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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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No. Cion doc.:	15845/13 ENV 1028 MI 974 IND 305 CONSOM 186 CODEC 2473 - COM(2013) 761 final
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags - Consideration of the final agreement in preparation for political agreement

I. INTRODUCTION

1. On 5 November 2013 the Commission forwarded to the European Parliament and to the Council its proposed Directive amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags, based on Article 114 of the Treaty on the Functioning of the European Union, and its related impact assessment¹.

The proposal aims at: limiting the negative impacts of plastic carrier bags' littering on the environment, encouraging waste prevention and achieving a more efficient use of resources.

¹ doc. 15845/13 + ADD 1 + ADD 2

2. The European Parliament voted its legislative resolution in first reading on 16 April 2014², adopting 43 Amendments.

The Economic and Social Committee voted its opinion on 26 February 2014 and the Committee of the Regions on 3 April 2014.

3. At its meeting on 10 October 2014, the Permanent Representatives Committee agreed on a mandate for the Presidency to enter into negotiations with the European Parliament with a view to an early second-reading agreement.

On 31 October and on 14 November 2014, the original mandate was modified to take into account the position and the demands of the European Parliament at the first and second informal trilogues (held on 14 October and on 4 November 2014, respectively).

A third informal trilogue took place on 17 November.

Tripartite technical meetings took place on 24 October and on 7 November 2014.

As a result of these discussions, a possible agreement on a compromise package is presented by the Presidency in a consolidated form in the Annex to this note.³

² doc. 9044/14. EP Rapporteur: Margrete Auken MEP - DK, the Greens.

³ Compromise text modifying the Commission proposal is in bold. Changes with respect to 15591/14 are in bold underline.

II. CONSIDERATION OF THE FINAL AGREEMENT IN PREPARATION FOR POLITICAL AGREEMENT

3. The only new elements, compared to the latest text (15591/14), as approved by the Committee on 14 November, agreed *ad referendum* at the last informal trilogue on 17 November, relate to:
- The figures for plastic bags consumption in Article 4, paragraph 1a, second subparagraph letter a) of Directive 94/62/EC, which now refer to 90 plastic bags and to a deadline of 31 December 2019 (instead of 100 plastic bags and a deadline of 31 December 2020).
 - The transfer of Recital 6c (Amendment 12) in the body of the text (Article 6b, paragraph 3 of Directive 94/62/EC).
 - The simplification of reporting requirements in Article 4, paragraph 1a, third and fourth subparagraph of Directive 94/62/EC.
 - A new Recital 7a providing alignment to the new Article 6a (labels and marks) of Directive 94/62/EC. In the first subparagraph of the latter Article, requesting the Commission to adopt implementing acts, a "shall" replaces the previous "may".
 - A reference to "recovery" is added in Article 4, paragraph 1a, second subparagraph of Directive 94/62/EC.
 - Recitals 5, 6 and 6a are aligned to the corresponding Articles. In footnote 11, the deadline for review was reformulated with respect to the "date of entry into force", in line with all other deadlines in the text.

III. CONCLUSION

The Presidency considers that the overall compromise agreement reached with the Parliament remains within the mandate given to the Presidency.

In view of the above, the Permanent Representatives Committee is invited to examine and endorse the agreement reached with the European Parliament, as set out in the Annex to the present Note.

The text in Annex will be submitted to the Council for adoption of a political agreement, subject to receiving an approval letter from the Chair of the European Parliament's ENVI Committee confirming that the text in Annex is acceptable to the European Parliament.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption

of lightweight plastic carrier bags*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission¹,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

After consulting the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

* The text will be subject to legal/linguistic revision.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C

Whereas:

- (1) Directive 94/62/EC of the European Parliament and of the Council⁴ was adopted in order to prevent or reduce the impact of packaging and packaging waste on the environment. Although plastic carrier bags constitute packaging within the meaning of that Directive, its provisions do not contain specific measures relating to the consumption of such bags.
- (2) Consumption of plastic carrier bags results in high levels of littering and an inefficient use of resources and is expected to increase if no action is taken. Littering of plastic carrier bags [...] **results in environmental pollution and aggravates the widespread problem of litter in water bodies, threatening aquatic eco-systems worldwide.**
- (2a) **Furthermore, the accumulation of plastic carrier bags in the environment has a clearly negative impact on certain economic activities.**
- (3) **Lightweight** plastic carrier bags with a thickness below 50 microns, which represent the vast majority of the total number of plastic carrier bags consumed in the Union, are less frequently re-used than thicker plastic carrier bags, **thus become waste more quickly and are more prone to littering due to their light weight.**
- (3a) **Current recycling rates of lightweight plastic bags are very low and, due to a number of practical and economic difficulties, are not likely to reach significant levels in the near future.**
- (3b) **According to the waste hierarchy prevention comes first. However, plastic carrier bags serve several purposes and their consumption will continue in the future. In order to ensure that the needed plastic carrier bags will not end up in the environment, adequate measures should be in place and consumers should be informed about proper waste disposal.**

⁴ OJ L 365, 31.12.1994, p. 10.

