containers of liquids for human consumption

Rapporteur: Miss G. HOOPER

PE 76.965/fin./2

English Edition

By letter of 7 May 1981 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the EEC Treaty to deliver an opinion on the proposal from the Commission of the European Communities to the Council on the proposal for a Council Directive on containers of liquids for human consumption.

On 15 June 1981 the President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

On 26 June 1981 the Committee on the Environment, Public Health and Consumer Protection appointed Miss HOOPER rapporteur.

The committee considered the Commission's proposal and the draft report at its meetings of 28 April 1982, 22 September 1982 and 18 October 1982.

At the latter meeting the Committee rejected the Commission's proposal for a directive by 15 votes for to 10 against and the motion for a resolution by 11 votes for to 11 votes against. The rapporteur was requested to present a new motion for a resolution.

At its meeting of 19 January 1983 the Committee adopted by 12 votes for to 10 against the motion for a resolution. It called on the Commission to replace the proposal for a directive with a proposal for a recommendation.

The Committee decided to reserve the right to propose to Parliament the application of Rule 35, paragraph 3 after having heard the opinion of the Commission.

The opinion of the Committee on Economic and Monetary Affairs is attached.

At the plenary session of 11 March 1983 and having heard the opinion of the Commission the rapporteurs proposed the application of rule 36.

The Committee on the Environment, Public Health and Consumer Protection reconsidered the report at its meeting of 19 April and 26 May 1983.

At the latter meeting the committee decided by 10 votes to 9 to present a revised motion for a resolution.

The following took part in the vote : Mr Johnson, Vice-Chairman; Mr Weber, Vice-Chairman; Mr Hooper, rapporteur; Mr Alber, Mr Berkhouwer, Mr Bombard, Mrs Clwyd (deputising for Mr Collins), Mr Krouwel-Vlam, Mr Lemmer (deputising for Mr Ryan), Mr Muntingh, Mr Pantazi, Mr Phlix (deputising for Mrs Lentz-Cornette), Mr Protopapadakis (deputising for Mr Del Duca), Mr Provan (deputising for Mr Forth), Mrs Schleicher, Mrs Seibel-Emmerling, Mr Sherlock, Mrs Spaak and Mrs Van Hemeldonck.

The report was submitted on 27 May 1983.

CONTENTS

The Committee on the Environment, Public Health and Consumer Protection hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on containers of liquids for human consumption

The European Parliament,

- having regard to the OECD (Beverage containers re-use of recycling) Report, 1978;
- having regard to the UK Waste Management Advisory Council (Study of returnable and non-returnable containers) Report, 1981;
- having regard to the establishment of a Committee on Waste Management in July 1975;
- having regard to the Community Waste Management Policy of May 1977;
- having regard to the European Communities' Second Environment Programme (1977-81);
- having regard to the Report on the state of the Community environment (Doc. 1-276/81);
- having regard to the proposal from the Commission to the Council (COM (81) 187 final);[1]
- having been consulted by the Council pursuant to Article 235 of the EEC Treaty (Doc. 1-223/81);

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1 O.J. C 204 of 13.8.81, p.6

- having regard to the second report of the Committee on the Environment, Public Health and Consumer Protection and the opinion of the Committee on Economic and Monetary Affairs; (Doc. 1-371/83);

- having regard to the result of the vote on the proposal from the Commission;

1. Endorses the objectives of a resource management policy, namely: the conservation of energy and raw materials; the reduction in the volume of domestic waste; the encouragement of economic management and recycling of refuse materials and the protection of the environment.

2. Regrets that the Commission's proposal:

   (a) fails to provide a scientific basis or evidence for the measures it proposes or sufficient justification for taking such measures on a Community basis,

   (b) is unclear and badly drafted,

   (c) highlights the Commission's failure to consult interested parties on a sufficiently wide basis before drafting its initial proposal,

   (d) seems likely to encourage the creation of non-tariff barriers,

   (e) fails to take into account recent technical innovations in the waste disposal and land reclamation fields and numerous voluntary recycling schemes which pre-empt the need for state intervention.

3. Calls on the Commission to replace the present proposal for a directive with the document attached as an annex to this resolution.

