

Reuse Quotas and Product Specific Targets for Packaging

EUROPEN urges the European Commission to ensure proper implementation of the Packaging and Packaging Waste Directive (94/62/EC), in accordance with the EC Treaty. Our organization maintains that Member States should not create unjustified barriers to trade and distort competition by:

- Adopting mandatory quotas or establishing any other mandatory preference for reusable packaging;
- Setting mandatory targets for reuse, recovery and recycling for packaging of a specific product category or sector.

It is not possible to force a sustainable shift in market demand (such as preference for refillables) through legislation. Consumers determine market trends more strongly than legislation (1). Further, when designing legislation, account needs to be taken of the economic interests of all economic operators, including consumers.

REUSE QUOTAS

In the past, some Member States (notably Germany) have adopted or considered legislation mandating quotas for reusable beverage packaging. These laws are often accompanied with a legal sanction of an economic instrument (generally a mandatory deposit) if such quotas are not achieved. This approach is now being considered by and extended into new EU Member States (eg Hungary) and others.

A statutory preference for reusable beverage packaging creates an unjustified obstacle to the free movement of goods and therefore constitutes an infringement of Articles 28 & 30 of the Treaty (2,3,4).

Reuse systems clearly have an impact on imported products more than on domestic products, since reuse systems are intrinsically local (5). Less restrictive alternatives to mandatory reuse quotas exist.

The Packaging Waste Directive provides for systems based on harmonised recovery and recycling rates designed to pursue the environmental objectives of the Directive. An earlier study concluded that if mandatory reuse quotas were abolished in Germany, the same reduction in solid waste as that currently achieved would still be preserved due to light weighting and recycling (6). Article 5 of the Packaging Waste Directive, which allows Member States to encourage reuse systems, does not eliminate the burden of proving that a restriction of the free movement of goods is justified in individual circumstances. Indeed, it specifically provides that any reuse systems must be *"in conformity with the Treaty"* and should relate to packaging which *"can be reused in an environmentally sound manner"*.

Mandatory reuse quotas clearly infringe Article 18 of the Packaging and Packaging Waste Directive, which provides that *"Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive"*. Packaging which complies with the Directive should therefore be allowed to move freely within the Community. (A point again emphasised recently by the Advocate General of the European Court of Justice (7)).

Statutory preferences for reuse systems are often based on the false assumption that reuse takes legal precedence over recovery of packaging and that reuse systems always prevent waste and have less environmental impact than non-refillable packaging options.

Legislation

The twin objectives of Directive 94/62/EC are to prevent the environmental impact of packaging and packaging waste and ensure the functioning of the internal market. It is important to note that the Packaging Waste Directive does not classify reuse as a means of prevention. Article 1(2) gives top priority to preventing the production of packaging waste; whilst reuse, recycling and other forms of recovery are given equal standing.

The ECJ ruling in Case 463-01 notes that:

“While Directive 94/62 envisages as a ‘first priority’ the prevention of the production of packaging waste, it lists in Article 1(2), as ‘additional fundamental principles’, reusing packaging, recycling and other forms of recovering packaging waste ... Directive 94/62 therefore does not establish a hierarchy between the reuse of packaging and the recovery of packaging waste.”

The basic rules for prevention are found in Annex II, paragraph 1 of Directive 94/62/EC and cover the design of the packaging and the manufacturing processes. These measures apply equally to reusable and recyclable packaging and thus prevention should not be equated with reuse.

Similarly, the CEN packaging standards for reuse and for prevention make no such suggestion.

In addition, Article 7 of Directive 94/62/EC puts recovery and recycling on an equal footing with reuse systems, providing they make it possible to achieve the objectives laid down (7, 8, 9).

Life Cycle Studies

LCA studies in general show that the environmental impact differences between refillable and non-refillable packaging systems are insignificant, irrespective of the assumptions used (1, 10). Reuse systems can, in certain circumstances, contribute to waste prevention but this is not always the case. The processes involved in reuse systems generate waste at each rotation and on ultimate disposal of the container. Reuse systems also place a burden on the environment, related to transport, cleaning, refilling and/or refurbishment.

