

EUROPEN – lunch event on Circular Economy Package
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Ladies and Gentlemen,

On behalf of EUROPEN, I welcome Mr Florenz, our speakers and guests to this debate today.

We had originally scheduled the event for 22nd March but of course we had to cancel at the very last minute because of the tragic events that took place in Brussels that day. So, thank you for taking the time to join us today.

Thank you Mr Florenz for your introductory remarks.

Introductory comments on the CEP

Let me start by reiterating that EUROPEN supports the growth and competitiveness objectives of the Circular Economy package. We also support much of the content of the legislative part of the Proposal.

We have however made, in recent months, a number of specific recommendations relating to the **legislative Proposal** that we believe will increase the likelihood that the Circular Economy objectives and targets can be measured and met, for the benefit of Member States, their businesses and their citizens. Today we will elaborate on some of those recommendations. Let's see if the ENVI report addresses these topics. We now know that the ITRE opinion on the review of the Waste Framework Directive (WFD) has addressed some of these topics, which will allow for a more focused debate today.

We are not commenting today on the Action Plan. That is for another day.

EUROPEN

Allow me just a few words of introduction to EUROPEN, as I see one or two people here who may not know us quite as well as others.

EUROPEN was first established in 1993 as the Packaging and Packaging Waste Directive (PPWD) was being developed.

Our members span the supply chain for packaging and packaged goods. We have raw material producers (all materials) and packaging converters who provide the specific packaging formats that meet the many and varied needs of the brand-owners and their distinct product portfolios. Our brand owner members cover many market sectors including food & drink, home care and personal care, amongst others.

We all, as citizens, have access to packaged products placed anywhere within the Internal Market and, on the other side of the coin, packaging and packaged goods may be placed on the market anywhere within the Internal Market by the companies that manufacture them.

That is the Internal Market of the EU and for us it is guaranteed by the PPWD, which gives companies confidence to invest and innovate in order to provide the growth and employment we all need.

Top Level Comments and Recommendations - Legislative Proposal

The PPWD has the Internal Market as **one of its two policy objectives** and it has the Internal Market as its sole legal base¹.

¹ Article 114 TFEU

The other waste stream Directives, including the WFD have Environment² as their legal base. In this respect, the PPWD differs from other waste Directives.

This is a fundamental and crucial difference.

In fact a Circular Economy for Europe cannot be achieved without an Internal Market that functions properly.

This key principle informs some of our specific observations on the CEP and the recommendations that we propose in order to strengthen the Internal market safeguard.

I will come to those in just a minute.

I just said the PPWD has **two** policy objectives. It also has Environment as a policy objective.

But again the PPWD is not like the other waste stream Directives that are concerned **only** with the end-of life phase, or waste phase, of "**products**".

Packaging is not a product per se, it is an integral part of the product/package system. It performs various roles and responsibilities, such as optimal preservation and protection of products, all along the value chain. These aspects go beyond end-of-life considerations, and define the separate and individual legislative context for the PPWD.

This **second** important difference also informs our observations and recommendations.

Specifically, Harmonisation of legal text in the various waste Directives does not work in all cases.

We are in favour of Harmonisation to provide "*effectiveness*", "*efficiency*", "*coherence*" and "*relevance*". Where did these words come from? The Commission's "fitness check", ex-post evaluation of the 5 waste stream directives³.

But where harmonised text would **not** meet the criteria of "*effectiveness*", "*efficiency*", "*coherence*" and "*relevance*", we recommend strongly that **separate** legal text and measures should be kept. If it doesn't work, don't.

So, these are the two key points I want to lodge in your memories:

1. **Strengthen the Internal Market** safeguard by including specific amendments in both the PPWD and the WFD.
2. **Harmonise when it makes sense but ensure specific legal texts and measures for packaging** are included in the PPWD when harmonisation, for example by using only the WFD, would create misinterpretation, confusion and/or unnecessary administrative burdens.

This speech will be publicly available so you will be able to remind yourselves of the detailed recommendations but keep these two key points on Internal Market and Harmonisation in mind.