4. Considers that the Commission should make use of the 'green paper' procedure in the preparation of all proposals of such a complex and far-reaching nature, affecting a multiplicity of interests.

5. Instructs its President to forward this resolution to the Council and Commission as Parliament's opinion.

ANNEX

Proposal for a revised draft directive on containers of liquids for human consumption[1]

I. Paragraphs of the preamble (in numerical order)

1. Paragraph numbers 1,2,3,4,5,12,13 and 15 of the preamble are maintained.

2. Paragraph numbers 8,9, 10 and 14 of the preamble are deleted.

3. Paragraph numbers 6,7 and 11 of the preamble have to be slightly modified :

   a) no 6 : delete the part of the sentence "each year and for each type of packaging"

   b) no 11 : replace every two years by "four-yearly report".

4. a) Add after paragraph no 12 the following paragraph (12A) :

   Whereas to achieve one of the aims set out in this Directive a Member State may choose one or another action deemed by it to be the most appropriate, it may not obstruct the introduction onto its home market of containers which do not conform to this system but which conform with the actions chosen by another Member State to arrive at the same aims.

   b) Add after paragraph no 13 the following paragraph (13A) :

   Whereas it may be necessary to augment the provisions of the Directive in the light of experience gained;

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1 O.J. C 204 of 13.8.81, p.6

II. A R T I C L E S

ARTICLE 1

The objective of this Directive is to provide for a series of measures in the fields of:

i. the reduction of tonnage and/or volume of containers of liquids for human consumption;

ii. the encouragement of the use of refillable and recyclable containers.

ARTICLE 2

For the purpose of this Directive :

a) "liquids for human consumption" means the liquids for human consumption listed in the Annex;

b) "Container" means the bottles, cans, jars, cartons or any other type of initially sealed containers (excluding barrels and casks) which contain a liquid for human consumption and are made of glass, metal, plastic, paper or any other material.

ARTICLE 3

In order to attain the objectives fixed in Article 1, the Member States shall draw up four-yearly programmes, for the first time in 1984, for the period 1985 - 88.

The Member States shall communicate these programmes to the Commission which will examine them having regard to the provisions of the Treaty and taking account especially of the Council Directive 83/.../CEE of 28 March 1983, setting out an information procedure in the field of technical standards and regulations.

ARTICLE 4

Member States shall promote technological innovation with a view to reducing the weight and volume of containers and making energy savings, whilst respecting the necessary safety conditions.

ARTICLE 5

Member States shall take measures intended to make use of packaging wastes in particular by :

i. promoting selective collection of containers;
ii. encouraging the development of effective processes to separate containers from household waste;
iii. promoting outlets for the materials recovered from waste containers.

ARTICLE 6

Every four years and for the first time on 1 January 1988, the Member States shall draw up a report on the measures they have adopted and the results obtained.

These reports shall be sent to the Commission which shall draw up a consolidated report for the Council and the European Parliament.

ARTICLE 7

During the course of 1983 the measures to be taken to complete, as necessary, the provisions of the Directive shall be examined in the light of the available technical and economic information.

The Council shall adopt, on a proposal of the Commission and after consulting the European Parliament and the interested parties, all new provisions deemed necessary in the light of this examination.

ARTICLE 8

Member States shall bring into force the measures necessary to comply with this Directive within 2 years of its adoption and they shall forthwith inform the Commission. Member State shall inform the Commission of the national laws, administrative means or voluntary agreements by which they implement this Directive.

ARTICLE 9

This Directive is addressed to the Member States.

EXPLANATORY STATEMENT

BACKGROUND

1.1 The Commission's proposal takes further the programme initiated under the first environmental action programme with the Commission Directive on waste and the establishment of a Committee on Waste Management in July 1975 and the Community Waste Management Policy of May 1977. The second environment programme (1977-1981) envisaged further Community wastage measures - "waste management by a comprehensive policy of prevention, reclamation and disposal." The Committee on the Environment, Public Health and Consumer Protection, in the ALBER report on the state of the Community environment (Doc 1-276/81) proposed that the Commission should "Encourage and facilitate all projects involving the recovery of materials from waste products - in particular the collection of sorted domestic waste" and "Examine how (particularly with regard to packaging) the volume of waste products could be reduced, for example by introducing tax incentives or constraints." The present proposal therefore is in accordance with Community programmes and with the wishes expressed by this Committee.

