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**COMMISSION DECISION**

**of 19 February 2001**

**establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste**

*(notified under document number C(2001) 398)*

**(Text with EEA relevance)**

(2001/171/EC)

(OJ L 62, 2.3.2001, p. 20)

Corrected by:

► **C1** Corrigendum, OJ L 272, 10.10.2002, p. 35 (2001/171/EC)

▼B**COMMISSION DECISION****of 19 February 2001****establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste***(notified under document number C(2001) 398)***(Text with EEA relevance)**

(2001/171/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste<sup>(1)</sup>, and in particular Article 11(3) thereof,

Whereas:

- (1) Directive 94/62/EC provides in Article 11 a gradual reduction of the concentration of heavy metals in packaging.
- (2) Experience of the first years of application of Article 11 has shown that there is a specific problem in the glass sector, as the recycled glass is contaminated by glass material containing high quantities of lead.
- (3) The full applications of the level of 100 ppm, which is due to enter into force on 30 June 2001, might have as a consequence that the use of recycled glass is reduced, in order to comply with Article 11. This result is environmentally not desirable for this reason.
- (4) The derogation is intended for glass packaging taking account of its characteristics in relation to emissions of heavy metals and the importance of further encouraging glass recycling.
- (5) The 100 ppm limit is to be concerned by the derogation.
- (6) Measurements results from production sites and measurement methods employed should be made available to the competent authorities if requested.
- (7) The derogation is to expire on 30 June 2006 unless this deadline is extended in accordance with the procedure laid down in Article 21 of Directive 94/62/EC.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Committee, established pursuant to Article 21 of European Parliament and Council Directive 94/62/EC,

HAS ADOPTED THIS DECISION:

*Article 1*

This Decision, shall apply to glass packaging covered by Directive 94/62/EC, and aims to establish the conditions under which the concentration levels established in Article 11 of Directive 94/62/EC shall not apply.

*Article 2*

For the purposes of this Decision:

- the definitions as set out in Article 3 of Directive 94/62/EC shall apply,

<sup>(1)</sup> OJ L 365, 31.12.1994, p. 10.

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- ‘intentionally introduced’ shall mean ‘deliberately utilised in the formulation of a packaging or a packaging component where its continued presence is desired in the final packaging or packaging component to provide a specific characteristic, appearance, or quality’; the use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of regulated metals, is not be considered as intentionally introduced.

*Article 3*

Glass packaging is allowed to exceed, after the date of 30 June 2001, the limit of 100 ppm by weight established in Article 11 of Directive 94/62/EC where it complies with all the conditions established in Articles 4 and 5 of this Decision.

*Article 4*

No lead, cadmium, mercury or hexavalent chromium shall be intentionally introduced during the manufacturing process.

The packaging material may only exceed the concentration limits because of the addition of recycled materials.

*Article 5*

►C1 Where the average heavy metals concentration levels ◀ on any twelve consecutive monthly controls made from the production of each individual glass furnace, representative of normal and regular production activity, exceeds the 200 ppm limit ►C1, the manufacturer or his authorised representative ◀ shall submit a report to the competent authorities in the Member States. This report shall include as a minimum the following information:

- measures values,
- description of measurement methods employed,
- suspected sources for the presence of heavy metals concentration levels,
- detailed description of the measures taken to reduce the heavy metals concentration levels.

Where neither the manufacturer nor his authorised representative is established within the European Union, the obligation to submit a report to the competent authorities shall be with the person who places the product on the Community market.

Measurement results from production sites and measurement methods employed shall be made available at any time to the competent authorities, if requested.

*Article 6*

This Decision shall expire on 30 June 2006, unless it is extended, in particular on the basis of the reports under Article 5 of this Decision and Article 17 of Directive 94/62/EC, in accordance with the procedure laid down in Article 21 of Directive 94/62/EC.

*Article 7*

This Decision is addressed to the Member States.