



COMMISSION OF THE EUROPEAN COMMUNITIES

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96/0123 (COD)

**Proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE  
on marking of packaging  
and  
on the establishment of a conformity assessment procedure for packaging**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### INTRODUCTION

To attain the objectives of the Directive on Packaging and Packaging Waste (94/62/EC)<sup>1</sup>, to promote collection, reuse, recovery, including recycling, of packaging and packaging waste, the contribution of consumers, collectors, sorters and recycling operators is indispensable.

To be able to contribute, information of these parties is necessary, in terms of information campaigns and in terms of informative marking on the packaging being placed on the market.

The purpose of the marking is to inform about the nature of the packaging and to help the correct dealing with used packaging to facilitate the reuse, recovery and recycling of it. In addition the marking implies that the packaging complies with the relevant essential requirements, set out in the Directive on Packaging and Packaging Waste (94/62/EC).

The purpose of the present Directive is to meet the obligation set out in Article 8, para 1 of the Directive 94/62/EC of 20 December 1994 of the European Parliament and the Council on Packaging and Packaging Waste, pursuant to which the Council shall decide on the marking of packaging no later than two years after the entry into force of the Directive. The date of entry into force was 31.12.94.

Although Directive 94/62/EC contains essential requirements to which packaging must conform, it omits to describe how conformity to such requirements must be assessed. The present Directive therefore introduces such a conformity assessment procedure for all packaging covered by Directive 94/62/EC.

This is in line with the statement made by the Council and the Commission at the adoption of the Directive 94/62/EC, that says: "...Finally, an adapted assessment procedure for the compliance of the packaging with the essential requirements has to be created."

### CURRENT SITUATION

Taking into account, that several different markings are already being used on the market for similar purposes, it is urgent to harmonize this marking, as a minimum at European level;

- to remove confusion among the consumers
- to avoid technical barriers to trade

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<sup>1</sup> OJ No L 365, 31.12.1994, p.10.

There are mainly four different types of marking on packaging being used on the market:

- indicating the material of the packaging - material identification
- indicating the recoverable or recyclable nature of packaging
- indicating that the packaging is made of recycled material
- indicating that the packaging is subject to a specific system of return and management

At the moment numbering systems, abbreviation systems and graphical symbols are used in a total mix, that makes it impossible for the consumer to be sure of what the marking indicates.

## **THE DIRECTIVE ON PACKAGING AND PACKAGING WASTE**

- requires a material identification system, based on a numbering and abbreviation system. The packaging shall indicate for purposes of its identification and classification by the industry concerned the nature of the packaging material used. The Packaging Committee shall deal with this, and the Commission shall determine the system.
- requires that the Council decides on the marking of packaging no later than two years after the enter into force of the Directive, that is before the end of 1996. This marking could be graphical symbols, indicating e.g. the reusable, recoverable or recyclable nature of packaging. This type of marking was part of the original proposal on packaging and packaging waste<sup>2</sup>, but was removed due to the complexity of the problem, also including legal rights to the symbols proposed.

The present proposal deals with the graphical symbols, as mentioned in the latter indent.

## **COMMENTS ON THE PROPOSAL ON MARKING**

### **1. The proposed marking of packaging**

The purpose of the marking is to enable the consumer to contribute to the protection of the environment, to give the consumer a choice - thus the marking should be a kind of quality marking, indicating which packaging is environmentally more friendly than others.

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<sup>2</sup> OJ No C 263, 12.10.1992, p.1.

By marking reusable and recyclable packaging, the proposal gives a priority to these kinds of packaging; this is in line with the Directive 94/62/EC that indicates that "until scientific and technical progress is made with regard to recovery processes, reuse and recycling should be considered preferable in terms of environmental impact".

Encouraging recycling of packaging by indicating the recyclable nature of packaging is also in line with, and supports the fact that the Directive 94/62/EC has specific targets for recycling to be attained.

Thus, it is proposed to mark reusable and recyclable packaging.

It is evident, that the packaging, marked reusable, shall comply with the essential requirements of the Directive 94/62/EC, related to reusable nature of packaging - Annex II, para 1. and para 2., and in case the packaging is marked recyclable, it shall comply with the essential requirements for recyclable nature packaging - Annex II, para 1. and para 3. (a) or (c) or (d).

