

ACT

of 1 February 2006,

**amending Act 477/2001 Coll., on Packaging and on the amendment to certain other acts (Packaging Act),
as amended**

The Parliament has passed the following Act of the Czech Republic:

Article I

Act 477/2001 Coll., on Packaging and on the amendment to certain other acts (Packaging Act), as amended by Act 274/2003 Coll., Act 94/2004 Coll., Act 237/2004 Coll., Act 257/2004 Coll. and Act 444/2005 Coll., shall be amended as follows:

1. At the end of footnote 2, the sentence "Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004, amending Directive 94/62/EC on Packaging and Packaging Waste" shall be inserted on a new line.
2. In Section 1, Subsection 2, the word "water" shall be deleted.
3. In Section 2, Letter a), Item 1 and in Section 2, Letter l), the word "consumer" shall be replaced by the word "sales".
4. In Section 2, Letter a), the following words shall be inserted at the end of the text of Item 3: "; the criteria and illustrating examples specifying the definition of packaging are provided in Annex 1 to this Act".
5. In Section 2, Letter d), the words "international transportation of packaging or a packed product from another EU member state to the Czech Republic, or" shall be inserted after the words "is also considered".
6. In Section 2, Letter e), the words "in the Czech Republic" shall be inserted after the words "delivery of packaging".
7. In Section 2, Letter f), the words "into the free circulation mode" shall be replaced by the words "from a state which is not an EU member to the Czech Republic, to the customs mode of free circulation".
8. In Section 3, Subsection 1, the words "or another end user" shall be inserted after the words "consumer".
9. In Section 3, Subsection 2, including footnote No. 7a, shall have the following wording:

"(2) If packaging for a certain product is made in accordance with the harmonized Czech technical standards^{7a)}, the requirements according to Subsection 1 shall be deemed fulfilled.

7a)

Section 4a of Act 22/1997 Coll., on technical requirements for products and on the amendment to certain other acts, as amended by subsequent regulations."

10. In Section 4, Subsection 1, Letter b) shall have the following wording:

"b)

The total sum of concentrations of lead, cadmium, mercury and chromium with oxidation number VI in a package or packaging device did not exceed the value of 100 micrograms/g (hereinafter the "limit value");".

11. In Section 4, Subsections 3 and 4, including footnote No. 9a, shall have the following wording:

"(3) If a package or packaging device is made in accordance with the harmonized Czech technical standards ^{7a)}, the requirements according to Subsection 1 shall be deemed fulfilled.

(4) No limit value according to Subsection 1, Letter b) is stipulated for packages and packaging devices produced exclusively from lead crystal glass ^{9a)}.

9a)

Decree 379/2000 Coll., stipulating conditions for the determination of individual types of crystal glass, their properties and forms of identifying crystal glass products."

12. In Section 4, Subsections 5 and 6 shall be inserted, including footnotes No. 9b and 9c, with the following wording:

"(5) The limit value according to Subsection 1, Letter b) may be exceeded in glass packages and packaging devices, provided that

a)

no lead, cadmium, mercury or chrome with the oxidizing number VI are deliberately inserted into the package or packaging device during the manufacturing process; for the purposes of this Contract and in accordance with the European Communities law ^{9b)} deliberate insertion shall mean the process of the deliberate use of a certain substance to create a package or packaging device, so that the substance is present in the produced package or packaging device and is the carrier of certain specific characteristics, appearance or quality of packaging; deliberate insertion shall not include the use of recycled material for the production of packages or packaging devices where part of the recycled materials may contain certain regulated quantities of heavy metals,

b)

the limit value is exceeded only as a consequence of added recycled materials and

c)

the producer of the packaging or packaging device conducts measurements of the concentrations of heavy metals in product samples, at least once a month, representing normal and regular production activity. These samples shall be collected from each single melting aggregate. The measured values of heavy metal concentrations are recorded and reported in the manner stipulated in Annex 5 to this Act.

