

THE FOLLOWING ASSOCIATIONS SUPPORT THESE COMMENTS:



DRAFT EU WASTE PREVENTION GUIDELINES
COMMENTS FROM THE PACKAGING VALUE CHAIN

EUROPEN—The European Organization for Packaging and the Environment—and the abovementioned associations support the need for guidelines for EU Member States on waste prevention programmes. We are glad to have the opportunity to offer the views of the packaging value chain on the draft guidelines presented at the Workshop on 19 October.

In this paper we summarise our views with regard to the added value of EU Guidelines in general and recommendations on packaging waste in particular.

Summary

The packaging value chain has many years of experience in the area of waste prevention. Source reduction has been a legal requirement since the Packaging and Packaging Waste Directive was adopted in 1994 and growth in packaging placed on the market (measured by weight) has been slower than growth in GDP over the period 1998-2007ⁱ. The amount of packaging waste being sent for final disposal in the EU-15 has decreased by 35% from 29.2 million tonnes to 18.9 million tonnes during this periodⁱⁱ.

In addition to the legal requirement, there is also a European harmonised standard on source reduction for packaging (EN 13428). This standard specifies a procedure for assessing packaging during the design phase to ensure that the weight and/or volume of its material content are at the minimum possible, without compromising 10 packaging performance criteria. EUROPEN strongly supports use of this standard which encourages innovation and continuous improvement on environmental performance over time.

EUROPEN acknowledges the European Commission's support for better regulation and growth and jobs, and its views on prevention in policy documents addressing packaging.

We would welcome inclusion in the guidelines of EU principles and rules which Member States should take into consideration when drafting national waste prevention programmes. This would help to ensure that the obligation under Article 29(5) of Directive 2008/98/EC is fully implemented.

Guidelines on Waste Prevention Programmes

Throughout the legislative process that led to adoption of the revised Waste Framework Directive, EUROOPEN advocated European Commission guidelines for Member States on national prevention programmes. We believe that the Commission's role in this area should be to offer EU guidance aiming to avoid 27 different national approaches to prevention.

Differences in national requirements (e.g. on design or use of economic instruments) risk causing disruption to the EU internal market and distortions of competition. EUROOPEN supports the objective of reducing waste and its environmental impact but, even if they are voluntary, measures must be proportional and respect Treaty and secondary legislative provisions. Clear EU guidelines on waste prevention are a pre-requisite to safeguarding the proper functioning of the internal market. To help avoid internal market disruptions, provisions on packaging in national prevention programmes must be notified as drafts to the European Commission in accordance with Article 16 of the Packaging and Packaging Waste Directive.

Definition of prevention

The Packaging and Packaging Waste Directive is *lex specialis* to the Waste Framework Directive, meaning that it takes precedence over the Waste Framework Directive where packaging and packaging waste are concerned. This has been confirmed by the European Commission in its recent Communication on beverage packagingⁱⁱⁱ. Therefore, the definitions in Directive 94/62/EC on packaging and packaging waste should be referred to when addressing packaging.

According to the Packaging and Packaging Waste Directive (Article 3),

"prevention' shall mean the reduction of the quantity and of the harmfulness for the environment of:

- *materials and substances contained in packaging and packaging waste,*
- *packaging and packaging waste at production process level and at the marketing, distribution, utilization and elimination stages,*

in particular by developing 'clean' products and technology."

According to the Packaging and Packaging Waste Directive, reusable packaging becomes waste when no longer subject to reuse.

The European Court of Justice has confirmed that Directive 94/62/EC does not establish a hierarchy between the reuse of packaging and the recovery of packaging waste^{iv}. The Commission acknowledges this interpretation in its Communication on beverage packaging^v.

EUROOPEN members do not oppose the promotion of reusable packaging systems, provided that measures are environmentally justified and do not hinder the free movement of goods or fair competition. The Commission has provided guidance on measures that can be taken without infringing EU rules in its Communication on beverage packaging, deposit systems and free movement of goods (OJ C107, 9.5.2009).

There has been much controversy over the years over the environmental benefits of reusable packaging systems, but EUROOPEN supports the European Commission's view that, *"most studies found reusable packaging to be environmentally more beneficial in situations where transport distances were small and return rates high, while*

one-way packaging performed better in specific situations with generally high transport distances and low return rates.^{vi} This perspective is needed to ensure the proper functioning of the Single Market.

The draft guidelines appear to take the definition of 'packaging' in the Packaging and Packaging Waste Directive as the basis for a definition of 'packaging waste' (page 35). EUROOPEN would welcome clarification that the materials to which the guidelines refer are 'packaging' as products and not 'packaging waste'. These materials become waste in legal terms only when the holder discards or intends to discard them.

Key waste streams

EUROOPEN supports the Commission's stated aspiration to tackle areas which have the greatest opportunity for positive impact with the lowest effort and cost. According to the Commission, "the overall environmental impacts of packaging are in the order of magnitude of one to a few percent of the overall economy"^{vii}.

