

EUROPEAN AND NATIONAL LEGISLATION ON PACKAGING AND THE ENVIRONMENT



A UNIQUE INDUSTRY AND TRADE ORGANIZATION

EUROPEN – “*The Voice of Industry for Packaging and the Environment*”, is the only pan-European cross-sectoral industry and trade body dedicated exclusively to this subject.

Membership is open to all packaging chain economic operators:

- . producers of every material used for packaging;
- . packaging designers;
- . manufacturers of packaging, components and machinery;
- . packaging users, irrespective of product, sales and distribution method;
- . companies engaged in the distributive and retail trade;
- . national cross-sectoral industry groups with similar objectives.

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European and National Legislation on Packaging and the Environment

Published by EUROPEN, Avenue de l'Armée 6 Legerlaan, 1040 Brussels, Belgium

e-mail: packaging@europen.be

Tel: +32 2 736 36 00

Website: www.europen.be

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FOREWORD

Dear colleague,

In response to numerous requests from all sectors of the packaging supply chain, EUROPEN has produced this publication to assist its members and other stakeholders. It is intended to give *“a comprehensive regulatory and policy framework, directly or indirectly, affecting the packaging and packaging waste industry’s daily business in Europe. In addition, it provides an analysis and interpretation of the legal setting in which the industry operates.”*

This publication is an update from the 2007 version on the EU and the 27 EU Member State’s legislation on packaging and the environment. It explains the key laws related to environmental regulation in Europe affecting packaging and packaged goods.

The main EU policy in this area is the European Parliament and Council Directive 94/62/EC on Packaging and Packaging Waste. Its two objectives are to safeguard the free circulation of packaged goods across Europe and promote a high level of environmental protection. This updated edition takes account of other relevant EU policy developments and voluntary initiatives, as well as changes introduced at national level since the previous edition was published in 2007.

All of our stakeholders should contribute to a continuous improvement of the environmental footprint of packaging and packaging waste. The Member States will do this by adopting a harmonised regulatory approach across Europe. The packaging industry needs both to carry out its obligations, and contribute to the shaping of EU policies.

EUROPEN and its members use this publication as a key reference for policy discussions in its interaction with EU policy makers, NGOs, various industry players and other key stakeholder groups. *“In particular, it will be a useful tool in the current preparations for the upcoming revisions of EU legislations affecting EUROPEN’s members as well as the broader packaging industry.”*

EUROPEN members are companies which support a united industry and trade organization, dedicated to satisfactorily resolving the environmental challenges facing the packaging chain in an active and co-operative manner without favouring any specific packaging material or packaging system. For further information about EUROPEN please contact us or visit our website, www.europen.be.

Thank you for your interest and continued support.



Véronique Bagge
Managing Director
EUROPEN

Brussels, March 2012

ABOUT EUROPEN

EUROPEN – the European Organization for Packaging and the Environment – is the only pan-European organization dedicated exclusively to issues concerning packaging and the environment, with membership open to all partners in the packaging value chain, being the producers of packaging materials, the converters and the brand owners using the packaging materials. EUROPEN works for the achievement of non-conflicting European and national packaging & packaging waste measures based on a full understanding of the issues, close co-operation between all sectors of the packaging value chain and avoidance of barriers to trade.

EUROPEN members are identified as companies which support a united industry and trade organization, dedicated to satisfactorily resolving the environmental challenges facing the packaging chain in an active and co-operative manner without favouring any specific packaging material or

packaging system. The five packaging materials are: Carton, Glass, Metal, Plastic and Wood.

EUROPEN has its secretariat located in Brussels at the heart of the European capital and home to the decision making bodies of the European Union.

The EUROPEN Secretariat

Véronique Bagge is Managing Director with Virginia Janssens fulfilling the role of EU Affairs Manager and Dara O'Flynn the Membership and Administration Manager.

The EUROPEN Executive Committee (2011-2013)

The Executive Committee supervises the management of the organization and its members are selected to reflect the cross sectoral nature of EUROPEN. It is elected by EUROPEN's Council of Members every two years and is currently chaired by John Swift and two Vice-Chairs, Ulrike Sapiro and Martin Reynolds.

