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THE ALLIANCE FOR
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Association des Industries de Marque
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The European Organization for Packaging and the Environment



Packaging and the EU Directive on Waste: Questions & Answers

Q & A

1 What are the Waste Framework and Packaging and Packaging Waste Directives?

The EU Directive on waste¹ (or 'Waste Framework Directive') is an environmental protection measure which establishes rules for how waste should be managed in the EU. It aims to reduce the environmental impact of waste and to encourage efficient use of resources through reuse, recycling and other forms of recovery. This Directive has recently been revised.

The Packaging and Packaging Waste Directive² is a harmonisation measure, meaning that it establishes common rules that help enable goods to trade freely and easily throughout the EU. It has a twin objective: to help prevent obstacles to trade (through harmonisation) and to reduce the environmental impact of packaging. It defines minimum ('essential') requirements for packaging and sets targets for the amount of used packaging that must be recycled or otherwise recovered in each EU Member State. The European Commission proposed the Directive in the early nineties because different national environmental measures were causing competitive distortions and obstacles to the free movement of packaged goods.

2 What is in the revision of the Waste Framework Directive?

As a 30-year-old law (adopted in 1975), the original Waste Framework Directive needed to be modernised. The rather high number of legal cases related to this Directive also highlighted a need for clarification.

The revised Directive contains a number of new definitions, sets targets for reuse and recycling, and includes a requirement for Member States to prepare waste prevention programmes. It specifies a 'hierarchy' of waste management options and says that in their national policies and legislation, Member States should give preference to waste prevention, then to reuse, then recycling, other forms of recovery, and finally to use disposal (i.e. landfill or incineration without energy recovery) as the least favoured option. However, Member States may depart from this hierarchy when defining policies on specific waste streams if it makes environmental sense to do so.

3 Does the waste management hierarchy apply to packaging in practice or in law?

In a strict sense, no. When you consider the whole life-span of a package, the most environmentally sound way to deal with it after use will vary according to a number of factors. A study³ prepared for EUROPEN offers real-life examples of how the hierarchy has been implemented with respect to packaging in some European cities and regions. It finds that the best environmental options depend on factors such as geography, climate, demography, and the state of the waste management infrastructure. It goes without saying that waste management scenarios also have to be taken into account when a package is being designed.

Legally-speaking, the question of how the hierarchy applies to packaging has been tested. The European Court of Justice ruled in 2004⁴ that the Packaging and Packaging Waste Directive does not give preference to reuse over recovery (including recycling, energy recovery, etc.) of used packaging, hence there is no hierarchy of treatment options for packaging. In addition, the Waste Framework Directive says that the hierarchy applies to waste prevention and management legislation. As explained under question 1 above, the Packaging and Packaging Waste Directive is more than a waste prevention and management law.

In practice, preventing packaging waste (i.e. used packaging being disposed of in landfill or by incineration without energy recovery) is of course a priority and the Packaging and Packaging Waste Directive says that only the minimum amount of packaging needed to ensure the safety and acceptance of the packed product may be used. Companies in the packaging value chain have together made huge advances over the past decade or more in making packaging lighter and thinner thus saving resources and, in the end, preventing waste. It also important to remember that packaging itself prevents waste by providing a means to protect and deliver products. It may be that the environmental impact of using enough packaging to protect a product is lower than the environmental impact of product losses and waste caused by insufficient packaging.

4 Can the waste hierarchy be used to justify a particular packaging policy?

If a measure is likely to create competitive distortions or to discriminate unfairly between packaging systems or cause obstacles to the free movement of packaged goods, then the waste hierarchy cannot be used to justify it. Such a measure would risk being in breach of the Packaging and Packaging Waste Directive and could be challenged.

5 Should the Packaging and Packaging Waste Directive be revised so that measures can be taken in line with the Waste Framework Directive?

The aims and objectives (as well as the legal bases) of the two Directives are not the same. The Packaging and Packaging Waste Directive has a dual objective: environmental protection and internal market harmonisation. The Waste Framework Directive is purely an environmental protection measure and does not address trade issues. For these reasons, the organisations supporting this document would not advocate such an alignment.