"(6) The limit value according to Subsection 1, Letter b) may be exceeded in plastic crates and plastic pallets, provided that

a)

no lead, cadmium, mercury or chrome with the oxidizing number VI is deliberately inserted into the crates or pallets during the manufacturing process or during distribution;

b)

the limit value is exceeded only as a consequence of added recycled materials,

c)



the crates or pallets are produced through a recycling process using only recycling material produced from the recycling of other plastic crates or pallets, and the use of other material outside the recycling cycle is restricted to the minimum permissible limit and does not in any case exceed 20% of the weight of the material used for the production of such crates or pallets, and

- d) the material from which the crates or pallets are produced is visibly identified on such crates or pallets, in accordance with the European Communities law ^{9c)}.

9b) Commission Decision 2001/171/ES of 19 February 2001, establishing the conditions for marking for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.

9c) Annexes I to VII of Commission Decision 97/129/ES of 28 January 1997, establishing the identification system for packaging materials pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste.”

13. Section 6, including the heading, shall have the following wording:

"Section 6

Identification of Packaging

If a person marketing or putting into circulation a package or packed product indicates on the package or packed product the material from which the package is produced, this identification shall be in harmony with the European Communities law ^{9c)}.”

14. In Section 7, Subsection 2 shall read:

"(2) The specific aspects of these measures and the method and course of repeated use are stipulated in the relevant harmonized Czech technical standards ^{7a)}.”

15. In Section 10, Subsection 1, the first sentence shall be replaced with the sentence “Unless a person marketing or putting into circulation packages or packed products proves that these packages do not become waste in the Czech Republic, this person shall ensure the repurchase of these packages or waste from these packages.”

16. In Section 10, Subsection 1, second sentence, the words "directly from consumers" shall be cancelled.

17. In Section 12, Subsection 1 shall read:

"(1) Unless a person marketing or putting into circulation packages or packed products proves that these packages do not become waste in the Czech Republic, this person shall ensure that the waste from the packages of products marketed or put into circulation on the market by this person are re-used to the extent stipulated in Annex 3 to this Act.”

18. In Section 14, Subsection 1, the word “and” shall be replaced by “or”.

19. In Section 14, Subsection 2, including footnote No. 13a, shall have the following wording:

"(2) An application for registration in the List shall be filed with the Ministry of the Environment no later than within 60 days of the commencement of the obligation according to Subsection 1

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- a) in two hard copies and in electronic form on a technical data medium, or
- b) in electronic form identified with an electronic mark based on a qualified system certificate issued by an accredited provider of certification services or signed with a recognized electronic signature according to the relevant legal regulation ^{13a)}.

13a) Act. 227/2000 Coll., on electronic signatures, as amended by subsequent regulations.”

20. In Section 14, introductory clause to the provisions of Subsection 3, the words “and the following shall be attached to the application” shall be deleted.

21. In Section 14, Subsection 3, Letter g) the words “or put into circulation” shall be inserted after the words “marketed”.

22. In Section 14, Subsections 5 and 6 shall read:

“(5) Unless the application meets the requirements according to Subsections 2 and 3 or the data according to Subsection 3, Letters c), d), e) and g) are sufficient for the consideration of whether the applicant has secured the fulfilment of the obligations stipulated by this Act, the Ministry of the Environment shall request the applicant to supplement or further specify the application during a period stipulated by the Ministry; however, no less than 30 days. In addition, the applicant will be instructed on how to provide such supplementation or specifications. Should the applicant fail to specify the application during the period stipulated, the Ministry of the Environment will make the entry in the List on the basis of the available data and if there are any doubts as to whether the applicant has fulfilled the obligations stipulated by this Act, the Ministry of the Environment will request the competent control authority to conduct an audit.

“(6) The Ministry of the Environment will enter the applicant in the List within 30 days of the delivery of an application meeting all requirements according to Subsections 2 and 3 and including data sufficient for the consideration of whether the applicant has secured the fulfilment of the obligations stipulated by this Act; the Ministry shall notify the applicant about the execution of the entry within 14 days thereof.