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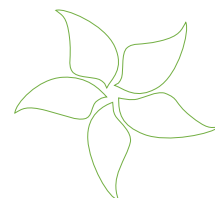
Denis Rousseau, *ExxonMobil Chemical Films*

Tony Taylor, *Unilever*

EUROPEN MEMBERS 2012

EUROPEN membership is open to any company with an economic interest in packaging or packaged goods.

For further information about EUROPEN, please contact us or visit our website: www.europen.be.

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Ardagh Group
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Procter & Gamble
Rexam
SCA Packaging
Sealed Air
SIG Combibloc
Stora Enso
Symphony Environmental Technologies
Tetra Pak
Total Petrochemicals
Unilever

NATIONAL ORGANIZATIONS***Bosnia and Herzegovina***

Association for Packaging & Packaging Waste Management (*Bihpak*)

Czech Republic

Czech Industrial Coalition on Packaging and the Environment (*CICPEN*)

Romania

Romanian Association for Packaging and the Environment (*ARAM*)

Russia

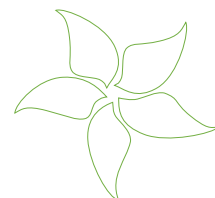
Russian Packaging and Environment Coalition (*RusPEC*)

Sweden

Miljöpack

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PART I

**THE EU DIRECTIVE
ON PACKAGING AND
PACKAGING WASTE
(AS AMENDED IN 2004)
AND FOLLOW-UP MEASURES**

THE EU DIRECTIVE ON PACKAGING AND PACKAGING WASTE (AS AMENDED IN 2004) AND FOLLOW-UP MEASURES

CURRENT STATUS OF THE DIRECTIVE

European Parliament and Council Directive 94/62/EC on Packaging and Packaging Waste¹ (the Packaging and Packaging Waste Directive) was adopted on 20 December 1994. Article 6 provides for a review of the recovery and recycling targets after the first five-year stage, and amending Directive 2004/12/EC lays down the next set of targets, as well as expanding the definition of “packaging”.

Since the original 1994 Directive was adopted, twelve more countries have joined the EU. Directive 2005/20/EC establishes deadlines for the ten Member States that joined in May 2004 to meet the recovery and recycling targets set out in Directive 2004/12/EC; and targets for Bulgaria and Romania, which joined the EU in January 2007, were set out in their accession agreements.

Directive 2004/12/EC also set the agenda for a review of other issues which was intended to lead to a further revision of the Directive at a later date. The main recommendation of the European Commission's 2006 review was that certain provisions of the Directive needed to be clarified or amended in order to facilitate the free movement of goods within the Internal Market. It did not believe that any changes to the targets, or any new targets, were needed at that stage.

Since then, the Waste Framework Directive 2008/98/EC (the WFD) has been adopted, and the European Commission is now considering whether any changes are needed to the Packaging and Packaging Waste Directive and the other “recycling directives” to bring them into line with the WFD.

THE DIRECTIVE IN BRIEF

Article 2, Article 3 as amended Directive 94/62/EC covers **all packaging placed on the market within the EU and all packaging waste**, whether disposed of at industrial or commercial sites or in private homes. Directive 2004/12/EC sets out criteria to help decide whether an item is packaging or not, as well as

illustrative examples of the application of these criteria.

Article 1 The Directive aims to harmonise national measures. It has two objectives:

- **to reduce the overall impact of packaging on the environment;** and
- **to bring national measures closer together** in order to remove obstacles to trade and distortions of competition.

Article 7, Article 22 as amended **National governments must ensure that systems are set up for the return or collection of used packaging**, so that it is effectively reused or recovered. Provided that the recovery and recycling targets are met, these systems may be based on agreements between the competent authorities and the economic sectors concerned rather than on legislation.²

Article 6 as amended Member States must take the necessary action to ensure achievement of the following targets by 31 December 2008:

- at least 60% by weight of packaging waste must be recovered or incinerated at waste incineration plants with energy recovery;
- at least 55% and no more than 80% by weight of packaging waste must be recycled;
- the following minimum recycling targets for materials contained in packaging waste must be attained:
 - 60% by weight for glass;
 - 60% by weight for paper and board;
 - 50% by weight for metals;
 - 22.5% by weight for plastics, counting exclusively material that is recycled back into plastics;
 - 15% by weight for wood.