The possibility of indicating the percentage of "recycled content" of a packaging has been considered. In case the percentage is related to the symbol for "recyclable packaging" it would not be clear whether the indication applied to the recyclability or to the recycled content.

Further more it is not, at the moment, possible to control the recycled content of a packaging, and thus, whether the indication is correct. Following the development in this area, it can be considered at a later stage, to introduce a symbol for the indication of recycled content.

**2. No conformity marking is suggested, but a conformity assessment procedure is introduced**

Indication of compliance with the essential requirements as such, that means introducing a conformity mark, has no interest for the consumer.

The meaning of the conformity mark, the CE marking, is:

- that the product in question complies with all applicable provisions (or requirements) of the applicable directive(s)

and

- that the product has been subject to the appropriate conformity assessment procedure(s) contained in the appropriate directive(s).

The CE marking is a kind of a "passport" allowing industrial products to move freely throughout the internal market. It is intended to make it easier for the national surveillance authorities in the Member States to monitor the market.

Furthermore the potential confusion is obvious - it would not be possible to tell whether a CE mark on a product refers to the packaging or to the product inside. Taking the above mentioned into account, the Commission is of the opinion that it is not suitable to introduce a CE marking or any other conformity mark for packs.

Council Decision of 22 July 1993 concerning modules for the various phases of the conformity assessment procedures<sup>3</sup> imposes the use of the "modules" in technical (total) harmonisation directives. Therefore a conformity assessment procedure is introduced, with the aim of ensuring a coherent application of the Directive 94/62/EC by manufacturers as well as allowing the Member States authorities to efficiently control their market. This should contribute to avoid internal market problems in the future.

In order not to impose unnecessary burdens on the manufacturers of packaging and taking into account the risks arising from the products concerned as well as the economic infrastructure of the sector, the Commission considers that the most appropriate procedure - and at the same time the least onerous - is Module A (internal production control by the manufacturer).

### 3. No marking indicating "Return system is available"

For the consumer it would be ideal, if the marking of recyclable packaging also indicated, that the packaging was subject to an established system of return and management, so that the consumer could contribute to the actual recycling of the pack by choosing only those packs which are marked accordingly.

However, such EC-wide marking would only be possible where a European wide return and management system existed; today it is impossible to ensure, that a system is available on places where the packaging is actually sold. For example, a certain bottle might be reusable in the Member State where it is produced, but not in the Member State where it is marketed.

Thus the present proposal does not deal with this kind of marking.

### 4. Voluntary marking

Any manufacturer of packaging will probably mark his reusable and recyclable products according to the Directive, whenever it is possible, in order to obtain the goodwill this will imply.

The marking is therefore proposed to be **voluntary**; thus, its use is not mandatory and may be omitted, where the costs, compared to the benefits, seem to be excessive.

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<sup>3</sup> OJ L 220 of 30 August 1993

## **5. The choice of new symbols**

The Commission suggests the symbols as set out in the annexes. It has not resorted to existing symbols. Indeed, such symbols are often privately owned and it is uncertain whether the EC would obtain the possibility to introduce them generally. Furthermore, such symbols are already used by different economic operators or their associations for very different purposes.

Therefore, in order to avoid conflicts in relation to the current use of certain markings, and to avoid obstacles in terms of property rights, a different, neutral marking is considered the optimal solution at European level.

Discussions on a symbol for the marking of both the content and the packaging of a product are currently on-going in the framework of ISO. The definitions underlying the ISO marking, however, differ significantly from the definitions of Directive 94/62 determining the marking symbol of the current proposal. Also, the discussions within the framework of ISO are not likely to end before 1999. The current proposal is put forward in compliance with Art. 8 of Directive 94/62 which requires the European Parliament and the Council to decide on the marking of packaging in relation to Directive 94/62 before the end of 1996.

## **6. Existing marking**

The Member States shall ensure, that any markings other than those set out in the directive, which intend to indicate the reusable and recyclable nature of packaging, shall be prohibited. This is the key element of the directive and an indispensable provision to eliminate the confusion in the current use of the same marking for different purposes and, in particular, different markings for the same purpose.

## **7. Concluding remarks**

It is obvious that the success of the marking, which intends to orient consumers' choice, will depend very largely on information and education of consumers. Directive 94/62/EC provides already that users of packaging, in particular consumers, obtain the necessary information about, among other things,

- their role in contributing to reuse, recovery and recycling of packaging and packaging waste.
- the meaning of markings on packaging existing on the market.

