Demonstrating Compliance with the EU Packaging and Packaging Waste Directive

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In the European Union (EU), packaging and packaging waste is regulated under Directive 94/62/EC (adopted Dec. 20, 1994), the so-called "Packaging and Packaging Waste Directive" (PPWD). The PPWD sets forth requirements related to the management of packaging and packaging waste, and mandates that all packaging placed on the EU market comply with the "essential requirements" of Article 9 of the Directive, as well as specified heavy metals limits. The overarching goal of the PPWD is to harmonize national laws on packaging, thereby deterring Member States from restricting the free movement of packaged goods, as well as to reduce the negative impact of packaging waste on the environment. Importantly, the scope of the law is broad so that the PPWD covers all packaging placed on the EU market, including packaging designed for industrial, commercial, and domestic purposes.

The PPWD requires Member States to take steps to: 1) prevent packaging waste by reducing waste both in terms of quantity and hazard; 2) recover and recycle high percentages of packaging waste by imposing quantitative objectives; and 3) collect data on packaging and packaging waste to allow an adequate monitoring of the effect of the PPWD. Recently, portions of the PPWD were amended by Directive 2004/12/EC of Feb. 11, 2004, which must be adopted into the national legislation of all EU Member States by Aug. 18, 2005. The main amendments imposed by Directive 2004/12/EC:

- Raise the overall recovery and recycling targets specified in the PPWD;
- Attain minimum specific recycling targets for materials contained in packaging waste;
- Lay out criteria on the interpretation of the definition of "packaging"; and
- Make efforts to reduce further and, if appropriate, ultimately phase out, heavy metals and other hazardous substances in packaging by 2010.

Several standards that have been adopted to assist companies comply with the law also have been amended recently. This article provides information to help companies demonstrate compliance with the PPWD, as well as highlights the recent changes to the law and the applicable compliance standards.

At the time of its enactment, the PPWD represented a new breed of EU legislation. A so-called "new approach" directive, in addition to establishing specific limits for compliance in certain areas, i.e., heavy metals limits, the PPWD also set forth more flexible "essential requirements" in areas deemed necessary to protect the public interest. In addition, it called for the development of harmonized standards to provide companies with more specific guidance on how to demonstrate compliance with these "essential requirements." The European Committee for Standardization (CEN), in concert with various national committees on standardization, and as discussed more fully below, has drafted and adopted such compliance and guidance standards. In theory, companies that adequately demonstrate that a product complies with an existing CEN standard or, in its absence, a national standard, may automatically presume that the product complies with the "essential requirements" of the PPWD, and may therefore market the product throughout the EU.

**Article 9 "Essential Requirements"**

Article 9 of the PPWD requires all packaging placed on the EU market to comply with three "essential requirements" set forth in Annex II of the Directive. The three essential requirements are as follows:

1) Source Reduction: the packaging weight and volume should be limited to the mini-
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Companies responsible for placing packaging on the EU market must ensure that these three “essential requirements” are met. However, packaging is presumed to comply with the “essential requirements” of the Directive if the packaging complies with harmonized standards that are first adopted by CEN, and then approved and published by the European Commission. While six CEN standards were initially drafted in September 2000, to date, only the following two CEN standards have been approved, i.e., harmonized, by the European Commission and published in the Official Journal of the European Communities:

1) EN 13428:2000, “Packaging - Requirements specific to manufacturing and composition - Prevention by source reduction;” and
2) EN 13432:2000, “Packaging - Requirements for packaging recoverable through composting and biodegradation - Test scheme and evaluation criteria for the final acceptance of packaging."

Packaging complying with EN 13428:2000 is presumed to comply with the “Source Reduction” essential requirement, and partly with the “Recovery, Reuse, and Recycling” essential requirement. This standard provides guidance on the treatment of hazardous substances and heavy metals in packaging. In essence, the standard imposes on manufacturers the obligation to produce packaging whose volume and weight are limited to the minimum adequate amount to maintain the necessary level of safety, hygiene, and acceptance for the packaged product by the consumer. Compliance with this “Source Reduction” essential requirement is not intended to be detrimental to the safety of the packaged product, nor to the functionality of the packaging. Therefore, the amount of material used to produce a particular package may be justified, given its function.

Packaging that complies with EN 13432:2000 is presumed to comply with the “Recovery, Reuses, and Recycling” essential requirement. Note, however, that this standard applies only to certain types of packaging (i.e., packaging that is recoverable through composting and biodegradation). Additional standards need to be adopted to address packaging that is not recoverable through these processes.

As for compliance with the “Minimum Presence of Hazardous Substances” essential requirement, and the requirements relating to the reusable nature of packaging, no CEN standards are currently available. Packaging is presumed to comply with these requirements if it complies with the national standards currently in force, if any.