23. In Section 15, Subsection 1, Letters a) through c) shall read:

- “a) to keep records concerning packages and package waste and concerning the manner of the disposal thereof,
- b) to provide notification of data from these records for the previous calendar year, no later than by 15 February of the following year, to the Ministry of the Environment,
- c) to prove – upon the request of the Ministry of the Environment or the Czech Environmental Inspectorate – the veracity of the data recorded and reported according to Letters a) and b).”.

24. In Section 15, Subsection 1, the full stop at the end of the provision of Letter c) shall be replaced by a comma and a Letter d) shall be added, which reads:

- “d) to keep documents with data maintained in these records and reported from these records during a period of at least 5 years.”



25. In Section 15, Subsection 2, the words “Letter a)” shall be replaced by the words “Letter b)”.

26. A new Section, 15a shall be inserted after Section 15, which reads:

“Section 15a

(1) Persons marketing packages or putting them into circulation need not fulfil the obligations stipulated in Sections 10 through 15, provided that they meet the following conditions, i.e. that

- a) the total quantity of the packages marketed or put into circulation per calendar year does not exceed 300 kg, and
- b) their annual turnover does not exceed CZK 4,500,000.

(2) A person making use of the exception as per Subsection 1 shall ensure the fulfilment of the obligations stipulated in Sections 10 through 15 immediately after it becomes apparent that the conditions according to Subsection 1 will not be fulfilled during the calendar year concerned.

(3) A person making use of the exception as per Subsection 1 shall prove – upon request – the fulfilment of the obligations stated in Subsection 1 to the control authorities specified in Section 31.

(4) Any person who fails to prove the fulfilment of the conditions stated in Subsection 1 with respect to a certain period shall be deemed subject to all duties specified in Sections 10 through 15 during this period.”

27. In Section 16, Subsection 1, the words “with its registered office in the Czech Republic” shall be cancelled.

28. In Section 17, the words “or unless the project securing joint fulfilment provides sufficient guarantee that the joint fulfilment will be performed duly and for a sufficiently long time, that the project securing joint fulfilment is sufficiently financially supported and will not threaten the fulfilment of the repurchase and reuse obligation by other parties according to Section 13, Subsection 1” shall be added at the end of the text of Subsection 4.

29. In Section 30, Subsection 1, the number “2000” shall be replaced by the number “800”, the word “calendar” shall be inserted after the word “following” and the words “no later than by 31 December of the current year” shall be replaced by the words “for the previous calendar year, no later than by 15 February of the following year”.

30. In Section 30, Subsection 2 shall read:



“(2) For the authorization decision issued according to Section 17, the applicant shall pay a registration fee of CZK 2,000. In each subsequent calendar year, the authorized company shall pay a registration fee of CZK 800 per person with whom the authorized company has concluded a contract for joint fulfilment which was valid during at least a part of the calendar year, for the previous calendar year, no later than by 15 February of the following year.”

31. In Section 30, Subsection 3 shall read:

“(3) The authorized company shall not be obliged to pay the registration fee according to Subsection 2 with respect to a person with whom the authorized company has concluded a contract for joint fulfilment which was valid only during a part of the calendar year, provided that the person marketed or put into circulation less than 300 kg of package during this part of the calendar year.”

32. In Sections 38 and 39, the word “consumer” shall be deleted.

33. Section 41, including the heading, shall have the following wording:

“Section 41

Customs Authorities

Customs authorities are entitled to examine whether packages or packed products imported to the Czech Republic or transported from EU member states to the Czech Republic fulfil the requirements of this Act. If it is doubtful whether the conditions of this Act have been fulfilled, the customs authorities shall release the examined goods into the relevant customs regime or for further transportation and handling, request the competent control authority to conduct an audit and notify the Ministry of the Environment of this request. The audits shall be conducted in accordance with the relevant legal regulations⁷⁾.”