1.2 The proposal went through some nine drafts which were discussed with a wide range of organisations concerned before this proposal (which represents a considerable modification of the previous drafts) was finally forwarded to the Committee and the European Parliament in May 1981. At first the Commission thought in terms of a directive which would expressly encourage the use of refillable, returnable bottles throughout the Community, but in the face of opposition from many interested parties it decided to propose a framework to establish a context within which Member States would act rather than to lay down specific and detailed provisions, and to encourage containers which could be re-used by being either refilled, recycled or burnt to produce energy, rather than any one of these categories in particular.

1.3 Since the necessary powers for the action envisaged are not provided for in the Treaty, the Commission has invoked Article 235 which provides that the Council can "acting unanimously on a proposal from the Commission and after consulting the Parliament, take the appropriate measures".

1.4 Detailed consideration of the objectives of this Proposal have been carried out by:

I. The OECD (Beverage Containers, Re-use or Recylcing, 1978) which broadly recommends the use of refillable containers and where this is not practicable, the recycling of the ultimately disposed-of containers; and

II. The UK Waste Management Advisory Council (Study of Returnable and Non-returnable Containers, 1981) which amounts effectively to an Environmental Impact Assessment of the subject in the UK. The Study recognised shortcomings in the existing system and made certain practical suggestions to improve it.

1.5 Experience of the effects of measures taken to achieve the objectives of the proposal can be obtained from the seven States of the USA which have passed legislation in this respect and, within the Community, from Denmark which has the most stringent legislation passed between 1977 and 1980. Practices in Denmark and other member states are outlined in Section III of the Commission Proposal but do not yet offer sufficient conclusive evidence to substantiate the Commission proposal.

1.6 In order not to view the Proposal in isolation, other related matters should be considered, for example:-

- waste paper recycling
- forestry policy
- energy resources, including the methane gas by-product of incineration and landfill methods of waste disposal
- the restoration of derelict land
- materials collection and disposal - especially the litter problem
- employment, especially effects on metal and paper industry and women in employment
- consumer choice and food prices
- public health consequences
- small businesses
- road congestion

SCOPE OF THE PROBLEM

2.1 In 1979, of the EEC's 90m tonnes of waste, between 30% and 50% (in terms of weight) of the urban refuse collected by local authorities was from packaging. Of this, some 10% was from drink packaging.

2.2 The cost of disposing of packaging discarded in household waste was 222 million EUA a year; the cost of disposing of packaging collected in letter was 52 million EUA a year; the cost of cleaning up the air and water was about 340 million EUA a year. N.B. These figures represent packaging as a whole and not just beverage containers and are based on Commission statistics.

SCOPE OF THE PROPOSAL

3.1 The Proposal covers wines, beers, spirits, mineral waters, fizzy drinks and fruit juices as well as milk and vinegar and edible oils. For a complete list see Annex I of the Proposal.

3.2 The Proposal covers all types of packaging materials: bottles, cans, plastic containers and cartons.

REACTIONS OF BODIES CONSULTED

4.1 A wide number of representative bodies have been consulted or have made their views known to the rapporteur. A list of these bodies is annexed (Annex A) to this document.

4.2 (BEUC (the European Bureau of Consumer Unions) and the EEB (European Environmental Bureau) consider there to be a definite need for such a Directive, but complain that the present Proposal is not far-reaching enough. Its provisions are much too vague and more specific obligations need to be included. Many of the trade or industrial organisations involved, on the other hand, feel that a Directive is not the appropriate form of Community action in this field and would be much happier if it were turned into a recommendation in spite of the fact that the Commission has gone a long way to meeting objections in the course of the nine previous drafts.

4.3 EEB want Community control rather than control measures by Member States. Otherwise, it states, trade barriers may be created. COGECA and other organisations agree, but draw the opposite conclusions. They say that there should therefore be no interference, by Member States or the Commission, with the free economic operation of the market. Organisations, such as the Association of German Food Industries, claim that "there is no need for any regulatory measures since ..... the market has made full use of, and is continuing to exploit, any scope for energy and raw materials savings, for example, by recycling". This is echoed by the joint statement of the European Trade Associations concerned with the production, filling and distribution of containers of liquids for human consumption, grouping twenty-two organisations.

