

## Green Paper on Market-Based Instruments for Environment and Related Policy Purposes

### PRO EUROPE's comments

#### Summary

PRO EUROPE<sup>1</sup>, Packaging Recovery Organisation Europe, welcomes the Commission's initiative to launch a discussion on advancing the use of market-based instruments (hereby referred to as MBIs) in the European Community for environment policy purposes. In particular, PRO EUROPE welcomes the European Commission willingness to stimulate exchanges of experience and best practice on MBIs between Member States and encourage a harmonised approach across EU.

PRO EUROPE agrees that, if appropriately applied, MBIs can simultaneously afford a high level of environmental protection and cost-effective compliance. In order to avoid that MBIs give rise to obstacles to the internal market and distortions of competition, the European Union should put in place EU guidance setting out **harmonised criteria for the use of MBIs**. As witnessed in the waste management sector, the existing Community legal framework has been abused through supposedly environmental measures which in fact aimed at protecting national businesses or raising revenue for public budgets, causing *de facto* considerable trade barriers and competition distortion. There must therefore be a clear link between the MBIs adopted and the environmental aim being pursued.

Successful alternative MBIs, such as **producer responsibility-based systems**, could be further taken into consideration. These systems have indeed proven to be more effective in triggering environmental improvement than taxation. In the area of packaging, they have allowed the fulfilment of the EU recovery and recycling targets (set up in Directive 2004/12/EC) in a cost-effective and flexible way.

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<sup>1</sup> PRO EUROPE is the umbrella organisation for 30 packaging and packaging waste recovery schemes acting in the interests and on behalf of industry, and mainly using the "Green Dot" trademark. Its members span 24 Member States, 2 candidate countries (Turkey, Croatia), Ukraine, Norway, Iceland and Canada. [www.pro-europe.info](http://www.pro-europe.info)

### Question 1:

**What are the areas and options for the further use of market-based instruments at EU or national level?**

**Could market-based instruments be used in a way that promotes competitiveness, and does not impose an undue burden on consumers, in particular citizens with a low-income, but at the same time ensures revenue for public budgets?**

**Should the EU more actively pursue taxation to further Community policy purposes (in addition to fiscal objectives)? Is this the right response to current global challenges and the fiscal needs of national budgets?**

It is not within the remit of PRO EUROPE to make a recommendation on the specific areas or sectors to be targeted for the further use of market-based instruments (MBI), but we welcome the opportunity to put forward our views on the options, impact on citizens and revenue for public budget, and taxation.

Overall, PRO EUROPE is of the opinion that EU harmonised criteria should be developed to guide the use of MBI at EU and national level and ensure that the following conditions are observed:

- There must be a clear link between the MBIs adopted and the environmental aim being pursued. The suitability of a measure should be carefully evaluated and benchmarked vis-à-vis other available options (including other MBIs) and undergo a competitiveness impact assessment. Their effectiveness should be subject to monitoring mechanisms to measure progress and review their necessity once the objective has been achieved.
- MBIs should not give rise to obstacles to the internal market and distortions of competition. In the field of packaging, MBIs should not result in an unjustified discrimination between materials or similar products or allow the introduction of protectionist measures.
- MBIs should be flexible and capable of being adjusted quickly in response to market changes.
- MBIs should provide flexibility and incentives for technological innovation and greening market demand in order to make environment a true economic opportunity, stimulating competitiveness and allowing ongoing progress.
- The costs of the measures proposed should be proportionate to their environmental benefit.
- Before implementing any new economic instruments, it is crucial to assess the associated costs that would *ultimately* fall on the consumers.
- MBIs, notably environmental taxation, should not be used for the primary purpose of raising revenue for the state. Stealth taxation (portrayed as having an environmental justification) increases pressure on consumers (having a higher impact on low-income rents given the linear nature of such taxes) puts industry at competitive disadvantage, distorts competition, and discredits the use of MBIs for environmental purposes.

PRO EUROPE wishes to counsel caution when choosing taxation to tackle environmental challenges. In the area of packaging, taxation has proven to be less effective in triggering environmental improvement than alternative measures, such as producer responsibility-based systems (see below). In its Report on the impact of Directive 2004/12/EC on packaging and packaging waste on the environment and the internal market, the European Commission recognises that *"the use of taxation to drive packaging policy can potentially disrupt the internal market if the taxes are applied in a way that protects local producers"*. The motivations guiding environmental taxation have often responded to protectionist or budgetary agendas. Therefore PRO EUROPE would strongly advocate the development of European harmonised criteria based on the above conditions.

