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*****III REPORT**

on the joint text approved by the Conciliation Committee for a European Parliament and Council directive amending directive 94/62/EC on packaging and packaging waste
(PE-CONS 3697/2003 – C5-0629/2003 – 2001/0291(COD))

European Parliament delegation to the Conciliation Committee

Rapporteur: Dorette Corbey

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- *** Assent procedure
majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

At its sitting of 3 September 2002 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive amending directive 94/62/EC on packaging and packaging waste (COM(2001) 729 - 2001/0291(COD)).

At the sitting of 13 March 2003 the President of Parliament announced that the common position had been received and referred to the Committee on the Environment, Public Health and Consumer Policy (14843/1/2002 – C5-0082/2003).

At the sitting of 2 July 2003 Parliament adopted amendments to the common position.

By letter of 29 September 2003 the Council stated that it was unable to approve all Parliament's amendments.

The President of the Council, in agreement with the President of Parliament, convened a meeting of the Conciliation Committee on 4 November 2003.

At its meeting of 4 December 2003 the Parliament delegation approved the results of the conciliation by 12 votes to 1.

Agreement was reached by exchange of letters of 4 December 2003 and 10 December 2003.

The following took part in the vote: Renzo Imbeni (Vice-President and chairman of the delegation), Caroline F. Jackson (chair of the Committee on the Environment, Public Health and Consumer Policy), Dorette Corbey (rapporteur), María del Pilar Ayuso González, David Robert Bowe, Marialiese Flemming (for Charlotte Cederschiöld), Karl-Heinz Florenz, Françoise Grossetête, Eija-Riitta Anneli Korhola (for Giorgos Dimitrakopoulos), Bernd Lange, Patricia McKenna, Riitta Myller (for Torben Lund) and Marit Paulsen.

On 17 December 2003 the co-chairmen of the Conciliation Committee established that the joint text had been approved, pursuant to paragraph III.8 of the Joint declaration on practical arrangements for the new co-decision procedure¹, and forwarded it to Parliament and the Council in all the official languages.

The report was tabled on 21 January 2004.

¹ OJ C 148, 28.5.1999, p. 1.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the joint text by the Conciliation Committee for a European Parliament and Council directive amending directive 94/62/EC on packaging and packaging waste (PE-CONS 3697/2003 – C5-0629/2003 – 2001/0291(COD))

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee and the relevant interinstitutional statement (PE-CONS 3697/2003 – C5-0629/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001) 729)²,
 - having regard to its position at second reading³ on the Council common position⁴,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2003) 536 - C5-0433/2003)⁵,
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 83 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A5-0006/2004),
1. Approves the joint text and confirms the joint European Parliament, Council and Commission statement thereon;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published, together with the interinstitutional statement thereon, in the Official Journal of the European Union;
 4. Instructs its President to forward this legislative resolution to the Council and Commission.

¹ OJ C 272 (E), 13.11.2003, p. 30.

² OJ C 103 (E), 30.4.2002, p. 17.

³ Texts Adopted, 2.7.2003 P5_TA(2003)0318.

⁴ OJ C 107 (E), 6.5.2003, p. 17.

⁵ Not yet published in OJ.

EXPLANATORY STATEMENT

Background

On 7 December 2001, the Commission presented a proposal to amend directive 94/62/EC on packaging and packaging waste. The aim of this proposal is to establish the recovery and recycling targets to be achieved for the second five-year phase referred to in Article 6 of the original Directive and to clarify the definitions used for that purpose.

On 3 September 2002, Parliament adopted 44 amendments at first reading. The Council adopted its Common Position on 6 March 2003. At its second reading on 2 July 2003, Parliament adopted 12 amendments to the Common Position. They concerned in particular:

- the definition of "packaging" and the accompanying illustrative examples;
- the establishment of the latest dates by which certain targets must be attained by those countries granted a postponement, and the way in which similar arrangements should be made for the accession countries;
- prevention measures, including the possibility of further legislative proposals with regard to minimising the environmental impact of packaging, and the encouragement of pilot projects;
- the scope of the Commission's report on the implementation of the directive;
- the possibility for Member States to transpose certain provisions by means of agreements between the competent authorities and the economic sectors concerned.