4.4 Retail organisations at EEC level have considerable doubts about the desirability of this system which imposes a considerable burden on retailers who must provide facilities for returnable bottles. Small retailers are particularly affected, and problems may be created for the wholesaler/supplier where delivery patterns do not correspond with collection or returnables. They point out some consumer bias against this system which, for example, adds considerably to the weight of of shopping carried by old people and working wives without the possibility of shopping by car at supermarkets.

4.5 Other organisations contest in particular the wisdom of including the type of packaging which they produce or market within the scope of the directive. Thus the producers of milk and juice cartons point out that very small proportions of these which ever become litter (most go directly into the household dustbin) and consider that the Commission has not produced any indication of any significant benefits from including these in the Directive. Producers of edible oils refer to the difficulties of refilling their containers (difficult to clean - therefore refilling costly and returnability a potential public health hazard). COGECA opposes the inclusion of either of these.

4.6 Several organisations doubt the energy savings and raw materials conservation which are fundamental to the Commission Proposal and point to increased consumer costs in the light of the American experience. Furthermore it is suggested that the monitoring and reporting requirements will cause an excessive amount of bureaucracy and paperwork which would be costly and time-consuming.

USEFUL STATISTICS

5. Certain statistics are attached (Annex B).

VOTE IN COMMITTEE

6. On 19 January 1983 a significant minority of members voted in favour of an amended proposal for a directive rather than the recommendation considering that this could achieve a sufficient compromise.

7. The Parliament in plenary session on March 11 1983 rejected the Commissions proposal (Doc. 1-223/81) and withdrew this Motion for a Resolution under Rule 36 for further consultation with the Commission.

8. A compromise document (annexed to the Motion for a Resolution) was approved by the Committee by 10 votes to 9 at its meeting on 26 May 1983.

ANNEX I

Evidence has been received from the following organisations

- BEUC
- EEB
- UNICE
- COFACE
- European Milk and Juice Carton Producers Association
- Fédération Européenne du Verre d'Emballage
- Conféderation Européenne du Commerce de Détail
- The Retail Consortium
- Comité de Liaison des Associations Européennes du Commerce
- Communauté de Travail des Brasseurs du Marché Commun
- Comité de Liaison des Industries des Metaux Non Ferreux de la CEE
- Union des Associations des Boissons Gazeuses des Pays Membres de la CEE
- Comité des Associations de Transformateurs de Matières Plastique en Europe Occidentale
- Association des Producteurs de Matières Plastiques en Europe
- Secrétariat Européeen des Fabricants d'Emballages Métalliques Légers
- Consumers in the European Community Group
- Council of European Municipalities
- Nottingham University
- International Chamber of Commerce
- Friends of the Earth
- Consumers' Association
- Union des Groupements d'Achat d'Alimentation
- Groupement Européen des Maisons d'Alimentation à Succursales
- Comité Permanent des Industries du Verre
- Comité des Industries Alimentaires et Agricoles de l'UNICE
- Comission des Jus de Fruit CEE
- Union Européenne des Sources d'Eaux Minerales
- Comité Vins et Vins Spéciaux CEE
- Commission Européenne des producteurs de jus de fruits
- Coopératives Européennes de Consommation
- Department of Environmental Health
- Handelsvereinigung für Marktwirtschaft e.V., Cologne, and Markenverband e.V., Wiesbaden.

A joint statement has been received from the following organisations

- Association de l'Industrie Laitière de la CEE (ASSILEC)
- Association des Industries des Cidres et Vins de Fruits de la CEE (AICV)
- Comité de la CEE des Industries et du Commerce des Vins, Vins Aromatisés, Vins Mousseux, Vins de Liqueur
- Comité Permanent International du Vinaigre
- Comité International des Transformateurs de Papier et Carton
- Fédération Internationale des Grandes et Moyennes Entreprises de Distribution (FIGED)

- Fédération de l'Industrie de l'Huilerie de la CEE (FEDIOL)
- Union des Groupements d'Achat de l'Alimentation (UGAL)
- Union Européenne des Alcools, Eaux-de-Vie et Spiritueux
- Union Européenne des Sources d'Eaux Minérales Naturelles du Marché Commun