By derogation, **Greece, Ireland and Portugal** were allowed until the end of 2011 to meet these targets, and the “new” Member States’ deadlines for meeting these targets range between 2012 and 2015.

Packaging waste exported out of the EU’s internal market only counts towards achievement of the targets if there is sound evidence that recovery and/or recycling has taken place under conditions broadly equivalent to those prescribed by the relevant EU legislation.

Article 9, Annex II Member States must ensure that packaging complies with certain “Essential Requirements”. These include minimisation of packaging weight and volume to the amount needed for safety, hygiene and consumer acceptance of the packed product, minimisation of noxious or hazardous constituents, and suitability for reuse, material recycling, energy recovery or composting.

Article 18, Article 9 Packaging which complies with the Directive is guaranteed free access to the EU internal market – and packaging which does not comply was to be banned from January 1998.

Article 10, Article 9 CEN, the European Committee for Standardization, was mandated by the European Commission to draw up **standards** relating to the Essential Requirements.

Article 4 as amended In addition to compliance with the Essential Requirements, **Member States are to ensure that other preventive measures are taken**, such as “collecting and taking advantage of the many initiatives being taken within Member States on packaging waste prevention.” The European Commission shall, as appropriate, present proposals for measures to strengthen and complement enforcement of the Essential Requirements and to ensure that new packaging is put on the market only if the producer has taken all necessary measures to minimise its environmental impact without compromising the essential functions of the packaging.

Article 5 Member States may “encourage” environmentally sound reuse systems, provided these conform with the EU Treaty.³

Article 6 as amended “Where appropriate”, **Member States are to “encourage” the use of materials**

recovered from recycled packaging waste in the production of new packaging and other products by improving market conditions for such materials, and by reviewing existing regulations preventing the use of those materials.

Article 11 Member States are to limit the heavy metals present in packaging or packaging components. From January 2000 the combined concentration levels of lead, cadmium, mercury and hexavalent chromium must not exceed 100 ppm by weight.

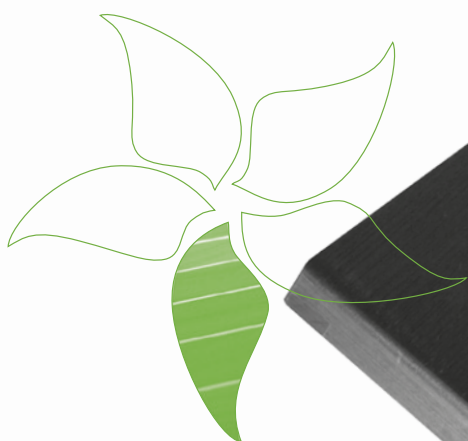
Article 15 Until such time as **economic instruments** have been introduced at EU level, Member States may adopt their own economic instruments to promote implementation of the objectives of the Directive.

Article 8 as amended, Annex I In order to facilitate collection, reuse and recovery by identifying the packaging material used, any **material identification system** is to be based on European Commission Decision 97/129/EC.⁴ This Decision says that use of the material identification system it describes is voluntary.

Article 12 Member States must set up **national databases** to provide information on the “magnitude, characteristics and evolution” of packaging and packaging waste flows at national level, so as to help Member States and the European Commission monitor implementation of the Directive.

Article 14, Article 16 Member States must include a chapter on packaging waste management in the **waste management plans** they have to submit to Brussels as required by the Waste Framework Directive.⁵ **They must also send the European Commission drafts of measures they intend to adopt** to implement the Directive so that the European Commission and the other Member States can examine and if necessary, challenge them.

