

EUROPEN calls to safeguard the Internal Market in the Packaging and Packaging Waste Directive (PPWD), as an underlying key principle for businesses and citizens in Europe.

Free circulation of packaging and packaged goods compromised in Commission Proposal on lightweight plastic bags

Safeguard the Internal Market principle and legal base of the PPWD

On behalf of the packaging supply chain, EUROPEN shares its concerns with the European Commission's abovementioned proposal. The free movement of packaged goods in the Internal Market is a fundamental principle of the European Union, benefiting citizens and businesses alike. But the free movement of goods can easily be disrupted if member states are allowed to impose unilateral market restrictions on certain packaging types that are legally put on the market. **Any breach of the free movement guarantee provided by Article 18 of the PPWD would create a very dangerous precedent and legal uncertainty for all packaging materials, types and packaged goods.** Any derogation of the Internal Market principle, in this case for specific plastic bags, contains far-reaching broader issues of more general application for all industries trading in the European Union.

For this fundamental reason, the packaging supply chain strongly opposes the proposed derogation of Article 18 of the PPWD, which would allow Member States to ban plastic bags, as suggested by the European Commission in their proposal to amend the PPWD requiring member states to reduce the consumption of lightweight plastic carrier bags. The proposal specifically allows Member States to adopt policies on lightweight plastic bags² that deviate from Article 18 of the PPWD, which guarantees the free movement of packaging and packaged goods which satisfy the PPWD's design requirements.

The draft measure also raises questions regarding the proportionality principle. A less burdensome alternative is readily conceivable i.e. the Commission's Impact Assessment confirms that some Member States have been very successful in reducing their use through measures far less drastic than a ban, for example a levy in Ireland, a combination of a tax and a voluntary agreement in Belgium and a voluntary agreement in Luxembourg. This option would indeed contribute to the intended specific objective, i.e. reducing the consumption of lightweight carrier bags to limit negative impacts on the environment.

The packaging supply chain supports efforts to further improve packaging waste management throughout Europe. As one of the key stakeholders, obliged industry has contributed financially and organisationally through extended producer responsibility (EPR) schemes in Europe. It has therefore consistently supported the concept and practice of the PPWD, which has been demonstrably successful in promoting resource efficiency, limiting the disposal of used packaging materials and in diverting them into recycling or energy recovery, as well as guaranteeing the free circulation of packaging and packaged products throughout the European Economic Area.

¹ EUROPEN - The European Organization for Packaging and the Environment- is a unique cross-sectoral industry organization open to any company with an economic and sustainability interest in packaging and packaged products. It presents the voice of the packaging value chain on topics related to packaging and the environment. Since 1993, EUROPEN unites corporate members ranging from raw material suppliers, packaging manufacturers to brand-owners, who have the common objective to improve the environmental performance of packaging and packaged products in a fully accessible European market for packaging and packaged goods. www.europen-packaging.eu

² .e. Italy's plastic bags ban, Spain's planned phase-out of non-biodegradable plastic bags by 2018, and earlier French and Maltese attempts to ban plastic bags which were blocked

EUROPEN therefore suggests that the statement “*marketing restrictions in derogation from Article 18 of this Directive*” in paragraph 1a in Article 4 of the PPWD be replaced by “*voluntary agreements*”.

Further considerations on proportionality principle

EUROPEN does not offer a position on the desirability or otherwise of reducing the use of lightweight plastic bags in the EU. EUROPEN questions whether the Commission’s justification for a measure as extreme as a ban is in line with the proportionality principle laid down in Article 5 of the Treaty on European Union: actions shall not exceed what is necessary to achieve the objectives of the Treaties. See also in the below considerations on the Impact Assessment.

Further considerations on the Commission’s Impact Assessment

The Commission’s Impact Assessment does not in EUROPEN’s view make a strong case for national bans. It estimates that a prevention target would bring about an 80% reduction in the use of lightweight bags, and a voluntary agreement a 55% reduction. No estimate is given of the likely reductions resulting from a tax or levy (this would depend on the level of the charge), but the Impact Assessment says that the Irish levy has been “*the most successful policy initiative*”. It also comments that “*both retailers and consumers could perceive a ban as excessive and disproportional, especially in light of the positive experiences in Member States having taken less stringent measures.*”

The Commission’s Impact Assessment lists three objectives, two of which are closely linked:

- ***To limit the environmental damage caused by plastic bags in terms of littering***
Reducing the use of lightweight plastic bags would only have a marginal effect on littering, which is a behavioural issue that requires action on many fronts. It is partly a matter of education and partly a matter of enforcement. It also involves ample provision of litter-bins, regular emptying of those bins, and frequent street cleaning (there is much evidence that people are much less likely to drop litter in a tidy street than in one where litter is already present).³ Industry can and does help with education and on research to identify where anti-litter measures should focus; but no one action can be effective without the others.
- ***To limit the environmental damage caused by plastic bags in terms of unsustainable resource use***
According to the Commission’s Impact Assessment, 1.61 million tonnes of plastic bags were placed on the EU market in 2010. This represents 2% of the 76.6 million tonnes of packaging placed on the EU market that year. Many of these bags are intended for multiple use and would not be covered by the proposed amendment to the PPWD, and it appears that lightweight bags would represent little more than 1% of packaging by weight.⁴ The Impact Assessment estimates that for every 1000 single-use plastic bags avoided, 433 additional bags would be used (multiple-use plastic bags, other multiple-use bags, paper bags and plastic bin liners). The majority of these bags would be heavier than the lightweight plastic bags replaced, so in weight terms the savings resulting from this measure would be very marginal indeed.

³ For example, Keizer, Lindenberg and Steg, *The Spreading of Disorder*, 2008.

⁴ The Commission’s Impact Assessment says that data are scarce on the consumption of single-use bags. Of the 1.12 million tonnes of bags produced in the EU, only 0.25 million tonnes (22.2%) were single-use. 70% of single-use bags are imported, which suggests that total consumption of single-use bags is about 0.83 million tonnes – or 1.1% of the packaging placed on the EU-27 market in 2010.

- ***To tackle a common and transboundary problem in a coordinated and coherent way across the EU***

This proposed amendment to the PPWD would set Member States the objective of reducing the consumption of lightweight plastic bags on their territory within a specified timeframe, and it suggests a number of ways in which they can do this. EUROPEN does not believe that allowing certain Member States to introduce a ban would improve coordination and coherence across the EU.

For all the above reasons, EUROPEN would strongly advise against the proposed derogation to article 18 of the PPWD, considering the proportionality, effectiveness of such a marketing restrictive measure and the implications of the proposal vis-à-vis the potential far-reaching disruption to the internal market principle. EUROPEN therefore calls on the European Parliament to suggest the abovementioned amendment as co-legislators. In anticipation of this consideration, we are available to expand upon our views.

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