The present proposal, once adopted, will allow Member States and the EC institutions to target their information campaigns in order to influence consumers' and users' behaviour as responsible contributors to an environmentally sound waste management.

**Proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE  
on marking of packaging  
and  
on the establishment of a conformity assessment procedure for packaging**

*5 bis*

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the Directive 94/62/EC of the European Parliament and of the Council of 31 December 1994 on Packaging and Packaging Waste, and in particular Article 8 thereof,

Having regard to the proposal from the Commission<sup>4</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>5</sup>,

Having regard to the Council Decision of 22 July 1993 concerning the modules of the various phases of the conformity assessment procedures and the rules for the affixing and the use of the CE conformity marking<sup>6</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

Whereas markings are necessary to inform the consumer about the nature of packaging, and to provide a possible choice between different types of packaging,

Whereas markings are essential to enable the consumer to contribute to promote reuse and recycling of packaging, and thus prevent the creation of packaging waste,

Whereas the current use of different symbols for the same purpose and vice versa creates an urgent need to harmonize the symbols for reusable, recoverable and recyclable packaging to remove confusion,

Whereas this harmonization should be done at Community level, since packaging is a product that is circulating all over the Community, thus the markings of this Directive should be the only ones at Community level to indicate reusable and recyclable nature of packaging,

Whereas the marking should be linked to the essential requirements of Directive 94/62/EC on packaging and packaging waste, to ensure that the understanding of reusable and recyclable nature of packaging is in line with that Directive,

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<sup>4</sup> OJ No

<sup>5</sup> OJ No

<sup>6</sup> OJ L 220 of 30 August 1993



Whereas it is recognised, that the use of markings on packaging is not required where the costs, compared to the benefits, are excessive,

Whereas marking of packaging to indicate that it is reusable or recyclable shall be voluntary,

Whereas Member States shall not impede the placing on the market of packaging which does not bear the symbol for reusable or recyclable,

Whereas Directive 94/62/EC established the requirements that apply to packaging but did not indicate how the conformity of packaging to such requirements must be assessed; whereas it is therefore necessary to insert provisions on conformity assessment,

Whereas this procedure should not impose unnecessary burdens on the manufacturers of packaging,

## **HAVE ADOPTED THIS DIRECTIVE:**

### **Article 1**

This Directive aims to facilitate reuse and recycling of packaging and packaging waste by providing harmonized information to the consumer by marking.

For this purpose the Directive harmonizes the marking of packaging to be placed on a voluntary basis by the operators to indicate its reusability or recyclability.

This Directive also establishes a conformity assessment procedure for all packaging covered by Directive 94/62/EC on packaging and packaging waste.

### **Article 2**

For the purpose of this Directive :

1. "reusable packaging" shall mean packaging that complies with the essential requirements as defined in Article 9, para 1 and 2 and Annex II, para 1 and para 2 of the Directive 94/62/EC, as well as Article 11 of this, related to the concentration levels of heavy metals present in packaging;
2. "recyclable packaging " shall mean packaging that complies with the essential requirements as defined in Article 9, para 1 and 2 and Annex II, para 1 and para 3(a) or (c) or (d) of the Directive 94/62/EC, as well as Article 11 of this, related to concentration levels of heavy metals present in packaging.

### **Article 3**

1. The symbols, shown in Annex I and II of this Directive, shall indicate either the reusable or the recyclable nature of packaging.
2. The Member States take the necessary measures to ensure that these symbols are used only on packaging that corresponds to the definitions indicated in Article 2 of this Directive.

### **Article 4**

The Member States shall take the necessary measures to prohibit the application on packaging of other symbols than those set out in this Directive intended to indicate reusable or recyclable nature of packaging:

This is without prejudice to the application of internationally agreed and adopted standards for indicating reusability or recyclability.

The Committee mentioned in Article 6 shall examine standards indicating the nature of packaging developed in the context of ISO in order to adapt the annexes, if appropriate, by measures to avoid obstacles to trade.

## **Article 5**

Numbers and abbreviations for material identification according to the material identification system determined by the Commission Decision 96/ /EC, shall be located in the centre of or below the markings of this Directive.