PRO EUROPE would like to propose the inclusion of producer responsibility-based instruments as part of the Commission strategy on MBI. The use of producer responsibility-based systems has proved its effectiveness in fulfilling environmental goals. In the packaging sector, producer responsibility schemes have provided flexible and cost-effective means for reaching the recovery and recycling targets set up in Directive 2004/12/EC<sup>2</sup>, as acknowledged by the 2006 European Environment Agency Report "Effectiveness of packaging waste management systems in selected countries: an EEA pilot study".

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<sup>2</sup> Producer Responsibility Schemes are packaging recovery organisations assuming the take-back and recovery obligations on behalf of industry. The recovery and recycling targets set up by the Directive have been met in all countries where producer responsibility schemes operate.

PRO EUROPE wishes to draw attention to the main positive effects associated with the structure and functioning of producer responsibility schemes which may provide a useful model as a MBI applicable in other areas beyond packaging:

- Triggering strong environmental commitment of industry, which is able to fulfil its producer responsibility in a cost-effective manner.
- Operation under open and transparent principles, whereby among other things the annual costs and expenditure are publicly available.
- Generation of sound data on packaging waste generation and waste management, providing relevant data for Member States reporting obligations and objective information for well-founded decision making.
- Contributing to raising consumers' environmental awareness through environmental education programmes, both at national and international level.
- Greater flexibility in meeting the environmental objectives compared to other instruments such as taxation, as the fees paid to recovery organisations can be changed without a legislation process.
- Effectively decoupling waste generation from social and economic growth/development as a result of the internalisation of the waste management costs in the product price.

### Question 2:

***How could the Commission best facilitate environmental tax reforms at national level? Can it for example offer some kind of co-ordination process or procedure?***

***Would the establishment of the abovementioned MBI Forum be useful to stimulate exchanges of experience / best practice on Environmental Tax Reform between Member States? How could it be organised in an optimal way? How should it be composed to avoid potential overlap with existing structures?***

EU guidance setting out harmonised criteria for the use of MBIs (as proposed under question 1) would represent a critical first step to facilitate tax reforms and coordinate measures that are geared towards EU environmental objectives, proportional, and in compliance with EU competition and internal market objectives. In the packaging sector, this is essential to prevent the re-emergence of previous situations of market fragmentation and market access restrictions.

PRO EUROPE acts as a platform for the share of best practice on prevention, collection and recycling and the transfer of experience and know-how among its members as well as non-member countries world-wide. PRO EUROPE therefore supports the establishment of an MBI Forum open to the participation of industry experts, as a useful platform to promote exchange of experience and best practice on the use of MBIs for environmental purposes. Such Forum should help identify and evaluate at an early stage the potential impact of MBIs (especially national measures) on the various business sectors, consumers, as well as other EU countries. Furthermore, it should fully take account of industry views through stakeholder consultation with representative bodies, and ensure that the information that arises from discussions is easily accessible to all, i.e., it should not be an inaccessible 'expert' panel.

### Question 10:

***If there is insufficient progress to divert waste away from landfill, should the Commission consider proposing a harmonised landfill tax with EU-wide minimum rates?***

PRO EUROPE supports policy-development that aims at diverting waste away from final disposal. The use of taxation on final disposal can help improve the economic competitiveness of waste recovery options. Moreover, because of the differing demographic characteristics of individual Member States, it may not be adequate for the Commission to suggest a single landfill tax for all. We would therefore advise that the level of the tax rate is left up to the individual Member States.

However, some degree of harmonisation across the EU in the application of such taxes would be necessary.

The European Commission should facilitate the exchange of information on the success of differing levels of landfill tax applied across the EU and develop harmonised criteria for their application. This criteria would act as a guidance to ensure that Member States, when assessing the taxation level for their specific geography, apply the same principles of good practice in their decision making processes but not necessarily derive the same outcome.

Finally, we would suggest that a lower tax is applied in the case of landfill waste coming from a previous sorting process.