Article 19-21 A committee of national government representatives, chaired by a European Commission official, will meet to agree any technical measures needed to deal with **problems encountered in applying the Directive to certain categories of packaging** and to adapt the marking system and database requirements to **scientific and technical progress**.⁶



PART V

NATIONAL IMPLEMENTATION

OF THE PACKAGING AND

PACKAGING WASTE DIRECTIVE

NATIONAL IMPLEMENTATION OF THE PACKAGING AND PACKAGING WASTE DIRECTIVE

The countries whose packaging legislation is discussed below fall into five categories:

- **EU – EEA Member States:** Members of the EU play a full part in negotiating Directives or amendments to Directives, and are part of the European Economic Area (EEA).
- **EFTA – EEA Member States:** Members of the European Free Trade Association (EFTA) which have opted to join the European Economic Area have only observer status in the formulation of Directives and amendments to Directives, but are bound to implement EU legislation relating to the free movement of goods. Thus, they are obliged to transpose the provisions of the Packaging and Packaging Waste Directive into their national legislation and administrative procedures.
- **EFTA – non-member of the EEA:** Switzerland is a member of EFTA, but opted out of the European Economic Area. It therefore has no obligation to implement the Packaging and Packaging Waste Directive.
- **EU accession candidates:** The countries applying to join the EU are obliged to adopt all existing EU legislation, though the timetable for implementing targets is sometimes open to negotiation.
- **Potential EU accession candidates:** Countries which have applied to join the EU but which have not achieved the necessary degree of compliance with EU membership criteria for accession negotiations to begin. Potential accession candidates are taking steps to align their legislation with the EU's.

Although packaging waste management legislation and systems have been in place in most European countries for many years now, there is a constant process of updating and amendment. The following summary relates to the situation as it was in February 2012.

“The Directive” means Directive 94/62/EC on Packaging and Packaging Waste, as amended by Directive 2004/12/EC. “The targets” are the second-

stage recovery and recycling targets set by Directive 2004/12/EC. “The WFD” is the Waste Framework Directive, 2008/98/EC.

ALBANIA

(potential EU candidate)

Albania submitted its application for EU membership in 2009. The European Commission has recommended that negotiations for accession should be opened once Albania has achieved the necessary degree of compliance with EU membership criteria.

With the support of the International Finance Corporation (part of the World Bank group) a draft Decision is being prepared to transpose the Packaging and Packaging Waste Directive.

There has been an environmental tax on beverage containers since 1993.

AUSTRIA

(EU – EEA member state)

Legal obligations – packaging waste

Packaging and packaged goods producers, distributors and importers must take back used packaging and disposable dishes and cutlery free of charge. Used packaging taken back, and packaging waste arising on company premises, must either be passed to a company upstream with a take-back obligation or be reused or recovered. Companies can opt to participate in an approved collection and recycling system, but if they do not, an upstream or downstream stage of distribution may join the system instead. In that case the company with the obligation must provide written evidence of how it has met the legal requirements.

Any company registering as a “large waste holder” is responsible for reusing or recycling the packaging waste arising on its premises, and suppliers have no obligations in respect of packaging supplied to it.

Businesses not already members of a recovery organization, or which cannot show that they have taken back and recycled the appropriate quantity of



packaging, must join recovery systems in respect of residual quantities of packaging waste.

Packaging contaminated with hazardous waste, non-packaging waste or foodservice disposables may only be introduced into collection and recovery systems if the operator of the respective collection and recycling system expressly permits it.

Targets

The Directive's targets must be met each calendar year. There is also a 25% recycling target for beverage composite board and a 15% recycling target for "other composites".

The recycling targets for individual compliers (companies not in membership of a recovery organization) range from 15% for wood and "other composites" to 90% or more for paper & board, glass, ceramics and metals. The target for plastics and beverage composite board is 40%.

The recycling targets applicable to individual compliers also apply to sales or transport packaging arising as waste on the premises of manufacturers, importers, packers and distributors.

No more than 40,000 tonnes of glass packaging and 17,000 tonnes of metal packaging may be landfilled.

Beverage containers

A voluntary agreement, the *Sustainability Agenda for Beverage Containers*, contains a 55% material recycling target for PET bottles, a target to recycle 9,000 tonnes of PET into new bottles by 2012, and a target to recycle 70% of drinks cans by 2013. There is also a target to reduce net greenhouse gas emissions by 10% by 2017 (against a 2007 baseline).