6 Why is the internal market so important? Shouldn't we be more worried about the environment?

Aside from the fact that free movement of goods is a fundamental principle underpinning the European Union, the internal market makes a critical contribution to the prosperity of Europeans *and* to environmental protection. Ideally, companies would have access to a large market with a single set of rules which would avoid unnecessary costs and allow companies to spend money on innovation and to develop products and manufacturing processes that have a lower environmental impact. In our globally-trading world, successful companies must be responsible and competitive at the same time.

7 Does the Packaging and Packaging Waste Directive achieve as much as the Waste Framework Directive?

In our opinion, yes. In fact in some areas, it has already achieved more when you consider management of used packaging alone. According to the European Commission⁵, 25 million tonnes of CO₂ equivalent and 10 million tonnes of oil equivalent have been saved due to packaging recycling and other forms of recovery (cumulative savings to 2002).

Indeed, the same data show that there has been an absolute reduction in packaging waste going to landfill and a decoupling of growth in packaging going onto the market from growth in GDP. The same cannot be said for municipal solid waste in general. Industry-funded packaging recovery schemes have been the major contributing factor to this success in most European countries.

8 What about prevention?

The Waste Framework Directive requires Member States to develop waste prevention programmes. These programmes may include packaging in their scope, but if they do they must be notified to the European Commission to check that they will not inadvertently cause trade barriers. The organisations supporting this document welcome the fact that the European Commission will issue guidelines to help the Member States prepare their prevention programmes.

Although it is not a specific requirement of the Packaging and Packaging Waste Directive, some countries already have packaging waste prevention plans. In these countries, companies are required to draw up documents to demonstrate that they have taken measures to prevent packaging at source. However, according to a study⁶ done for the European Commission, overall patterns of packaging waste generation are not significantly different between countries with prevention plans and those without.

Prevention is however a vital element in the essential requirements (see answer to question 1) and every packaging designer is required to consider prevention in the design of a packaging system.

Companies that apply the CEN suite of Standards on packaging and environment⁷ demonstrate their commitment to reducing to a minimum the weight of packaging, and to dealing with used packaging in the most environmentally sound manner. Our organisations believe it is essential for the Member States to respect and monitor compliance with the essential requirements of the EU Packaging and Packaging Waste Directive, which would help ensure that the internal market *and* the environmental objectives of the Directive are achieved.

It is unfortunate that widespread failure by the Member States to monitor compliance with the essential requirements has possibly hampered the achievement of optimal results in the goal of minimizing packaging use, as the European Commission has noted in its December 2006 Report⁸: "Lack of progress on essential requirements represents a major problem in the implementation process of the Directive with respect to the internal market. (...) The enforcement of essential requirements will bring additional benefits in terms of prevention, recycling and reduction of hazardous substances in packaging".

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Endnotes

- 1 Directive 2008/98/EC on waste and repealing certain Directives, OJ L 312 of 22.11.2008
- 2 Directive 94/62/EC on packaging and packaging waste, OJ L 365 of 31.12.1994
- 3 *The use of the waste hierarchy in certain parts of Europe: examples of a flexible approach to the hierarchy*, Ffact Management, July 2006, 8 pages. This study can be downloaded free of charge from the EUROOPEN website: http://www.europen.be//download_protected_file.php?file=106
- 4 Cases C-463/01 Commission v. Germany and C-309/02 Radlberger Getränke GmbH & Co / S. Spitz KG v. Land Baden-Württemberg
- 5 *Report from the Commission to the Council and the European Parliament on the Implementation of Directive 94/62/EC on Packaging and Packaging Waste and its Impact on the Environment, as well as on the Functioning of the Internal Market*, European Commission, 6 December 2006. (COM(2006) 767)
- 6 *Study on the Implementation of Directive 94/62/EC on Packaging and Packaging Waste and Options to Strengthen Prevention and Reuse of Packaging*, Ecolas/Pira, February 2005
- 7 The CEN suite of Standards EN 13427-EN 13432 are European harmonised standards formally recognised by the European Commission. For further information, see EUROOPEN's website www.europen.be.
- 8 See endnote 5.