Life cycle approach and resource efficiency

EUROOPEN strongly advocates life-cycle thinking in order to avoid unintentionally transferring environmental burden from one phase of the life cycle to another. In its 2006 Report on the impact and implementation of the Packaging and Packaging Waste Directive, the European Commission notes that "*it is over-simplifying and often incorrect to conclude that less packaging is better for the environment, since in many cases less packaging means more damage to the packed product.*"^{viii}

With life-cycle thinking in mind, the recommendation that tertiary packaging should be addressed separately (page 35) is neither justified nor scientifically sound. Prevention measures that address only one level of packaging risk causing negative environmental impact at another stage in the supply chain or life cycle phase. Most products leave production facilities with three levels of packaging (primary, secondary and tertiary) and selecting the optimum balance between these three levels is a critical element in packaging design.

Similarly, regardless of which level of the packaging system is addressed, all packaging materials have properties that may present advantages or disadvantages depending on the context within which they are used. No one material has a monopoly on environmental virtue.

The Commission and Member State authorities may find it useful to know that guidance^{ix} has recently been published for companies on the role of packaging in an overall sustainability strategy. This guidance contains practical advice on how to enhance the environmental performance of packaging throughout its life cycle in collaboration with partners along a supply chain.

Suggestions for guidance

EUROOPEN suggests the following guidelines for Member States when drafting national waste prevention programmes that address packaging:

1. Assess the expected environmental benefit, economic cost and administrative effort, taking into account the full life-cycle of packaging and packed products.

2. Refer to Directive 94/62/EC on packaging and packaging waste to ensure that measures do not contradict or reduce the effectiveness of existing legal requirements. Consider the requirement for Member States to ensure that packaging placed on the market complies with the Essential Requirements^x.
3. Refer to the 2006 European Commission Report on the implementation and impact of the Packaging and Packaging Waste Directive (pages 11-21) for its assessment of packaging prevention.
4. Check that measures do not disrupt the internal market nor introduce unfair competitive distortions^{xi}.
5. For measures addressing beverage packaging, refer to the 2009 Commission Communication on beverage packaging, deposit systems and free movement of goods.
6. When considering economic instruments, EUROOPEN recommends the following acceptability tests:
 - costs should be proportional to economic and environmental benefits;
 - instruments designed to fund a specific objective should be set at a level appropriate for the achievement of that objective, and should be abolished or reduced proportionately once the target has been achieved;
 - barriers to trade and distortions of competition should not be created, and there should be no unjustified discrimination between materials as a result of taxes, levies or deposit systems;
 - European manufacturers' cost base should not be raised to a level where companies based outside Europe gain a competitive advantage supplying into Europe;
 - economic instruments should not limit manufacturers' options by prescribing production and distribution methods which could be rendered obsolete or restrict new developments or innovations that produce positive environmental and economic benefits;
 - cost of collection and administration should not be excessive in proportion to the revenues, and waste disposal taxes or charges must be based on objective criteria directly related to the cost of the service, such as their waste-production capacity or the nature of the waste produced^{xii}.
7. Ensure that provisions on packaging in national prevention programmes are notified to the European Commission in accordance with Article 16 of the Packaging and Packaging Waste Directive.

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ACE, The Alliance for Beverage Cartons and the Environment, www.beveragecarton.eu
BCME, Beverage Can Makers Europe, www.bcme.org
FEVE, The European Container Glass Federation, www.feve.org
Plastics*Europe*, Association of Plastics Manufacturers, www.plasticseurope.org

ⁱ European Commission data 1998-2007

ⁱⁱ *ibid*

ⁱⁱⁱ Communication from the Commission, Beverage packaging, deposit systems and free movement of goods (page 3, footnote 10), 2009/C 107/01, OJ C 107, 9.5.2009

^{iv} Case C-309/02 Radlberger Spitz (2004) ECR I-11763, para. 33; Case C)-463-01 Commission v Germany (2004) ECR I-11705, para 40.

^v Communication from the Commission, Beverage packaging, deposit systems and free movement of goods (page 3), 2009/C 107/01, OJ C 107, 9.5.2009

^{vi} 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, COM(2006) 767 final, 6.12.2006 (page 24)

^{vii} 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, COM(2006) 767 final, 6.12.2006 (page 3). Although this statement is based on data from 2002 (when packaging waste in the EU-15 accounted for around 5% of total waste generation), the overall situation is unlikely to have changed significantly in 7 years.

^{viii} 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, COM(2006) 767 final, 6.12.2006 (page 11)

^{ix} *Packaging in the Sustainability Agenda: A Guide for Corporate Decision Makers*, EUROPEN/ECR Europe, 2009. ECR Europe is a voluntary and collaborative retailer-manufacturer platform, see www.ecr-net.org

^x EUROPEN can provide more detailed recommendations on request.

^{xi} This is important because, 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. This would allow companies to spend more money on innovation and to develop products and manufacturing processes that have a lower environmental impact (and possibly lower costs in the long term). In our globally trading world, successful companies must be responsible and competitive at the same time.

^{xii} ECJ Case C-254/08