Specific Recommendations – Legislative Proposal

Here then is Recommendation Number 1:

Strengthen the protection of the internal market for packaging and packaging waste by replicating in the PPWD the legal framework for Minimum Requirements for Extended Producer Responsibility (EPR) that today is only in the WFD.

² Article 192(1) TFEU

³ Ex-post evaluation of certain waste stream Directives, Final report (Page 7), European Commission – DG Environment 18 April 2014

Hans will explain the Minimum Requirements for EPR schemes more fully in a few minutes and why they are strongly supported by EUROOPEN for packaging. I will restrict my comments to Internal Market aspects.

Why do we need specific mention in the PPWD? Because, with its Internal Market legal base the PPWD contains an important notification requirement for Member States under Article 16. Our recommendation will ensure that national measures do not disrupt the Internal Market for packaging and packaged goods.

In order to remove any doubts and for the same reasons, here is Recommendation Number 2:

Add a new provision to the WFD⁴ to guarantee the Internal Market safeguard for packaging and packaged goods.

We would also suggest in relation to this article, Recommendation Number 3:

Remove the word “notably” in the same Article⁵ in the WFD proposal on “General requirements for Extended Producer Responsibility schemes”

Why? Because it implies that EPR fees could be modulated based on an infinite number of criteria when being implemented at national level. That risks fragmenting the Internal Market due to different criteria being used for fee modulation per EPR scheme, Member State and related packaging waste management infrastructures.

Finally, in this section, here, to wrap up all the above points, is Recommendation Number 4:

Include in the PPWD proposal an explicit obligation on the Commission to report annually on the implementation of the PPWD and the WFD and its impact on the functioning of the Internal Market.

Let me now come to the Second topic:

Harmonisation of waste legislation.

We in EUROOPEN support harmonisation of waste legislation where “relevant”. There are some instances however where harmonisation between the WFD and the PPWD, instead of providing clarity, actually creates confusion, either because the language is not “relevant” for packaging, or because some specific requirements for packaging are missing.

These situations can arise because packaging is not a product per se, as for example a washing machine or a mobile phone. Packaging is a product facilitator; it optimises resource use, helps to minimise (product and food) waste. It protects products along different value chains and it provides consumers with varied uses, choices and benefits of the products it contains.

In other words, the PPWD covers the full life cycle of packaging. It does not consider only the end-of-life phase, as is the case for other waste stream Directives.

So, Harmonisation of policy between the WFD and the PPWD must be assessed carefully, on a case-by-case basis.

Let me give you two examples where harmonisation of language might give rise to misinterpretation in the case of packaging:

The WFD states that EPR schemes should “gather data on products placed on the Union market by producers subject to EPR”⁶.

This would create a disproportionate and onerous administrative burden for both producers and Member States, if EPR schemes for packaging waste are required to collect data about individual packaged products.

⁴ Article 8a

⁵ Article 8a (4)b WFD

⁶ Article 8a (1) third intent proposed WFD

Anybody with experience of dealing with compliance officers will know there is potential for a nightmare here.

The WFD requires EPR fees paid by producers to be “modulated on the basis of the real end-of-life costs of **products** or groups of similar products.”

This requirement may be appropriate for **Product** waste streams covered by the WFD but that is for others, not EUROOPEN to judge.

We have no wish to interfere with measures that might be “*effective*” and “*relevant*” for those other waste streams. (Eg consumer durables like washing machines, electronics, furniture and textiles). These measures may indeed advance the Circular Economy for such **Product** groups. For packaging please refer to packaging materials.

EUROOPEN has two recommendations to fix these problems so that the requirements become clear, “relevant” and “effective”.

Firstly (Recommendation Number 5):

Amend the WFD proposal to specify that EPR schemes should gather data on the collection and treatment of products (and add these words) “or, as appropriate, packaging waste.” And make a similar change in relation to modulated fees.

Secondly (Recommendation Number 6):

Introduce EPR minimum requirements for packaging waste in the PPWD.