Statistics taken from the UK Waste Management Advisory Council Study

0.6% of national energy is involved in liquid beverage container systems
0.25% is maximum saving if all returnable systems instituted
21% saving on total energy if all systems were returnable; this is
0.13% of national consumption and could be increased to
0.22% given improved trippage
7,000 jobs lost if canned systems banned
1,500, say, new jobs to administer complete UK returnable container system

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mr I. FRIEDRICH

On 23 September 1981 the Committee on Economic and Monetary Affairs appointed Mr Ingo FRIEDRICH draftsman of the opinion.

The committee considered the draft opinion at its meeting of 31 March 1982 and adopted it unanimously with two abstentions.

Present: Mr MOREAU, chairman; Mr I. FRIEDRICH, draftsman; Mr ALBERS (deputizing for Mr Schinzel), Mr BEUMER, Mr von BISMARCK, Mr CALVEZ (deputizing for Mr Combe), Mr DELOROZOY, Mr NIELSEN (deputizing for Mr De Gucht), Mr ROGALLA (deputizing for Mr Mihr), Mr ROGERS, Mr SEAL (deputizing for Mr Caborn), Sir John STEWART-CLARK (deputizing for Mr Beazley), Mr VAN ROMPUY and Mr von WOGAU.

1. This proposal for a directive concerns containers of liquids for human consumption and is designed to rationalize the related waste management. The proposal forms part of the second programme of action of the European Communities on the environment and its aim is to limit the environmental impact of used containers and reduce the consumption of energy and raw materials in this field. The Committee on Economic and Monetary Affairs fully supports these aims.

2. What measures does the Commission propose in order to achieve these aims? The proposal for a directive leaves it entirely to the Member States to set quantitative targets and determine the means of attaining them. The role of the Commission is confined to assessing the progress made in this area in the various Member States and considering further measures where necessary, although it is unclear what these might be.

3. The two types of container which correspond to the objectives and are specified in the draft directive are refillable containers and recyclable containers. In this connection, recyclable containers are broadly defined as containers made of materials which can be used for the manufacture of new containers or other goods or for the production of energy (recycling). The draft directive thus offers a flexible approach to the problems raised by empty liquid containers. The Member States are free to choose between the two types. According to the Commission, this is the only way of taking European-scale measures in this field. In the individual Member States the approach to these problems has varied in the past. Some Member States have hitherto laid stress on recycling while others have taken measures to encourage the use of refillable containers. The Commission therefore feels that it would not be feasible to make only one of these two compulsory. According to the Commission, the proposed directive would enable the Member States to build on their existing systems and at the same time ensure coordination of the various national methods. The Commission feels that without such coordination barriers to trade and distortions of competition would arise, a situation which this directive makes it possible to avoid.

4. What effect will the draft directive have on the free movement of goods? Will it remove or prevent technical barriers to trade or will it give rise to new barriers? An answer to this question is of decisive importance for the opinion of the Committee on Economic and Monetary Affairs on this draft directive. The Committee's support for the proposal is conditional upon free movement of goods not being impeded. As stated above, the Commission considers that the creation of barriers to trade will be avoided as a result of this directive. However the references to the free movement of goods in the draft directive are made in only very general terms and are very incidental. This fundamental aim of the Treaty is only referred to very briefly in the recitals: 'Whereas the measures taken by Member States to comply with the present directive should not be at variance with the provisions of the Treaty and in particular with those concerning the free movement of goods'.

