

PRO EUROPE COMMENTS

Interim report of the study on the progress of the implementation and impact of the Packaging Directive 94/62/EC on the functioning of the internal market

PRO EUROPE represents 25 national schemes responsible for the collection, recovery and recycling of packaging waste which are active in 20 Member States, Bulgaria, Romania, Turkey, Norway and Canada¹. PRO EUROPE's member organisations are responsible for meeting the recovery and recycling targets laid down in EU Directive 94/62/EC on Packaging and Packaging Waste. As practitioners who are closely involved in the collection and recycling of packaging waste, PRO EUROPE has widely collaborated with the European institutions in shaping the revised Packaging Directive by sharing experience and expertise.

GENERAL COMMENTS

In general, PRO EUROPE welcomes the draft report carried out by Perchards which we find extremely valuable. However, in our view, some comments and/or recommendations could be revised in the way we indicate in our detailed comments.

DETAILED COMMENTS

II. IMPACT OF THE DIRECTIVE ON RECYCLING AND WASTE DISPOSAL

According to the interim report, it is stated on page IV of the Executive Summary, "*By 2001, the Directive had increased recycling rates in EU-15 by a maximum of 10%.*"

This statement is based on the hypothesis that the Packaging Directive has not had any influence in the countries where national legislation was applicable before the Packaging Directive came into force. However, we feel this approach might be too simplistic. Even if national legislation had come into force before the EU Packaging Directive, these pieces of legislation were formulated during the discussions about the Directive in the knowledge that there would be an actual Directive on packaging in the near future.

Indeed, selective collection had begun in Germany, France and Belgium, for example, before packaging legislation was ever a European issue. These countries arguably anticipated the Directive which they considered as imminent. Without such a discussion, and indeed without a directive, one could argue that there would have been no legislation in many countries. In the same respect, it is an underestimation to say that "*the incremental costs of meeting the Directive's recycling and recovery targets are quite limited*". (p.18)

¹ ARA - Altstoff Recycling (Austria); DSD - Duales System Deutschland AG (Germany); Eco-Emballages (France); Eco Embalajes Espana (Spain); EcoPack (Bulgaria); Eco-Rom Ambalaje (Romania); ERO (Estonia); FOSTPlus (Belgium); GreenPak (Malta); HE.R.R.CO (Greece); REPA (Sweden); REPAK (Ireland); SPV - Sociedade Ponto Verde (Portugal); VALORLUX (Luxembourg); Materialretur (Norway); CEVKO (Turkey); EKO-KOM (Czech Rep.); EnviPak (Slovak Rep.); Green Dot Cyprus (Cyprus); Latvijas Zalais Punkts (Latvia); ÖKOPANNON (Hungary); RekoPol (Poland); SLOPAK (Slovenia); Zaliasis Taskas (Lithuania) and the co-operation partner CSR (Canada).

To measure the effect of the Packaging Directive, PRO EUROPE proposes that only household packaging should be taken into account. The results displayed via the graphs in the study, to our knowledge, include household, industrial and commercial packaging.

The graphs analysing the recycling evolution include different materials - paper and board, aluminum and steel, glass - but in the summary we miss the evolution of plastics. We consider this to be an important lack.

III. MARKET ACCESS ISSUES: the Essential Requirements and the CEN standards

- **Recommendation 1:**

Regarding Essential Requirements, PRO EUROPE considers the text in the interim report as being directly in favour of the Essential Requirements. PRO EUROPE takes a more cautious approach and believes Essential Requirements, although useful, must be subjected to careful analyses in relation to the way they are implemented to ensure a harmonised approach in all Member States in order to avoid market distortions and barriers to innovation.

- **Trade barriers and distortions of competition:**

In countries where a deposit system has been set up i.e. Denmark and Finland the recycling rate is not above that of other EU countries. Rates are even slightly below vis-à-vis metals, as well as for plastic compared with other countries without any deposit system in place. Therefore PRO EUROPE is of the view that some Member States may “misuse” environmental arguments to justify ideological measures or financial burdens. What is more, deposit systems do not guarantee better results in terms of recycling rates and create trade barriers.