Those who are listening carefully will note this is the second reason for this ask. We already called for it for Internal Market reasons. So, two reasons for doing it.

Let me turn now to the measurement of recycling.

From the outset, EUROOPEN supported clear definitions, harmonized calculation methods and comparable reporting in the 28 MS for measuring recycling performance for packaging.

This is the reason why we supported the efforts of the Commission to ensure equal and fair reporting for recycling by for instance clarifying the measurement point of recycling, the point of input to a final ‘preparing for re-use’ or recycling process, after sorting operations have been completed. The option to count output from sorting operations under certain specified conditions is fully consistent with this measurement approach.

Let us consider however the new proposed **Combined Preparing for Re-use/Recycling** target in the PPWD:

We understand the concept in the Context of the Circular Economy and appreciate why this has been introduced into the WFD for **Products**. As I said before we do not wish to interfere in other waste streams. But harmonisation of the PPWD with the WFD in this instance is confusing for packaging and risks distorting the market, rather than correcting market failures.

The formula in Annex IV of the PPWD has been duplicated from the Annex VI of the WFD. It refers to the weight of “**products and components**” which is not relevant to packaging. It makes more sense and should rather be clarified as Recommendation Number 7: the weight of “**packaging and packaging materials**”. Here are the limits of the harmonisation.

More difficult to understand is the new definition of “Preparing for Re-Use” in the context of packaging as opposed to products. Despite checking with policy makers and wider industry, EUROOPEN members are still not clear about which packaging should be included in “Preparing for Re-Use. This creates uncertainty in how to properly calculate this combined target in the packaging context.

For example, companies, my own included, use a wide range of re-usable packaging systems in a business-to-business context. We use them between us and our suppliers, our customers and within businesses for plant-to-plant supply. Such systems are widely used because it makes business and environmental sense. New targets

are not necessary for such uses. It is not at all clear how and by whom such uses should be measured and reported. For example, do we count every pallet we use, every time we use it? Does my company now become a recognised preparing for re-use operator or not, even if the pallets are not repaired but are checked before each use?

Nevertheless, in discussion with other stakeholders, both here in Brussels and in various Member States, several of them claim to know precisely how to use the proposed method. Unfortunately each of them provides different figures and some measured rates have even tripled. We don't believe that was intended by the Commission.

The proposed new definition of "preparing for reuse" mixes up products and waste. It requires data that, in many cases, does not exist and it will make comparability of Member States reported rates more difficult than it already is.

We are hearing an increasing number of stakeholders calling for the retention of the 2008 WFD definition of Preparing for Re-Use. EUROPEN supports that call as it fits with our wish for clear reporting with real figures:

Recommendation No 8:

Retain the existing 2008 WFD⁷ definition for preparing for reuse.

We can add to that recommendation by ensuring that, once and for all, all Member States report on packaging waste generated (which excludes reuse) instead of reporting on packaging placed on the market (all packaging including re-use), which is used as a proxy for reporting on 'packaging waste generated'. A smaller denominator leads to a higher rate, and would thus credit those Member States who have invested in reusable packaging systems to better achieve the recycling targets.

This interestingly is what is contained in the proposed Annex to the PPWD. Taken together with the recommendation to retain the 2008 WFD definition for preparing for reuse, clarity is restored, credit is given for existing re-use systems and there is no effect on Preparing for Re-Use of Products such as "repairing bicycles, furniture, or electrical or electronic equipment which have been previously discarded by their owners". That's a quote from the Commission's guidance on the 2008 WFD.

Concluding Remarks

We have made some recommendations to enhance the internal market safeguard for packaging and packaged goods. We have made some additional recommendations to increase the likelihood that Circular Economy objectives can be met by our sector, by ensuring that harmonisation does not disadvantage our sector nor any other sector's waste stream.

I hope the Parliament and the Council will consider supporting them.

Ladies and Gentlemen. Thank you for your attention. I now give the floor to Mr Julius Langendorff.

Martin Reynolds
24 May 2016

⁷ Article 3 (16) WFD 2008/98/EC