## **Article 6**

The amendments necessary for adapting the Annexes and the conditions for the use of the markings to the scientific and technical progress and to European standards, developed according to Directive 94/62/EC, shall be adopted in accordance with the procedure laid down in Article 21 of Directive 94/62/EC.

## **Article 7**

The procedure for the assessment of the conformity of packaging with the essential requirements of Directive 94/62/EC on packaging and packaging waste shall be internal production control (Module A), referred to in Annex 3.

## **Article 8**

Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within three years from its entry into force.

## **Article 9**

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

## **Article 10**

This Directive is addressed to the Member States .

Done at Brussels

For the European Parliament  
President

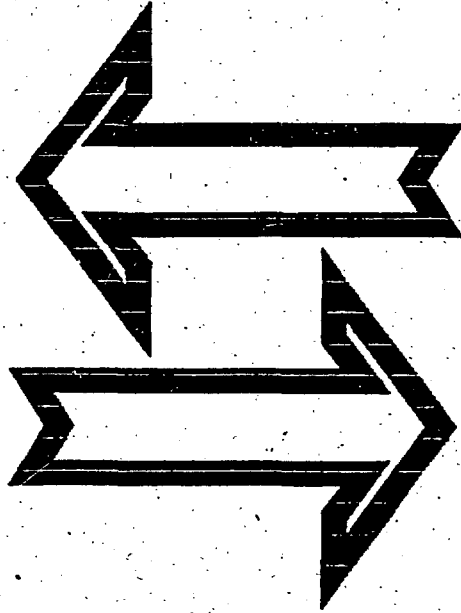
For the Council The  
The President

**ANNEX 1**

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**MARKING**

**REUSABLE PACKAGING:**

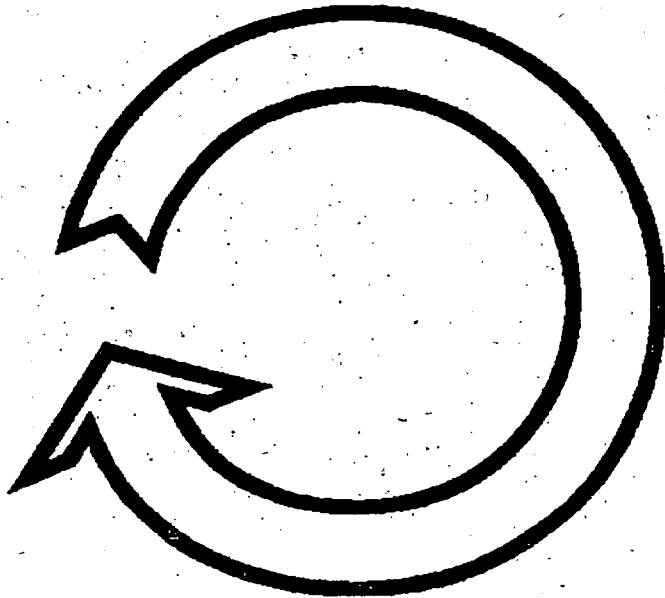


**ANNEX 2**

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**MARKING:**

**RECYCLABLE PACKAGING**



## ANNEX 3

### CONFORMITY ASSESSMENT PROCEDURE REFERRED TO IN ARTICLE 7

#### Module A (internal production control)

1. This module describes the procedure whereby the manufacturer or his authorized representative established within the Community, who carries out the obligations laid down in paragraph 2, ensures and declares that the packaging concerned satisfies the requirements of Directive 94/62/EC. The manufacturer or his authorized representative established within the Community must draw up a written declaration of conformity.
2. The manufacturer must establish the technical documentation described in paragraph 3 and he or his authorized representative established within the Community must keep it for a period ending at least 4 years after the last product has been manufactured at the disposal of the relevant national authorities for inspection purposes.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the product on the Community market.