IV. NATIONAL RULES SPECIFIC TO BEVERAGE CONTAINERS

- **Recommendations 2 & 3:**

Mandatory deposits on non-refillable beverage containers: the introduction of mandatory deposit systems is not an adequate solution, as it seems disproportionate and counter-productive when comprehensive and efficient collection and recycling systems are already in place. PRO EUROPE believes that rather than singling out beverage containers for special treatment, emphasis should be on tackling packaging waste as a whole and in a coherent and efficient manner.

V. IMPACTS ON THE INTERNAL MARKET OF DIFFERENT NATIONAL APPROACHES TO PRODUCER RESPONSIBILITY: Packaging Taxes

- Compared to the market share quotas and mandatory deposits, the report pays little attention to the instrument of packaging taxes, especially with respect to beverage containers. Nevertheless, such taxes can have important impacts on the functioning of the internal market.

PRO EUROPE would like to draw attention to the Belgian example, where the legislation on eco taxes has recently been modified and where a new modification is foreseen as of 1 January 2005. Due to a decision of the federal government, eco taxes on beverages in one-way packaging will further increase from 9,8537 EUR per hectolitre to 14,5037 per hectolitre. The eco taxes are resulting in a clear price distortion between beverages sold in Belgium and in the neighbouring countries. The percentage of taxes is especially high for cheap water. Therefore, the eco taxes should be considered as an antisocial measure.

A Belgian wholesaler reports that its turnover for beverages is 20%-40% lower in shops situated near the French border than in the shops in the other parts of Belgium. The percentages vary depending on the type of drinks.

In many cases the eco tax is not used for measures supporting the environment but goes to the general national budget.

VI. EVALUATION OF PRODUCER RESPONSIBILITY SYSTEMS

- **Recommendation 4:**

Reporting requirements: PRO EUROPE supports in principle the idea of making reporting requirements from Member States to the European Commission simplified and based on common criteria which are interpreted in the same way in order to achieve comparable statistics. Moreover, we would like to note that reporting systems set up by the PRO EUROPE member compliance schemes are a consequence of different national regulations.

At this point, we would like to underline some problems regarding the national implementation of the Directive.

Unfortunately, even the definition of packaging is not clear which in reality means that it differs from country to country, whether a packaging falls into the scope of the respective national packaging law or not. The “non-binding” annex of the revised Directive was a first step in the right direction but PRO EUROPE considers a binding annex would have been much more efficient.

One type of packaging not within the scope of the respective regulations in a Member State is medical equipment packaging. In some countries, there are special regulations so that packaging for medical equipment is not allowed to circulate in the system applied to all packaging, whilst in some countries it is authorised to participate in the given system. The question PRO EUROPE would

ask is given the special case of packaging for medical equipment, how can a multinational company be expected to comply with different laws in place throughout the Member States. In our view, it would be practically impossible, and would require investing a great deal of time and financial resources to make it work.

- **Recommendation 5:**

Marking the Green Dot on packaging: the meaning of the Green Dot is the same in every country in which it is used i.e. that a given company is financially involved in a national compliance scheme which takes over its packaging waste obligations.

In our experience, it does not create any significant problems vis-à-vis national requirements. Up to now, it was in general always possible to find a solution in the interest of all involved parties. If the Green Dot marking becomes voluntary everywhere however, it could progressively disappear, creating other kinds of distortions such as problems in identifying free riders and hence hindering the proper fulfillment of the targets of the Packaging and Packaging Waste Directive.

Moreover, the Green Dot logo is proof of producer responsibility, and is widely recognised as such. As levels of awareness are raised among consumers due to the work of the compliance schemes as well as the Green Dot appearing on packaging, it can be considered as an additional motivating factor for the public to become proactively involved in contributing to sustainable development.

In contrary to the paragraph about Germany on page 96 of the main report it has to be pointed out that – based on a lack of control of German government – there is still a recognizable number of free riders.

In the meantime the Green Dot is used by producer responsibility organizations in 20 European member states as well as in Norway, Romania, Bulgaria and Turkey.

At least we would like to clarify some statements on page 116 of the main report related to the protection of the Green Dot. The Green Dot is used as financing symbol so that the protection of it is extremely important for the members of PRO EUROPE. To ensure the functioning of the income by licensing the Green Dot to the obliged fillers and retailers and to ensure the possibility for setting up other producer responsibility organizations on behalf of industry as well as ensuring that no third parties may ask for royalties from our licensees using the Green Dot on all their packaging it is necessary to protect the Green Dot world-wide in the best possible way.