34. Sections 44 to 46, including heading and footnote No. 29, shall have the following wording:

“Administrative Torts by Corporate Entities and Individual Entrepreneurs

Section 44

(1) Corporate entities or individual entrepreneurs shall be deemed to have committed an administrative tort by conducting activities for which authorization is required according to Section 17 without this authorization, or offering – without authorization – third parties the opportunity to conclude contracts for activities for which authorization is required.

(2) Corporate entities or individual entrepreneurs shall be deemed to have committed an administrative tort by

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- a) breaching the duty stipulated in Section 3 as a person marketing packaging,
 - b) failing to meet any of the conditions for marketing packages, packed products or packaging devices according to Section 3 as a person marketing a package, packed product or packaging device,
 - c) failing to submit – upon request - technical documentation to the control authority according to Section 5, Subsection 1, Letter a) as the person marketing the package, or failing to demonstrably inform its customers according Section 5, Subsection 1, Letter b),
 - d) failing to submit – upon request - technical documentation to the control authority according to Section 5, Subsection 2, Letter a) as the person marketing the packaging device, or failing to demonstrably inform its customers according Section 5, Subsection 2, Letter b),
 - e) failing to adopt measures as the person marketing or putting into circulation products with re-usable or returnable packaging, owing to which it would be possible to make repeated use of the used packages according to Section 7, or failing to ensure the due reuse of returnable packages or use of the waste from this packaging according to Section 8,
 - f) breaching any of the duties concerning returnable packages (to be repurchased) according to Section 9 as the person specified in Section 9,
 - g) failing to ensure the repurchase of these packages or waste from these packages according to Section 10, Subsection 1 as the person marketing or putting into circulation packages or packed products,
 - h) failing to ensure the reuse of waste from packages according to Section 12 as the person marketing or putting into circulation packages or packed products,
 - i) breaching the duty to submit an application for entry into the List according to Section 14, Subsection 1 as the person marketing or putting into circulation packages or packed products,
 - j) failing to fulfil the duty to provide notification of changes in data according to Section 14, Subsection 7 as the person entered in the List, or
 - k) breaching any of the duties to register according to Section 15 as the person subject to the obligation to be entered into the List.

(3) Authorized companies shall be deemed to have committed an administrative tort by

- a) failing to fulfil any of the authorization conditions stipulated in the authorization decision pursuant to Section 17, Subsection 6, Letters c) through f),
- b) breaching the restrictions concerning the management of shares according to Section 20, Subsection 1,

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- c) breaching the ban on the distribution of profit among shareholders according to Section 20, Subsection 2,
 - d) breaching the prohibition to decrease or increase its registered capital according to Section 20, Subsection 3,
 - e) breaching the prohibition to become a member of a body or be involved in the business of another corporate entity according to Section 20, Subsection 4,
 - f) breaching the ban to hold shareholders' meetings without presenting an extract from the register of registered share issuers according to Section 20, Subsection 5,
 - g) enabling – in conflict with Section 20, Subsection 6 – persons whose shareholder's rights have been suspended by the Ministry of the Environment to participate in shareholders' meetings, or persons not stated in the issue extract,
 - h) breaching the prohibition to conclude contracts, secure obligations or transfer assets without consideration according to Section 20, Subsection 7,
 - i) breaching the prohibition to conclude contracts according to Section 20, Subsection 9,
 - j) failing to apply for approval by the Ministry of the Environment with respect to the issue of a resolution by the shareholders' meeting in events stated in Section 20, Subsection 10,
 - k) stipulating conditions concerning the conclusion of a contract for joint fulfilment in conflict with Section 21, Subsection 1, Letter a),
 - l) breaching the obligation to conclude a contract according to Section 21, Subsection 1, Letter b) or c),
 - m) breaching the ban on disclosing information to third parties according to Section 21, Subsection 2,
 - n) concluding a contract with a municipality in conflict with the provisions of Section 21, Subsection 3 or refusing to conclude a contract with a municipality in conflict with the provisions of Section 21, Subsection 3,
 - o) breaching the prohibition to conduct business activities according to Section 22,
 - p) breaching the obligation to record and report persons with whom a contract for joint fulfilment has been concluded or record the quantities of packages and waste packages and the manner of their reuse, and/or the obligation to have the records of the quantities of packages and waste packages and manner of their reuse duly audited according to Section 23, Subsection 1, or
 - q) failing to publish economic results according to the provisions of Section 23, Subsection 3.