3. Technical documentation must enable the conformity of the product with the requirements Directive 94/62/EC to be assessed. It must cover the design and manufacture of the product, in particular :
  - a general description of the product,
  - conceptual design and manufacturing drawings etc,
  - descriptions and explanations necessary for the understanding of said drawings,
  - a list of the standards referred to in Article 10 of Directive 94/62/EC, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of Directive 94/62/EC where the standards referred to in its Article 10 have not been applied,
  - results of design calculations made, examinations carried out, etc,
  - tests reports, including the tests performed in order to verify that the concentration levels of heavy metals referred to in Article 11.1 of Directive 94/62/EC have been met.
4. The manufacturer or his authorized representative established within the Community must keep a copy of the declaration of conformity with the technical documentation.
5. The manufacturer must take all measures necessary in order that the manufacturing process ensures compliance of the manufactured products with the technical documentation referred to in paragraph 2 and with requirements of Directive 94/62/EC that apply to them.

## IMPACT ASSESSMENT FORM

### THE IMPACT OF THE PROPOSAL ON BUSINESS

with special reference to small and medium-sized enterprises (SMEs)

**Title of Proposal :**

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Proposal for a Directive of the Council and the European Parliament on marking of packaging and on the establishment of a conformity assessment procedure for packaging.

**Reference Number :**

**1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?**

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According to the Directive on Packaging and Packaging Waste, Article 8, para 1., the Council shall decide no later than two years after the entry into force of the Directive on the marking of packaging.

This proposal is developed to meet this obligation.

The Directive seeks to harmonize the marking of packaging to provide clear and unambiguous messages to the consumer, enabling the consumer to contribute to the attainment of the objectives of the Directive on Packaging and Packaging Waste.

The introduction of a conformity assessment procedure is necessary to ensure a coherent application of the Packaging Directive by manufacturers and to avoid internal market problems in the future.

**2. Who will be affected by the proposal?**

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The marking system is proposed to be applied on a voluntary basis.

- **Which sectors of business?**

Primarily packaging manufacturers.

### **Which size of business?**

All sizes of enterprises will be affected, however marking is not required where the costs, compared to the benefits, are excessive. Marking as a competitive factor should nevertheless be taken into account.

Concerning the conformity assessment procedure, this has to be complied with by all packaging manufacturers or by their authorized representative.

### **Are there particular geographical areas of the Community where these business are found?**

Packaging manufacturers can be found throughout the whole Community; there is no concentration in any geographical areas.

### **3. What will business have to do to comply with the proposal?**

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The marking system is voluntary, thus the manufacturers do not have to mark their packaging according to this proposal. In case they wish to mark their packaging, indicating the reusable or recyclable nature of packaging, they must use the symbols set out in this Directive.

Marking their packaging with the symbols of this Directive, the packaging must comply with the essential requirements for the packaging in question, set out in the Directive on Packaging and Packaging Waste.

Finally, the manufacturers must not continue the use of existing symbols, in case they intend to indicate the reusable or recyclable nature of packaging.

To comply with the provisions on a conformity assessment procedure, the manufacturer of packaging must draw up a declaration of conformity with the essential requirements of the Packaging Directive, establish the technical documentation and keep it for a period of 4 years at the disposal of relevant national authorities for inspection purposes.

### **4. What economic effects is the proposal likely to have ?**

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In case the manufacturers wish to mark their packaging with the new symbols, investments are necessary to introduce the system.

The marking as such will also imply some costs that should be related to the goodwill the marking will imply among consumers, i.e. the marking is expected to be a competitive factor.



Manufacturers must spend some resources at drawing up a declaration of conformity. It is expected that the manufacturer is already in possession of the technical documentation; this will not imply essential extra costs.

**5. Does the proposal contain measures to take account of the specific situation of small and medium sized firms (reduced or different requirements etc)?**

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The fact that the marking system is proposed to be applied on a voluntary basis implies that small firms do not have to use it. In case the costs of marking are excessive, e.g. on very small packaging, it is not mandatory to mark.

The conformity assessment procedure applies to all packaging manufacturers. The least onerous procedure is proposed.

**6. Consultation**

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A number of meetings has been held with the associations of packaging and packaging material manufacturers on the general issue of marking of packaging.

The general position among the manufacturers is the wish to keep the existing symbols and abbreviations. These symbols and abbreviations are not used consistently throughout Europe, are a mix of indication of nature of packaging (e.g. recyclable) and of material identification. Symbols looking like they indicate recyclability are used for pure material identification etc.

To meet this position would be contradictory to the decision on material identification to be taken by the Packaging Committee as well as the principles of this proposal on marking of packaging.

The packaging manufacturers have shown a general support for one common procedure for the assessment of the conformity to the essential requirements.

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# DOCUMENTS

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