In response to some objections from certain Member States, the European Commission issued a second mandate in 2002 seeking revisions to five of the six original standards. To that end, in the fall of that year, CEN drafted revisions to five of the six original standards (including the already adopted EN 13428:2002); four of the revised standards were adopted by CEN this spring. Approval and publication of the revised standards have not yet occurred at the European Commission level. CEN’s five revised draft standards include:

1) EN13427:2002, “Packaging - Requirements for the use of European Standards in the field of packaging and packaging waste;”
2) EN 13428:2002, “Packaging - Requirements specific to manufacturing and composition - Prevention by source reduction;”
3) EN 13429:2002, “Packaging - Reuse;”
4) EN 13430:2002, “Packaging - Requirements for packaging recoverable by material recycling;”
5) EN 13431:2002, “Packaging - Requirements for packaging recoverable in the form of energy recovery, including specification of minimum interior calorific value."

Generally speaking, each of the CEN standards provides practical advice on how manufacturers can set up management systems to comply
with the Directive’s three “essential requirements.” According to CEN, the recommended procedures “will generate continuous environmental improvement without jeopardizing the functional performance of the packaging.” Once complete, the standards can be used by suppliers for “identifying appropriate assessment procedures, using checklists to ensure the procedures are followed, summarizing the results, and keeping the relevant records.”

**Heavy Metals Limits**

The heavy metals limits, which appear in Article 11 of the PPWD, apply to cadmium, mercury, lead, and hexavalent chromium. The PPWD requires that total levels of these heavy metals in packaging or packaging components must not exceed 100 parts per million (ppm). (The PPWD exempts lead crystal glass and allows for the possibility of special exemptions by the Commissioner for recycled materials that already contain higher concentrations of these heavy metals, e.g., plastic crates and pallets.) Directive 2004/12/EC, however, calls upon the Commission to report to the European Parliament and the Council on efforts to reduce further and, if appropriate, ultimately phase out heavy metals in packaging by 2010.

To properly establish compliance with the heavy metals requirement in an individual Member State in which packaging will be placed on the market, it is important for companies to consult the Member State’s national legislation implementing the PPWD. In France, for instance, national law goes beyond the PPWD by requiring companies to maintain a “technical file” containing particular information, including a general description of the packaging and its composition and the results of tests completed to ensure that heavy metals levels do not exceed the maximum limit. The French law further requires a written declaration attesting to the conformity of the packaging with the “essential requirements,” and technical documentation containing specific elements relative to the design and manufacture of the packaging.

**Conformity Assessment Procedure for Packaging; Marking and Identification System**

In accordance with Article 8(1) of the PPWD, the Commission has issued a proposal for a Directive on the Marking of Packaging and on the Establishment of a Conformity Assessment Procedure for Packaging. Under the proposed conformity assessment, packaging manufacturers (or the person who places the packaging on the EU market) would be required to make available to regulatory authorities certain technical documentation, including a general description of the product, conceptual designs and manufacturing drawings, a list of applicable standards, results of calculations and tests carried out in order to demonstrate conformity with the “essential requirements,” and

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While these recycling and recovery targets do not apply, *per se*, to packaging companies, Member States are obligated to take the necessary steps to achieve these goals. One voluntary program that is designed to assist packaging companies in achieving these goals is the “Green Dot” program (to be discussed in a future article).

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The updated ranges are: 1) a minimum of 60 percent by weight for recovery; 2) between 55-80 percent by weight for recycling generally; and 3) a minimum of 60 percent by weight for glass, paper, and paperboard, 50 percent by weight for metals, 22.5 percent by weight for plastics (counting exclusively material that is recycled back into plastics), and 15 percent by weight for wood.
demonstrate compliance with the law. Instead, the PPWD instructs Member States to implement systems to ensure that the requirements of the PPWD, whether the three “essential requirements,” recovery recycling targets, or heavy metals limits, are met. To that end, a packaging company’s compliance with an applicable CEN standard or, in the absence of a harmonized standard, a national standard in the Member State in which the packaging material will be marketed, creates an automatic presumption of compliance with the “essential requirements” of the PPWD and will ensure a product’s marketability throughout the EU. With respect to ensuring compliance with the heavy metals limits set forth in the PPWD, companies should consult the implementing language of the individual Member States to ensure that, in addition to the 100 ppm limit on heavy metals, no additional requirements exist.

Conclusions
The PPWD does not require specific testing of a packaging material or its components, per se, to

In accordance with Article 8(2) of the PPWD, the Commission adopted Decision 97/129/EC to establish a Packaging Material Identification System.