The agreement requires the market share of beverages in refillable containers in the retail trade to be maintained, so that consumers can choose between refillables and non-refillables. Beverages will be available in "sustainable containers" (i.e. with recycled content, reusable, recyclable) at major events.

Compliance organizations

ARA was founded by the packaging manufacturers, branded goods manufacturers and retailers to

organise the collection of used sales, secondary and transport packaging from private, commercial and industrial end-users. Around 40% of the packaging handled by ARA comes from commercial and industrial sources.



ARA pays the full cost of collection by municipalities. It is funded from weight-based material-specific fees and uses the on-pack Green Dot symbol. There are special simplified payment arrangements for specific product sectors and for small companies.

A number of waste management companies and some organizations approved as recovery organizations collect and recycle used packaging from commercial and industrial premises, as an alternative to ARA. The Packaging Ordinance says that recovery organizations will generally be approved only if they collect at least 60% of the quantity of each packaging material covered by the organization. At least 55% overall and at least the percentages set in the material-specific targets must be recycled. Exceptions to these requirements will be permitted only for organizations that cover packaging from a single material or if meeting them would be economically and technically disproportionate.

The Essential Requirements and heavy metals limit

The Essential Requirements and heavy metals limit were transposed by the 1996 amendment to the Packaging Ordinance. Companies must produce evidence of compliance on request, and 100-150 companies are audited by the authorities each year.

BELGIUM

(EU – EEA member state)

Legal obligations – packaging waste

Waste management is the responsibility of the three Belgian Regions, but they negotiated an Inter-regional Co-operation Agreement to ensure consistency in the transposition of the Directive's recovery and recycling requirements.

The Agreement requires packer/fillers and importers placing more than 300 kg of packaging on the market each year to take back as much used packaging as is necessary to meet the recovery and recycling targets. The targets applicable to the household packaging recovery organization FOST

Plus are an aggregate of the targets imposed on its members.

Businesses can entrust recovery of their packaging waste to waste management companies or municipalities, but the most common choice is to contract with an “approved organization” such as FOST Plus. Small retailers may get a third party (such as a trade association) to represent them with the approved organization. A contract with the approved organization is sufficient to prove that the person responsible for packaging has fulfilled his obligations.

Industrial end-users have a choice between giving used packaging back to the person responsible for it, giving it to a municipality, private company or approved organization contracted by them, or themselves recovering or recycling it. If they recover or recycle it themselves, they must provide evidence of this to the person responsible for the packaging, either directly or via the seller of the packaged goods.

The Inter-regional Agreement also requires companies placing more than 100 tonnes of non-reusable packaging on the Belgian market each year (or 300 tonnes of packaging in the case of imports) to prepare a “prevention plan” for packaging minimisation. This must be submitted to the authorities for approval, and producers must report back on how their plans have been implemented. Most companies opt to submit sectoral plans through their trade associations.

Targets

The current Inter-regional Co-operation Agreement, which came into force in 2009, sets higher recycling targets for some materials than those in the Directive. 30% of plastics packaging must be recycled (22.5% in the Directive), and there is a separate 60% recycling target for beverage cartons.

In addition, there are separate overall recovery and recycling targets for household and for non-household packaging waste: 80% recycling and 90% recovery for household waste, and 80% recycling and 85% recovery for non-household waste. The Directive’s targets – 55% recycling and 60% recovery – apply to all packaging waste.

Compliance organizations

The main compliance organization, FOST Plus, handles household packaging only. It bears the full cost of collection, recovery and disposal of packaging waste.



FOST Plus is funded from licence fees and uses the on-pack Green Dot symbol.

About 80% of its members use one of several simplified payment arrangements for small companies, other companies which are low packaging users or companies which are part of certain sectoral agreements.

A separate organization, VAL-I-PAC, takes responsibility for transport packaging and for commercial and industrial sales packaging. Businesses joining VAL-I-PAC must delegate to it responsibility for all the non-household packaging they place on the market: they cannot opt to handle, say, paper themselves. Members are responsible not only for the operating costs of VAL-I-PAC but also for the additional administrative costs of the collectors; end-users are expected to make a financial and logistical contribution to managing the packaging waste.