5. The fear exists, however, that the freedom which the draft directive leaves to the Member States will give rise to new barriers to trade. Article 3 of the draft directive leaves it to the Member States to set their targets annually. Article 4 lays down that the Member States shall take all necessary and appropriate measures either by legislative or administrative means or by voluntary agreements in order to achieve the aims laid down in Article 3. Of the measures enumerated in this article the possibility referred to in point (c), i.e. 'to bring about changes when necessary in the choice of containers and methods of distribution' is the cause of particularly serious misgivings. Each Member State is thus in a position to establish, through its own legislation, standards which containers must satisfy if the set targets are to be reached. Containers which do not comply with established standards would then not be admitted to the market in the Member State concerned, which means that the freedom of movement of goods within the Community would no longer be assured. In the view of the Committee on Economic and Monetary Affairs, it is not altogether clear how the flexible approach of the draft directive, which leaves it to the Member States to decide which measures to take, can be reconciled with ensuring the free movement of goods within the Community. After all, if each Member State adopts its own measures in order to achieve the established objectives, there is still a not inconsiderable danger that beverages will have to be marketed in different containers in each Member State. Such a situation would amount to a genuine barrier to trade. Moreover, certain types of containers are completely unsuitable for export. This is particularly true of refillable returnable containers. Such a system would require very extensive distribution networks, besides which such containers have to be refilled fairly quickly. They are therefore suitable primarily for domestic manufactured products and only to a limited extent for foreign goods marketed via a large distribution network. For other beverages for which there is only a limited distribution network the introduction of returnable containers would mean in practical terms that exports to other Member States could virtually be ruled out. A Member State opting for returnable containers would therefore also have to accept an alternative type of container so as not to obstruct imports and the free movement of goods.

6. In reply to these comments the Commission states that the provisions of the Treaty and more specifically those concerning the free movement of goods naturally remain applicable. Article 30 of the EEC Treaty with the broad interpretation placed on it by the Court in the 'Cassis de Dijon' case is also of relevance to the measures which are taken with regard to containers. Article 36 of the EEC Treaty which permits trade restrictions for the purposes of protecting public morals, public order, etc. cannot be invoked in the case of measures relating to containers. Member States cannot therefore take measures in this field which impede the free movement of goods. Otherwise Article 30 of the EEC Treaty may be invoked and the measures have to be lifted. The Commission also points out that the absence

of a directive in this field would in fact create barriers to trade.

7. By way of contrast, the present directive, which admittedly is intended mainly as a means of coping with the waste problem posed by beverage containers, does however enable the Commission to keep control over the measures which the individual Member States take in this field. Under Article 11 of the draft directive the Member States are required to inform the Commission beforehand of any measures , whether legislative, administrative or in the form of voluntary agreements, which they intend to take in order to achieve their objectives. This provision complies with the agreement reached by the representatives of the governments of the Member States on 5 March 1973, on information for the Commission and for the Member States with a view to possible harmonization throughout the Community of urgent measures concerning the protection of the environment[1]. Under the terms of this agreement, the Commission has five months after receiving notification of a measure taken by a Member State which will have an impact on the operation of the common market to place a proposal of its own before the Council. However, if the Council fails to take a decision within five months following receipt of the Commission proposal the Member State concerned remains free to implement the measure.

Such prior notification enables the Commission to block certain national measures at an early stage and to propose European measures in the meanwhile. However this situation is not satisfactory because even if the Commission does come to the conclusion that a certain national measure would have the effect of impeding the free movement of goods within the Community and, pursuant to the aforementioned agreement between the representatives of the governments of the Member States, is able to prevent implementation of the measure concerned, it can only do so for ten months, after which the Member State is in any case free to implement the measure. Admittedly, if the Member State then persists in implementing the measure which impedes the free movement of goods within the Community, the judgment handed down by the Court in the 'Cassis de Dijon' case may be invoked and the Member State concerned obliged by the Court to withdraw the measure. But this amounts to a very complicated way of safeguarding the free movement of goods,which may nonetheless be temporarily disrupted if only because of the time needed to bring a Member State to Court and oblige it to lift the measure. One wonders therefore whether the Commission should not be given the power to prohibit outright proposed national measures which impede the free movement of goods. There is a danger however that this might give rise to certain problems regarding the distribution of powers between the various institutions and the national authorities and it might be appropriate if a consensus were to be found on this matter in the Council. If such a possibility were to be considered, the Legal Affairs Committee should be asked to deliver an opinion. Where a Member State intends to introduce a measure which will have the effect

[1] OJ No C 9, 15 March 1973, p. 1

of restricting the free movement of goods within the Community, it is first and foremost the task of the Commission to draw attention to this fact and draw up a European proposal. If after five months the negotiations within the Council on this proposal do not lead to an agreement,which, given the slowness of Council decision-making, is highly likely, it is the Commission's duty to warn the Member State concerned that if the proposed measure is implemented it will be brought before the Court for infringement of Article 30 of the EEC Treaty. If the Member State then persists in implementing the measure the Commission should then take the matter to the Court immediately.