- (4) Consumption levels of plastic carrier bags vary considerably across the Union due to differences in consumption habits, environmental awareness, as well as the effectiveness of policy measures taken by Member States. Some Member States have managed to reduce consumption levels of plastic carrier bags significantly, with the average consumption level in the seven best performing Member States amounting to only 20% of the EU average consumption.
- (4a) **The availability and accuracy of data on the current consumption levels of lightweight plastic carrier varies between Member States. Accurate and comparable data on consumption is key in order to assess the effectiveness of reduction measures and ensure uniform conditions for implementation. Therefore, a common methodology for the calculation of annual consumption of lightweight plastic bags per capita should be developed with a view to monitoring progress in reducing consumption of lightweight plastic bags.**
- (4b) **Furthermore, consumer information has been shown to play a decisive part in achieving any goals regarding reduced plastic bag consumption. It is therefore necessary for efforts to be made at institutional level to heighten awareness of the environmental impact of plastic bags and do away with the current perception of plastic as a harmless and cheap commodity.**
- (5) To promote sustained reductions of the average consumption level of lightweight plastic carrier bags, Member States should take measures to **significantly** reduce the consumption of plastic carrier bags with a thickness below 50 microns in line with the overall objectives of the Union's waste policy and the Union's waste hierarchy as provided for in Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives⁵. Such reduction measures should take account of current consumption levels of plastic carrier bags in individual Member States, with higher levels requiring more ambitious efforts, **and take account of reductions already achieved**. To monitor progress in reducing the use of lightweight plastic carrier bags national authorities will provide data on their use under article [...] 12 of Directive 94/62/EC.

⁵ OJ L 312, 22.11.2008, p. 3.

- (6) Measures to be taken by Member States may involve the use of economic instruments such as **pricing**, taxes and levies, which have proved particularly effective to reduce the use of plastic carrier bags, as well as marketing restrictions such as bans in derogation of Article 18 of Directive 94/62/EC [...] **provided that[...] these restrictions are proportionate and non-discriminatory.**
- (6a) **These measures may vary, based on the environmental impact of lightweight plastic bags when they are recovered or disposed of, such as their recycling and composting properties, their durability or the specific intended use of these bags and with regard to possible adverse substitution effects.**
- (6b) **Member States may choose to exempt very lightweight plastic bags provided as primary packaging for loose food, when this is required for hygiene purposes or when their use helps prevent food wastage.**
- (6c) **[...] Revenues generated by measures taken pursuant to this Directive with a view to achieving a sustained reduction in the consumption of lightweight plastic bags may be used as Member States deem appropriate.**
- (6d) **Awareness programmes for consumers in general and educational programmes for children can play an important role in the reduction of the use of plastic bags.**
- (6e) **European Standard EN 13432 on “Requirements for packaging recoverable through composting and biodegradation - Test scheme and evaluation criteria for the final acceptance of packaging” lays down the characteristics that a material must possess in order to be considered ‘compostable’, namely that it can be recycled through a process of organic recovery comprised of composting and anaerobic digestion. The Commission should request the European Committee for Standardization to develop a separate standard for home-compostable packaging.**

- (6f) **Some plastic carrier bags are marked as “oxo-biodegradable” or "oxo-degradable" by their manufacturers. In such plastic bags, additives are incorporated into conventional plastics. Due to the presence of those additives, over time the plastic fragments into small particles, which remain in the environment. It can thus be misleading to refer to such plastic bags as “biodegradable” as these may not be a solution to littering and may, on the contrary, increase pollution. The Commission should examine the impact of the use of oxo-degradable plastic bags on the environment and present a report to the European Parliament and the Council, including, if appropriate, an elaboration of measures to limit their use or reduce any harmful impacts.**
- (7) **Measures to be taken by Member States to reduce the consumption of plastic carrier bags should lead to a sustained reduction in the consumption of lightweight plastic carrier bags and should not lead to an overall increase in the generation of packaging.**
- (7a) It is important to ensure Union-wide recognition of labels or marks for biodegradable and compostable bags.**
- (8) The measures provided for by this Directive are consistent with the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the Roadmap to a Resource Efficient Europe⁶ and should contribute to actions against littering undertaken in accordance with Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive⁷).
- (9) Directive 94/62/EC should therefore be amended accordingly,

⁶ COM(2011)571 final

⁷ OJ L 164, 25.6.2008, p. 19–40

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/62/EC is hereby amended as follows:

In Article 3, new points 2a to 2e are [...] inserted:

'2a. "plastic" means a polymer, within the meaning of Article 3(5) of Regulation 1907/2006, to which additives or other substances may have been added, and which is capable of functioning as a main structural component of bags.

2b. "plastic carrier bags" shall mean bags, with or without handle, made of plastic, which are supplied to consumers at the point of sale of goods or products.