In practice, VAL-I-PAC’s role is largely administrative. Previous recovery arrangements continue unchanged, apart from subsidies to encourage end-users to make their packaging waste available for recycling.

Packaging taxes and levies

There is an eco-tax of €9.8600 per 100 litres on non-refillable beverage containers;⁷⁴ the rate for refillable beverage containers is one-seventh of that, i.e. €1.4100 per 100 litres. The tax covers containers for beers, still and sparkling wines, intermediate products, ethyl alcohol, mineral and drinking waters, lemonades and other soft drinks and other similar drinks, and for fruit and vegetable juices. Milk is excluded.

There are also eco-taxes on disposable plastic or partly plastic shopping bags supplied by retail stores, including biodegradable bags (€3.00 per kg), on disposable tableware (€3.60 per kg) and on foodservice disposables – €2.70 on clingfilm and €4.50 on aluminium foil.



Finally, there is an eco-tax on packaging for inks, glues, oils and solvents in large sizes (i.e. intended for professional use). These containers may be exempted from the eco-tax provided the return rates laid down are achieved, and provided they are part of an organised deposit system.

The Essential Requirements and heavy metals limit

The Essential Requirements were transposed by the Products Standards Law. The heavy metals limit was transposed via a Decree enacted pursuant to this Law.

The Product Standards Law does not specify any compliance procedure. However companies above a certain size are required by the Co-operation Agreement to prepare and submit packaging prevention plans, which fulfil much the same purpose. These plans must address prevention in its broadest sense (i.e. not merely reduction at source). However both the Law and the requirements for prevention plans cover issues beyond those in the Essential Requirements.

BOSNIA AND HERZEGOVINA

(potential EU candidate)

Legal obligations – packaging waste

The country is divided into two “entities” – the Federation of Bosnia-Herzegovina (BiH) and the Bosnian Serb Republic (Republika Srpska), each with its own political structure. In addition, the district of Brčko is a self-governing administrative unit.

At the time of writing (February 2012), only BiH has detailed legislation on packaging: its Ordinance on Packaging and Packaging Waste came into effect in January 2011, but only on the territory of the Federation, and not in Republika Srpska or Brčko District.

As a temporary measure pending introduction of legislation harmonised with that of the BiH Federation, Republika Srpska adopted an Ordinance on Packaging and Packaging Waste Management in April 2011. The Ordinance is based on the Directive, but contains no targets and no provision for packaging fees: there is no possibility of a fee on packaging until Republika Srpska amends its fiscal legislation.

In **BiH**, producers (at all stages of the chain) are required to take back packaging waste and to sort it, and “producers, importers, fillers, packers,

distributors and end-suppliers” must take part in the packaging waste management system and meet the targets. There are *de minimis* exemptions for those handling only small amounts of packaging, except for point-of-sale packaging, packaging containing chemicals subject to chemicals legislation and packaging for plant protection products, where the *de minimis* exemptions do not apply.

Obligated companies can transfer their obligations to an approved recovery organization, or to a state-run Environmental Protection Fund.

Individual compliers must arrange for household and non-household packaging waste to be collected and sent for recovery, recycling or disposal. The Ordinance stresses that this obligation applies even to retail stores selling goods in primary packaging.

Recovery organizations must arrange for household and non-household packaging waste to be collected and sent for recovery or recycling through contracts with authorised facilities or for disposal in authorised municipal landfills.

Targets

The overall *recovery or recycling* target in **the BiH Federation** rises year by year from 8% in 2012 to 35% in 2016. Material-specific targets will be set by the end of 2013.

Compliance organizations

Producers’ organization BiHpak is in the process of obtaining approval for EKOPAK, which will operate a producer-run recovery organization throughout the country. It will be based on Green Dot principles.

Packaging taxes and levies

The Ordinance creates packaging “fees” that will be paid to the Environmental Protection Fund in respect of any shortfall against the targets. However, it is expected to be much less expensive to pay Green Dot fees to EKOPAK.

The Essential Requirements and heavy metals limit

The BiH Ordinance transposes the Essential Requirements in abbreviated form, and the 100 ppm heavy metals limit.