8. The aim of the Treaty in the matter of the free movement of goods is scarcely mentioned in the draft directive. The Committee on Economic and Monetary Affairs wants the draft directive to stipulate more clearly that the measures taken may not have a restrictive effect on the free movement of goods. To that end it wishes to make the following amendments. The following words should be added to the end of the first paragraph of Article 4:

'...on condition that such measures shall not give rise to non-tariff barriers to trade'.

In addition, a reference to the status quo agreement of 28 May 1969 should be inserted in Article 11.

9. The Committee on Economic and Monetary Affairs nonetheless still considers that it would have been better to draw up 'options' for the harmonization of containers of each beverage which took account of the specific characteristics of the beverage concerned whilst striving to attain as rational a level of waste management as possible. An optional form of harmonization whereby national provisions could continue to exist alongside harmonized European provisions would be enough to safeguard fully the free movement of trade. A beverage container which satisfied the agreed Community standard could not be excluded from trade between the Member States and would have to be admitted to the market in each Member State. However, in addition to this, other containers would also be admitted depending on the Member State concerned. A start has been made on harmonizing containers of liquids for human consumption but this is as yet confined to the volumes of the containers. Reference to this is made in Article 9(1) of the draft directive where the Member States are asked to encourage the use of containers which comply with Community standards. In addition, Article 9 (3) calls on the Commission to draw up proposals for Community provisions to standardize containers for beer, water and lemonade, flavoured spa waters and flavoured aerated waters and other non-alcoholic beverages, not including fruit and vegetable juices, as soon as possible. When asked why harmonization is considered precisely for these beverages and not for others the Commission replies that these beverages are those in which international trade is greatest. This is certainly true but it is no justification for

not also embarking on the harmonization of containers of other beverages which form part of intra-Community trade. In the last analysis, optional harmonization will be the only way of safeguarding the free movement of goods in the long term.

The Committee on Economic and Monetary Affairs is therefore calling for provisions on the harmonization of the containers of various beverages to be drawn up as soon as possible to include beverages other than those enumerated in Article 9(3) of the draft directive.

In this connection, however, the Committee on Economic and Monetary Affairs reiterates its call for the Commission to refrain from dealing with the technical aspects of the standards and to leave this to CEN (European Committee for Standardization). However in this respect the Commission has pointed out that, although CEN may be asked to provide technical assistance, this must not be allowed to affect deadlines for the establishment of standards. Article 9(3) should therefore be amended as follows:

'3. In cooperation with CEN, the Commission shall establish as soon as possible proposals for optional harmonization relating to the standardization of containers for liquids for human consumption which form part of intra-Community trade and initially for the beverages referred to in items 3 and 8 of Annex I'.

10. The Commission's cost estimates set out in the draft directive were regarded as minimum figures. When asked foran accurate estimate and cost-benefit analysis, the Commission replied that since the draft directive allows a choice between two alternatives this could not be done. The figures relating to the 'external' cost of eliminating waste and environmental pollution are set out in the explanatory memorandum. By way of information, your rapporteur was provided with a further cost analysis which takes account of the limitation of domestic waste, energy saving, effects on employment, environmental pollution, the direct cost of packaging etc. Existing cost surveys stress either refillable containers or recycling. The figures they contain are, however, always the subject of contention. A cost-benefit analysis offering a basis for a choice between the two solutions proposed, namely refillable containers or recycling, does not however exist. The surveys do nonetheless come to the conclusion that recycling is possible on a purely commercial basis.

11. Especially in the case of milk, fruit and vegetable products, costs analyses seem to show that it would be considerably more expensive to use refillable containers. The question is therefore whether the scope of the directive is not too wide and whether it should cover milk and fruit and vegetable juices. Denmark, which has passed the most far-reaching legislation on containers of liquids for human consumption, has laid down detailed provisions only for beer and soft drinks.