2c. "lightweight plastic carrier bags" shall mean plastic carrier bags [...] with a wall thickness below 50 microns[...].

2d. "very lightweight plastic carrier bags" shall mean plastic carrier bags with a wall thickness below 15 microns required for hygiene purposes or provided as primary packaging for loose food when this helps prevent food wastage.

2e. "oxo-degradable plastic bags" shall mean bags made of plastic materials that include additives that catalyse the fragmentation of the plastic material into micro-fragments of plastic material.'

In Article 4, the following paragraphs 1a, **1b and 1c** are [...] inserted:

'1a Member States shall take measures to achieve a **sustained** reduction in the consumption of lightweight plastic carrier bags on their territory [...].

These measures may include the use of national reduction targets, **maintaining or introducing** economic instruments as well as marketing restrictions in derogation from Article 18 of this Directive, **provided that these restrictions are proportionate and non-discriminatory**.

Such measures may vary based on the environmental impact of lightweight plastic bags when they are **recovered or** disposed of, their composting properties, durability or specific intended use.

The measures taken by Member States shall include either or both:

- a) the adoption of measures ensuring that the yearly consumption level does not exceed **[...]90** lightweight plastic carrier bags per capita by 31 December **[...] 2019** and 40 lightweight plastic carrier bags per capita by 31 December 2025, respectively; or equivalent targets set in weight. Very lightweight plastic carrier bags may be excluded from national consumption objectives; or
- b) the adoption of instruments ensuring that, by 31 December 2018, lightweight plastic carrier bags are not provided free of charge at the point of sale of goods and products, unless equally effective instruments are implemented. Very lightweight plastic carrier bags may be excluded from these measures.

From ...⁸ Member States shall report on **the annual consumption of lightweight plastic bags [...]** when reporting to the Commission in accordance with Article **[...] 12** of this Directive.

By...⁹, the Commission shall adopt an implementing act laying down the methodology for the calculation of the annual consumption per capita of lightweight plastic bags **and adapting the reporting formats adopted pursuant to Article 12(3) of this Directive**.

That implementing act shall be adopted in accordance with the procedure referred to in article 21(2).

1b. Without prejudice to Article 15, Member States may take measures such as economic instruments and national reduction targets, as regards any kind of plastic carrier bags, regardless of their wall thickness.

1c. In addition to the provisions laid down in paragraph 1a, the Commission and the Member States shall, at least during the first year after the date of transposition of this Directive, actively encourage public information and awareness campaigns concerning the adverse environmental impact of excessive use of lightweight plastic bags.

⁸ OJ: please insert the date = date of entry into force of this Directive + 36 months.

⁹ OJ: please insert the date = date of entry into force of this Directive + 12 months.'

(2a) A new Article 6a is inserted:

'By ...¹⁰, the Commission [...] shall adopt an implementing act laying down the specifications of labels or marks to ensure Union-wide recognition of biodegradable and compostable plastic carrier bags and to provide consumers with the correct information about the composting properties of such bags. That implementing act shall be adopted in accordance with the procedure referred to in article 21(2).

Member States shall ensure that biodegradable and compostable plastic carrier bags are labelled in accordance with the specifications laid down in that implementing act 18 months after its adoption, at the latest.'

¹⁰ OJ: please insert the date – two years after the entry into force of this Directive.'

(2b) A new Article 6b is inserted:**

1. By ...¹¹ the Commission shall present a report to the European Parliament and Council, assessing the effectiveness of measures in Article 4 paragraph 1a at EU level, in combating littering, changing consumer behaviour and promoting waste prevention. If the assessment shows that the measures adopted are not effective, the Commission shall examine other possible ways to achieve a reduction in the consumption of lightweight plastic bags, including the setting of realistic and achievable targets at EU level, and present a legislative proposal, if appropriate.
2. By ...¹² the Commission shall present a report to the European Parliament and Council, examining the impact of the use of oxo-degradable plastic bags on the environment and present a legislative proposal, if appropriate.
3. The Commission shall assess the life cycle impacts of different possibilities to reduce very lightweight plastic bags, by ...¹³, and present a legislative proposal if appropriate.

¹¹ OJ: please insert the date = date of entry into force of this Directive + 78 months.

¹² OJ: please insert the date = date of entry into force of this Directive + 24 months.

¹³ OJ: please insert the date = date of entry into force of this Directive + 24 months.

** Article 2a (15591/14), as a part of the act to be amended, should be in Article 1 of the Directive and is introduced in paragraph 2b (new Article 6b).

(2c) In Article 22, paragraph 3a, first indent, is modified as follows:

'3a. Provided that the objectives set out in Article 4 (prevention) and Article 6 (recovery and recycling) are achieved, Member States may transpose the provisions set out in Articles 4(1a) and 7 by means of agreements between the competent authorities and the economic sectors concerned.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] **eighteen** months after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

[...]

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