Therefore PRO EUROPE has obtained and defended trade mark rights in about 170 countries all over the world. Regarding the countries where no Green Dot schemes or co-operation partner exists, PRO EUROPE offers a royalty free license agreement which can be downloaded on our homepage www.pro-e.org.

The reason for signing special agreements for the UK and the NAFTA area is the great importance of these economic regions where most of the international licensees of our members are distributing their products as well; many of the packaging of the products are labeled with the Green Dot. Loosing the trademarks in these countries would lead to big problems and probably high costs to our licensees.

As the protection of the Green Dot in these countries can be best managed by local organizations it is the most effective approach to work together with similar producer responsibility organizations like CSR and VALPAK instead of mandating law firms and consultants.

Nevertheless we do not see any relevance of the use of the Green Dot in the NAFTA area for the Internal Market of the European Union; therefore we would like to ask to remove this paragraph from the report.

- **Recommendation 7:**

In general terms, PRO EUROPE believes that it is not necessary and not useful that there is regulation of recovery schemes at the European level, as the work of the recovery organisations has to take into account decisions in the Member States as well as specific national circumstances.

It is up to each recovery organisation to decide upon the most efficient and workable solution - whether this is the local authorities or private waste management companies selling the sorted material for recycling, or whether the recovery organisation itself sells it. We propose citing the example of Fost Plus in Belgium, whereby the material is sold by issuing a call for tender, which in our view is a model of an efficient system. In some countries it may be necessary to have a five or six year contract with collectors, sorters or recyclers if this is considered necessary to ensure investments in capacity-building in the longer term, whereas in other countries short term contracts are sufficient. The fact that this system works well is evidence, in PRO EUROPE's view, that European regulation is not necessary.

Regarding the third point in Recommendation 7, "*Where suitable organisations exist, recycling of each material should be co-ordinated by the relevant materials organisation*", in PRO EUROPE's view, this general recommendation does not reflect the different situation and the different circumstances in the different Member States. In general, placing the responsibility of coordination on a multimaterial packaging recovery organisation has advantages as a more neutral approach guarantees the balance between materials and this facilitates the achievement of the recycling targets for all of them. Of course the involvement of the respective material organisations is necessary for an effective solution.

- **Recommendation 8:**

In relation to all recovery organisations following the same ground rules set out in legislation or in government guidance, we believe this should only be followed on a countrywide basis. In other words, all recovery organisations in any given country ought to follow the same rules and guidelines, but if the proposal refers to all European recovery organisations having to abide by the same ground rules, we feel this would be impossible to manage given the different national situations and that national laws are too varied throughout the EU-25.

VII. IMPACT OF NATIONAL RECYCLING SYSTEMS ON THE WASTE MANAGEMENT AND RECYCLING SECTORS

- **Recommendation 10:**

Regarding not using a certain type of packaging, for example “*clear glass rather than green glass for wine wherever possible*” as quoted in the interim report, PRO EUROPE believes that if a type of packaging is in line with European law, every producer and/ or importer should be free to decide on whether to use such a packaging.

IX. COSTS AND BENEFITS OF FURTHER HARMONISATION OF PRODUCER RESPONSIBILITY RULES

- **Recommendation 11:**

Anti-litter measures: PRO EUROPE is supportive of any approach aimed at quantifying the litter problem which is based not on ideological opinions, but on scientific research. It has to be pointed out that littering is not a packaging problem but a problem of social behaviour. Most of the littered items come from other sources than from packaging, as this was shown in an Austrian study from 2004 which can be delivered on request. Therefore we think that awareness and education programs are more effective in reducing littering than legislative interferences.

- **Recommendation 12:**

Calls for a Commission study on “non-mainstream countries” to discuss whether the same targets should be applied in all Member States: in general terms, PRO EUROPE sees no need for complete exemptions for any given “non-mainstream” Member State, but we would call for more flexibility in applying European legislation to the Member States i.e. regarding the deadline for quotas, agreeing whether a recycling or recovery process is counted as recycling to fulfil the quotas, etc.