Conclusions

The Committee on Economic and Monetary Affairs

(a) approves in principle the objectives of the proposed directive, but is nevertheless not convinced of the need for this new proposal; therefore doubts whether it is advisable to ask the Member States to implement different national provisions and then to harmonize them in an attempt to mitigate the adverse effects they have had on the free movement of goods; does not however feel it is up to it to pronounce either for or against the proposed directive but draws the attention of the Committee on the Environment to the fact that if Parliament should finally endorse the Commission's proposal, the text of the directive should include provisions to guarantee the free movement of goods within the common market;

(b) notes the flexible approach of this draft directive which allows the Member States to choose between refillable and recyclable containers;

(c) notes in this connection that the information procedure laid down in the draft directive provides the Commission with a means of keeping the measures taken by the various Member States under control;

(d) doubts however whether this information procedure, which even though it enables the Commission temporarily to block any proposed national measures which it considers incompatible with the free movement of goods, is enough to safeguard fully the free movement of goods within the Community; draws attention to the fact that the Commission has not yet succeeded in having the Danish provisions in this area amended;

(e) underlines the primordial importance of the Treaty objectives relating to the free movement of goods, a fact which is barely mentioned in the draft directive; proposes therefore a number of amendments as set out below seeking to stipulate more clearly the need to safeguard the free movement of goods; draws the attention of the committee responsible to the fact that the European Parliament should deliver a favourable opinion on the proposed directive only on condition that the Commission amends its proposal (see Rule 36 of the Rules of Procedure);

(f) emphasizes that Article 30 of the EEC Treaty and the interpretation placed on it in the 'Cassis de Dijon' case relating to non-tariff barriers to trade is applicable to all measures affecting containers of liquids for human consumption;

(g) reminds the Commission that where Member States are preparing to draw up measures constituting an infringement of the aforementioned Article of the Treaty it is the Commission's duty to warn them of this fact and, should the Member States concerned persist with these measures, take the matter immediately to the Court of Justice;

(h) urges the Commission to submit proposals as soon as possible for an optional form of harmonization for the containers of all beverages which form part of the intra-Community trade; and to cooperate closely with CEN on the technical aspects of these standards;

(i) takes the view that the cost estimates set out in the draft directive represent a strict minimum;

(j) proposes that the draft directive should be amended as follows:

Article 4

Amended text:	Text proposed by the Commission:
In order to attain the objectives fixed in accordance with Article 3 Member States shall take all necessary and appropriate measures either by legislative or administrative means or by voluntary agreement on condition that such measures shall not give rise to non-tariff barriers to trade.	In order to attain the objective fixed in accordance with Article 3 Member States shall take all necessary and appropriate measures either by legislative or administrative means or by voluntary agreements.
Remainder unchanged	

Article 9

Paragraphs 1 and 2 unchanged

3. In cooperation with CEN the Commission shall establish and submit to the Council as soon as possible proposals for optional harmonization relating to the standardization of containers for liquids for human consumption which form part of intra-Community trade and initially for the beverages referred to in items 3 and 8 of Annex 1.	In consultation with the sectors of industry concerned, the Commission shall establish and submit to the Council as soon as possible, proposals for common rules relating to the standardization of containers for liquids for human consumption referred to in items 3 and 8 of Annex 1.

Article 11

1. Member States shall communicate to the Commission all the draft measures, whether legislative, administrative or in the form of voluntary agreements, by which they propose to attain the objectives fixed in conformity with Article 3 and to apply the provisions of Articles 8 and 9. The provisions of the Agreements of the Representatives of the Governments of the Member States meeting in Council of 28 May 1969 concerning the status quo and notification to the Commission[1] and of 5 March 1973 on information for the Commission and for the Member States with a view to possible harmonization throughout the Community of urgent measures concerning the protection of the environment[2] shall apply with respect to such draft measures.	1. Member States shall communicate to the Commission all the draft measures, whether legislative, administrative or in the form of voluntary agreements, by which they propose to attain the objectives fixed in conformity with Article 3 and to apply the provisions of Articles 8 and 9. The provisions of the agreement of the representatives of the governments of the Member States meeting in Council of March 1973 on information for the Commission with a view to possible harmonization throughout the Community of urgent measures concerning the protection of the environment[2] shall apply with respect to such draft measures.

Paragraph 2 unchanged

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[1] OJ C 76, 17.6.1979, p. 9

[2] OJ C 9, 15.3.1973, p. 1