

Comments from EUROPEN

ARCADIS SURVEY ON COMPLIANCE WITH THE ESSENTIAL REQUIREMENTS

Introduction

EUROPEN members are very disappointed with the final report of Arcadis: 'A Survey on compliance with the Essential Requirements in the Member States' prepared for the European Commission – DG Environment. Our members find that the survey falls short of adding significant value to finding a means of improving member state monitoring of compliance with the Essential Requirements. Additionally, some of the policy options the report proposes, if followed, could jeopardize the achievements of the twin objectives of the Packaging and Packaging Waste Directive already realized.

EUROPEN Comments:

- The report is not in line with the Terms of Reference (ToR) for the survey. The tasks set out in the ToR have not been completed and detailed policy recommendations have been made that were not part of the ToR. These recommendations appear to have been transcribed from suggestions made by interviewees, but they have not been evaluated or analysed in any way.
- The report is very abstract. It assumes that if legislation is not properly enforced, nothing will happen. Yet the Commission's recent review of the IPP programme¹ concluded that while the member states have been slow to act on it, trade and industry have taken a lead in making it a reality. A survey of published CSR and/or sustainability reports of major companies will readily show how much is happening in this regard independent of legislation.
- The report shows an inadequate understanding of how packaging design decisions are made. It assumes that producers should be applying the Essential Requirements in isolation from all other considerations. In reality, packaging design involves a series of environmental and functional trade-offs².
- The authors of the report do not seem to recognize that the Essential Requirements were devised as a way of defining the environmental criteria that packaging must fulfil in order to be allowed to move freely throughout the EU.

Scope, substance and quality of the survey

The report does not reproduce the ToR as issued by the Commission according to which the contractor was *"to assess available data and information, identify and address remaining needs with a view to assisting the Commission services and member states*

¹ *Commission Report on the State of Implementation of Integrated Product Policy, December 2009. "Most product-specific IPP activities, including the Commission's own pilot projects, were only possible with the proactive involvement of industry and NGOs. Industry has also been, and is being, instrumental in making life-cycle information available, notably by contributing to the European Life-Cycle Database." "Increasingly, industry sectors apply life-cycle thinking to inform their approaches towards product policy and communication with customers and authorities."*

² See *Packaging in the Sustainability Agenda : A Guide for Corporate Decision Makers* EUROPEN/ECR Europe 2009.

authorities in evaluating the compliance to the Essential Requirements.... The study should collect data from national authorities on the compliance of the Essential Requirements on their territory, the accepted mechanisms followed by the economic operators to prove conformity, the percentage of the economic operators using the CEN packaging and environmental standards and the existing enforcement mechanisms in place, if any.”

Although the report contains information from interviews with authorities from selected member states³ on how compliance with the Essential Requirements is monitored or why it is not monitored it does not satisfactorily answer the question whether companies perform audits to ensure consistency in compliance. During the preparation of the survey, Arcadis did not respond to invitations from EUROOPEN members to visit companies to see how compliance with the Essential Requirements is in practice assured.

Additionally the survey did not attempt an estimate of the percentage of economic operators using the CEN standards. The report merely states that “EUROOPEN claims that 65% of the industry is following the CEN standards, and 12% is following its own standards.” This was not a “claim”, but the findings from a survey of its own members that EUROOPEN carried out in 2003.⁴

The consultant proceeded to evaluate the wording of the Essential Requirements and make detailed policy recommendations based on interviews with member state authorities. This was not part of the brief. The resultant recommendations are in some cases contradictory with each other and with the objectives of the Packaging and Packaging Waste Directive.

Examples of the consultant’s apparent lack of proper understanding of the functions of packaging and of the Packaging and Packaging Waste Directive (including its Essential Requirements) are:

- 1) Throughout the survey, reusable packaging is assumed to be preferable to single-use packaging. No evidence is provided to support this and in any case is irrelevant as the Essential Requirements do not require the promotion of reuse.
- 2) The report suggests making the CEN Standards mandatory⁵ without any consideration for the fundamental principle that Standards should remain voluntary.
- 3) Conversely, the report suggests that the Essential Requirements should be made voluntary so that member states could adopt their own more detailed policy measures. Under such an amendment one of the twin pillars on which the Directive rests - “ensure the functioning of the internal market” - would collapse.
- 4) The suggestion that recyclability should be redefined to take account of the likelihood of the material being recycled in the particular national market concerned, similarly overlooks the Single Market dimension – as well as ignoring the fact that the Essential Requirements are design requirements (it is obviously impossible to manufacture packaging which is already recycled).