(4) Authorized companies or corporate entities and/or individual entrepreneurs shall be deemed to have committed an administrative tort by failing to fulfil the obligation to inform customers and consumers according to Section 10, Subsection 2 as persons marketing or putting in circulation products sold to consumers.

Section 45

Penalties shall be imposed for administrative torts according to Section 44

- a) up to CZK 500,000, as regards administrative torts according to Subsection 2, Letters a), c) through f) and Letters i) and j) or according to Subsection 4,
- b) up to CZK 1,000,000, as regards administrative torts according to Subsection 2, Letter k,
- c) up to CZK 10,000,000, as regards administrative torts according to Subsection 1, Subsection 2, Letter b), g) or h), or according to Subsection 3, Letters a) through q).

Section 46

(1) Corporate entities shall not be held liable for an administrative tort should they prove that they have exerted every effort which may be reasonably required to prevent from such a breach of a legal obligation. As regards administrative torts according to Section 44, Subsection 2, Letters g) and h), corporate entities shall be exempted from their responsibility if the obligation is breached within 3 months of the day on which the authorized person with which the corporate entity or individual entrepreneur concluded a contract for joint fulfilment of obligations to which the corporate entity or individual entrepreneur concerned are subject according to Section 10, Subsection 1, or Section 12, loses its licence for such activities.

(2) The amount of the penalty imposed against corporate entities shall reflect the seriousness of the administrative tort concerned, particularly the form of commitment and its consequences, as well as the circumstances under which it was committed.

(3) Legal entities shall cease to be liable for an administrative tort provided that the administrative authority does not instigate proceedings concerning such a tort within 1 year of the day on which the administrative authority becomes aware of the tort, no later than 3 years from the day on which the tort was committed.

(4) Proceedings concerning administrative torts according to this Act shall be conducted – at the first instance – by the Regional Hygiene Station, the Czech Trade Inspection, State Agricultural and Food Inspection, State Institute for Drug Control, Institute for State Control of Veterinary Biologicals and Medicaments or the Czech Environmental Inspectorate, to the extent of their competences stipulated in Sections 35 through 40. If more administrative authorities are competent to deal with an administrative tort concerned with respect to the extent of their competences, the proceedings concerning the administrative tort in question shall be conducted by the administrative authority which has first instigated such proceedings. The administrative authority instigating proceedings shall duly notify all administrative authorities competent to conduct proceedings concerning administrative torts according to this Act.

(5) The responsibility for action associated with the business undertaking of an individual²⁹⁾ or in direct connection therewith shall be subject to the provisions of this Act regarding the responsibility and disciplinary action against legal entities.

(6) Penalties shall be payable within 30 days of the day on which the decisions imposing such penalties become legally effective.

(7) Penalties shall be collected by the body which has imposed them, and enforced by the customs authority.

(8) The income from penalties shall be income to the budget from which the activities of the body which has imposed the penalty concerned is financed, with the exception of penalties imposed by the Czech Environmental Inspectorate, which shall be the income of the State Environmental Fund of the Czech Republic.

29)

Section 2, Subsection 2 of the Commercial Code.”

35. In Section 49, Letter e), the words “and Section 32, Letter m)” shall be inserted after the words “the provisions of Section 14”.

36. In Section 50, Subsection 3 shall be deleted.

The existing Subsection 4 shall be identified as Subsection 3.

37. Annex 1 shall read:

“Annex 1 to Act 477/2001 Coll.”