### Question 11:

**Does the Community legal framework provide sufficient scope for Member States to use MBI to address waste management issues? Should the Commission facilitate the application of MBI in this area, e.g. through supporting exchanges of information?**

The existing Community legal framework provides considerable leeway for Member States to use MBIs to address waste management issues. The possibilities offered by this framework have actually been abused in a number of cases, notably in the packaging sector where, national measures justified on environmental grounds, have effectively been used to protect a national business sector or raise revenue for public budgets. This has caused considerable trade barriers, competition distortion and product-material discrimination, including the restriction of market access for some packaging products.

Article 15 of Directive 2004/12/EC allows Member States to adopt economic instruments to promote the implementation of its objectives: a high level of environmental protection; and the functioning of the internal market and the prevention of obstacles to trade and distortion and restriction of competition.

Beyond the implementation of EU waste and packaging waste legislation, Member States have considerable scope to adopt environmental taxes provided that these comply with the relevant provisions in the EU Treaty, notably those relating to the internal market (Articles 28-30) and non-discrimination (Article 90). Neither Directive 2004/12/EC nor the provisions in the EU Treaty have proved to be effective in preventing the misuse of taxation in the packaging sector.

This is acknowledged in European Commission's Report on the Implementation of Directive 94/62/EC on Packaging and Packaging Waste which states: *"the use of taxation to drive packaging policy can potentially disrupt the Internal Market if the taxes are applied in a way that protects local producers"*.

PRO EUROPE is concerned by the references to the **Danish packaging tax** on pages 12-13 of the Green Paper, which seem to portray this system as an example of a sound MBI in the packaging waste area. The Danish system -the only one that does not have a producer responsibility scheme in place- brings a number of flaws that should be carefully considered:

- **Costs:** The Danish approach is the most expensive in Europe, much more expensive than producer responsibility systems.
- **Performance:** Despite its high cost, the Danish system has not led to better recycling results compared to the producer responsibility systems.
- **Internal Market:** Since the Danish taxes are among the highest of any of the taxes and levies imposed on packaging within the EU, there is an obvious market distortion.
- **Methodology:** the LCA serving as a basis for the tax uses outdated figures, has not been subject to review and does not include the distribution phase of the packaging life-cycle of packaging, a vital element in view of today's carbon reduction agenda.

PRO EUROPE recognises that packaging taxes can play a useful role in encouraging the establishment of recycling systems. However once recovery organisations have been established, the need for taxes is greatly reduced, although there is a risk that taxes are nevertheless maintained, as they have become a useful source of state revenue regardless of the future environmental impact of the taxed items. Packaging has proven to be an easy target for taxes. They interfere with the set-up of packaging recovery organisations, make consumers pay twice and are often not used for environmental purposes.

Among the examples of MBIs already used by Member States, the Green Paper refers to deposit-refund systems (p.13) for packaging waste in general or for specific types of packaging such as drinks containers or plastic bags. PRO EUROPE would like to warn against the potential negative effects of supporting this specific instrument in the packaging sector. From an environmental standpoint, deposits are questionable because new transport systems need to be set up for the parallel take-back of only one small fraction of the packaging waste stream, resulting in increased fuel consumption, traffic congestion and CO<sub>2</sub> emissions. Furthermore they are an ineffective approach to tackle the problem of littering.

Mandatory deposit systems often constitute disproportionate measures and introduce distortions to the internal market, as highlighted in the European Commission Report on the Implementation of Directive 94/62/EC on Packaging and Packaging Waste: *“National measures can lead to distortions of competition and in some cases partitioning of the internal market, which contradicts the objectives of the directive. The beverage packaging sector has signalled such impacts from mandatory deposit systems for non-refillable containers (e.g. in Germany<sup>3</sup>).”*

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<sup>3</sup> In the case of Germany, a mandatory deposit on beer, soft drinks and mineral water in disposable cans and bottles was introduced on 1 January 2003, because the share of refillable containers had fallen below a certain level (72 %) set in accordance with the German 1991 packaging law. The introduction of the German mandatory deposit failed to counter the decrease in use of refillables by consumers testifying thereby that consumers' behaviour could not be changed by this mean. The German mandatory deposit system – running at the Court of Justice in 2004 - was described as distorting the internal market by the European Commission, and creating a trade barrier, in the case of mineral water. The EEA 2006 report also portrayed this case as illustrating “potential conflicts between national environmental policy targets and international trade principles.”