³ Belgium, Bulgaria, the Czech Republic, Cyprus, France and the UK.

⁴ *Compliance with the Packaging and Packaging Waste Directive’s Essential Requirements for Source Reduction: A survey of best practices of EUROOPEN Member Companies*, FFact Management Consultants, December 2003.

⁵ Page 57.

- 5) Throughout the survey a confusing umbrella term (“the requirement on hazardous substances”) is used to describe the obligation to minimise noxious and hazardous substances in packaging and the heavy metals limit.
- 6) The suggestion to integrate a waste management hierarchy into the Essential Requirements would create enormous practical and legal problems. This idea appears to rest on the false assumption that the waste management hierarchy in the Waste Framework Directive is a design tool as well as a guide to waste management operations. Packaging design has to be based on many considerations that do not specifically relate to waste – energy and water consumption, for example.
- 7) One policy option the report suggests, *“not to endorse the concept that the market actors can make strategic choices on the products and their packaging freely, based on market demand and consumer acceptance”* would, if adopted, be a recipe for making Europe uncompetitive. EUROOPEN contends that had that principle been established in 1994, industry would still be focusing exclusively on the Essential Requirements, and developments aimed at the broader and more important issues of sustainability would be subservient. As recognised by the Commission, industry is taking the lead on sustainability.

The report attributes a number of apparently unsubstantiated views to the packaging value chain, and others are misquoted. For example,

- 1) Industry is claimed to have said that the most important effect of the Essential Requirements is not the reduction of packaging (waste), but the free movement of packaging.⁶
- 2) All Member State representatives that were interviewed are claimed to agree on *“the major driving force for industry to comply with the Essential Requirements (especially regarding prevention), namely cost reduction.”*⁷

EUROOPEN has long held the view that the Packaging and Packaging Waste Directive, including its Essential Requirements, have the dual benefit of reducing environmental impact while protecting the free movement of packaging and packaged goods. It is true that the Essential Requirements are needed in the legislation to avoid disharmonising measures on packaging, but this is not the only positive effect. Indeed, EUROOPEN's written comments to Arcadis clearly state that our members believe that support for the approach taken by the Directive has been vindicated by its environmental successes.

Assessment of monitoring of compliance by Member States

The section of the survey which does fall within the scope of the Commission brief confirms EUROOPEN's belief that few member states do monitor compliance with the Essential Requirements. Reasons for failure to do so⁸ include a belief that the Essential Requirements are too vague to be enforceable, and that checking compliance with the Essential Requirements is not a high priority for authorities with limited inspection budgets.

⁶ Page 32.

⁷ Page 42.

⁸ Page 39.

EUROPEN would like to see wider enforcement of the Essential Requirements to protect the reputation of the industry against irresponsible producers on the one hand and from unfounded allegations of over-packaging on the other hand. Notwithstanding the present levels of compliance monitoring we believe that the Essential Requirements and use of the Commission mandated CEN standards as a means of demonstrating compliance, have had a positive effect in the marketplace. The standards provide expert guidance on eco design criteria for packaging, and are the basis of a number of more specific design guides produced by various public-sector and industry bodies including EUROPEN.

The fact that at national level enforcement of the Essential Requirements has not been seen as a priority could be interpreted as evidence that non-compliance is not a major cause of concern. Therefore suggestions to amend the Essential Requirements to make them more restrictive may conflict with the proportionality principle.

Policy options proposed in the report

These fall under three headings:

- 1) Policy options for implementation and inspection measures with no impact on the Essential Requirements or CEN standards (pages 47-52)
- 2) Policy options with possible impact on the CEN standards (pages 52-55)
- 3) Policy options with impact on the formulation of the Essential Requirements (pages 55-58).

We note however that the policy options do not necessarily correspond with the heading under which they are proposed. Few if any of the options are likely to achieve the support of the packaging value chain, nor would they respect the proportionality principle. The one exception is a suggestion to integrate the CEN standards in ISO certification systems (page 41), but this idea is not developed.

Because assessment of the Essential Requirements and the submission of policy options based on the Arcadis evaluation was not part of the brief for this survey, before any policy decisions based on them could be taken a detailed analysis of the options would be essential. Any such work would need to take into account that the Arcadis proposals are not in line with the Commission (and trade and industry's) current holistic and life-cycle approach to environmental policy-making in general and the Sustainable Consumption and Production Action Plan in particular.

Notwithstanding this caveat, should such an evaluation be deemed desirable, EUROPEN is ready to engage with the Commission services and other stakeholders in such a process.

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