Criteria and examples clarifying the meaning of the term packing

Criterion 1

A product compliant with the definition of packing as per Section 2, letter a), simultaneously fulfilling or capable of fulfilling a function other than that of packing, shall be considered packing only if:

- a) it is not an integral part of another product;
- b) is not essential for closing, carrying or protecting such product for the duration of its service life; and
- c) all parts thereof have not been designed to be used, consumed and/or removed jointly.

Examples illustrating criterion 1

Packing

A box for sweets

A foil over a CD box

Products that are not packing

A flowerpot to be used for the life of the flower; cases, boxes and cartridges for tools and instruments. tea bags; wax layers on cheeses; sausage casing

Criterion 2

Items designed to be filled at the point of sale, are considered packing, if they fulfil the function of packing.

Examples illustrating criterion 2

Packing

Sacs and carrying bags made of paper or plastic

Disposable plates and cups

Covering foils; sandwich bags; aluminium foil

Products that are not packing

Mixer

Disposable cutlery



Metals	AL												
	FE												
	Total												
Composite materials													
Wood													
Other													
Total													

Material	Packaging waste recovered or incinerated in incineration plants with energy release												Total recovery and incineration of waste in incineration plant with release of energy
	Material recycling of one-way packaging	Material recycling of reusable packaging	Other forms of recycling of one-way packaging	Other forms of recycling of reusable packaging	Total recycling	Energy recovery of one-way packaging	Energy recovery of reusable packaging	Other forms of recovery of one-way packaging	Other forms of recovery of reusable packaging	Incineration of one-way packaging in incineration plant with release of energy	Incineration of reusable packaging in incineration plant with release of energy*		
	11	12	13	14	15	16	17	18	19	20	21	22	
Glass													
Plastics	PET												
	PE												
	PVC												
	PP												
	PS												
	Other												
	Total												
Paper and board													
Metals	AL												
	FE												
	Total												
Composite materials													
Wood													
Other													
Total													

Estimate on the basis of empiric experience and specific single-way methods – packages which do not fulfil the criteria in Section 13, Subsection 2, reusable – packages which fulfil the criteria in Section 13, Subsection 2 Calculation of **columns**

8=2+4-6

9 = 3 + 5 -7

10=8+9

15= 11 +12+13+14

22 = 15 + 16 + 17 + 18 + 19 + 20 + 21 "

40. Annex 5 is hereby supplemented and shall read:

Annex 5 to Act 477/2001 Coll.

Measured values of heavy metal concentrations

Table 1

Measured values of heavy metal concentrations in the glass melt of individual smelting aggregates, in micrograms per gram

	Aggregate No.	1	2	3	4	...	x
Month							
January							
February							
March							
April							
May							
June							
July							
August							
September							
October							
November							
December							

If the measured value of heavy metal concentration exceeds 200 micrograms per gram in any month at any of the measured aggregates, the values measured during a period of the following 12 months shall be entered in Table 2.

Table 2

Measured values of heavy metal concentration in the glass melts of the melting aggregate No. __, in micrograms per gram, for the purposes of reporting to the Ministry of the Environment

Melting aggregate No.		
Month	Date of measuring	Measured value
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Total	xxx	
Annual average P	xxx	
P - 200	xxx	

If the total P - 200 in any of the melting aggregates is higher than zero, it is necessary to submit a report with respect to this aggregate to the Ministry of the Environment.

The report shall comprise:

- 
1. Measured values
 2. Description of measuring methods used
 3. Suspicious sources of heavy metal concentrations identified
 4. Detailed description of measures adopted in order to reduce heavy metal concentrations”.

Article II

Transitional Provisions

1. The proceedings concerning administrative torts commenced and pending prior to the effective date of this Act shall be completed according to the currently valid legal regulations.

2. Requirements concerning the marketing or putting into circulation of packages produced prior to the effective date of this Act shall be considered according to the currently valid legal regulations.

Article III

Annulling Provisions

Decree 115/2002 Coll., on details concerning waste management, is hereby annulled.

Article IV

Effectiveness

This Act shall come into force as of the date of its promulgation.