Conciliation

Parliament's delegation to the Conciliation Committee held its constituent meeting on 3 September 2003. Its members instructed its Chairman, Renzo Imbeni, the Chair of the committee responsible, Caroline Jackson, and the rapporteur, Dorette Corbey to begin informal negotiations with the Council. The conciliation procedure was formally opened on 4 November as an agenda item without debate. At the third triilogue meeting, on 4 December 2003, a compromise was reached covering all the unresolved issues. This was approved by Parliament's delegation on the same day by 12 votes to 1, and by Coreper on 10 December. It was subsequently confirmed by exchange of letters.

The key points of the agreement reached in the conciliation procedure can be summarised as follows:

1. Postponement of the attainment of the targets for certain countries

i) The Directive provides limited derogations for Greece, Ireland and Portugal with regard to the attainment of the Directive's recovery and recycling targets. After negotiations, a compromise was found between the dates proposed by Council and Parliament with the effect that these countries will be able to postpone the attainment of the 2008 targets until 31 December 2011.

ii) In the case of the acceding States, negotiations concentrated on the way in which to address the need for derogations. Council initially preferred to deal with this issue through a

declaration, with a view to making bilateral arrangements with each country on the basis of Article 57 of the Accession Treaty. Under this approach, no reference would have appeared in the legislative text and Parliament would have been excluded from the final decision. Parliament, however, strongly defended its second reading position, insisting on an explicit reference in the legislative text and a proposal from the Commission to be submitted to Parliament and Council under the co-decision procedure.

Under the compromise reached, it was agreed to introduce in the text of the Directive an explicit reference to the derogation requests already received from the countries in question, and to the fact that the final decision will be made in accordance with the appropriate legal procedure before the expiry of the deadline for the transposition of the Directive. From Parliament's point of view, this represents a significant improvement on Council's initial stance.

2. The implication of recent Court judgements for the recovery targets of the Directive

The European Court of Justice's interpretation of the concept of "recovery" in its judgements C-458/00, C-228/00 and C-116/01 was the subject of considerable debate. In summary, the judgements concluded that waste incineration with energy recovery does not constitute recovery if that is not the main purpose of the operation. This effectively changes the Member States' understanding of what is meant by "recovery" in the context of the original Directive and its targets, with the result that some Member States could have found themselves, either now or in the future, to be unexpectedly in contravention of the Directive and thus potentially liable to infringement proceedings.

While there was general agreement that the judgements did raise some important questions with regard to the definition of what constitutes "recovery", views differed as to how best to address the matter from a procedural point of view, given that the matter had not been addressed in the Common Position or in Parliament's second reading amendments.

The compromise solution finally found was to modify the relevant parts of the text of the original Directive, in order to clarify that waste incinerated at waste incineration plants with energy recovery can count towards the Directive's targets. This represents an immediate solution to the problem in the short-term and has the effect in practice of maintaining the goal posts as they were when the Directive was originally adopted.

However, the three institutions also decided to adopt an accompanying statement in which they undertake to review the issue at the earliest opportunity and in which the Commission states its intention "to propose amendments as appropriate to the relevant legislation". This statement thus recognises that the solution found is only a partial one and that the issue requires further examination, both with regard to existing legislation and with a view to possible future revision of the definition of recovery in the framework of the Thematic Strategy on Waste Prevention and Recycling and of horizontal waste legislation in general.

3. Definition of packaging

The substance of Parliament's amendment of the basic definition of packaging has been accepted by Council. As a result, an item will be considered to be packaging if it fulfils the Directive's definition, unless it is an integral part of a product and "it is necessary to contain,

support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together".

As part of the agreement negotiated, rather than embarking on debates on possible technical amendments to the non-exhaustive list of illustrative examples, it was decided to introduce a clear requirement for the Commission to examine and if necessary review these examples under the comitology procedure, as Parliament had requested at second reading. In addition, it was also agreed to indicate as a specific priority for consideration those items which have been the subject of some debate with regard to their classification: namely CD and video cases, flower pots, tubes and cylinders around which flexible material is wound, release paper of self-adhesive labels and wrapping paper.

Conclusions

The agreement reached represents a very positive outcome for Parliament, with satisfaction having been found on all of the issues covered by its second reading amendments, both with regard to the issues outlined above and to other important questions such as prevention measures, the encouragement of pilot projects and the use of voluntary agreements. Although the Court judgements question was not the subject of any second reading amendment, the solution found is a balanced and pragmatic one which addresses the immediate problem while nevertheless allowing for further examination and legislative follow-up as appropriate. The delegation therefore recommends that Parliament approve the joint text at third reading.