Furthermore, in view of the recycling rates achieved by non-reusable packaging and the fact that reusable packaging usually contains a much greater weight of packaging material, reuse systems may generate more waste in absolute terms, unless high trippage rates are achieved over short transport distances (11). Therefore reuse cannot necessarily be regarded as the best measure to divert waste from landfill.

Any market quota for reuse systems will tend to cement market patterns and thus restrict innovation.

The choice between reuse and other recovery options should take full account of the whole environmental impact, as well as all economic and social factors and local capacities and needs.

PRODUCT-SPECIFIC TARGETS

The adoption by Member States of targets for the packaging of specific product categories and sectors whilst going against the spirit of the Packaging and Packaging Waste Directive, is very difficult to uphold in any European court of law. The only differentiation required by Directive 94/62/EC is the setting of minimum recycling targets for broad categories of packaging material. The recent revision of the Directive changed the previous 15% minimum for each material to differentiated targets (12). The recovery and recycling targets in article 6 of the Directive are not product-specific. The Directive covers all types of packaging placed on the market and all packaging waste, without any distinction other than packaging material types. Indeed, it repealed Directive 85/339/EC on containers of liquids for human consumption.

Mandating a given treatment for a specific category of product risks creating barriers to trade and distortions of competition, which would constitute an infringement of the Directive and of the Treaty.

CONCLUSION

EUROPEN members strongly support a high level of environmental protection in packaging waste policy and to this end are continuously engaged in developing environmental improvements.

Reuse systems can, in certain circumstances, contribute to waste prevention. However, reuse systems can also generate more waste in absolute terms than non-reusable packaging when trippage rates are not sufficiently high. Proper evaluation of environmental protection in packaging decisions must extend beyond simply measuring net solid waste generation.

The evaluation of other environmental impacts along the supply chain, such as water and energy consumption, waste water generation, emissions to air and spatial demands on distribution channels are also necessary. Life cycle assessments could provide insights into some of these areas. However, life cycle assessments do not address the other equally important aim of ensuring the functioning of the Internal Market and hence are not an appropriate tool to determine legislation.

When such broader analyses are carried out, the results show that there is no environmental justification for any statutory preference for reusable packaging or adoption of product specific targets.

FOOTNOTES / REFERENCES

1. ECOLAS / PIRA *Study on the Implementation of Directive 94/62/EC on Packaging and Packaging Waste and Options to Strengthen Prevention and Re-use of Packaging* - Final Report 03/07884/AL, 21 February 2005.

This study observes a general decrease in the market share of refillables across the EU as a consequence of societal changes.
2. In his report of 6 May, 2004 concerning case C-463/01 of the Commission of the European Communities versus the republic of Germany, the advocate general states *"I think there is no justification, once the collection systems are in place in a State, for the public authorities temporarily to prevent certain economic operators from competing because its nationals have changed their drinks consumption habits and prefer to buy them in non-refillable bottles, and to do so until the trend is reversed. It constitutes a restriction on the free movement of goods which is not in correct proportion to the insignificant advantages it represents for the protection of the environment"*. The advocate general also goes on to say that it is clear *"that the contested German legislation cannot invoke the protection of the environment, as an overriding requirement restricting the application of Article 28EC, in order not to comply with the principle of proportionality"*.
3. In its December 14, 2004 judgement of case C-309/02, concerning the imports of soft drinks, fruit juices and other non-carbonated drinks to Germany, the ECJ stated that setting a requirement on drinks producers in other Member States of achieving a fixed proportion of packaging in reusable containers to avoid the need to establish specific deposit and return obligations *"constitute an obstacle to the marketing of their products in Germany"*. This point was similarly made by the ECJ in its December 14, 2004 judgement of case C-463/01, concerning the import of mineral waters to Germany.
4. A letter by DG XV to the permanent representation of Austria, dated 6 September 1995, states that: *"In the view of the Commission services the Target Ordinance [which sets reuse quotas (note by the translator)] ... is likely to hamper intra-Community trade ... and should therefore be considered a measure having equivalent effect to quantitative import restrictions, as defined by Article 30 of the Treaty. Requirements to use a certain type of packaging for certain products are to be considered as national measures, which, according to the jurisprudence of the ECJ, can hamper trade between Member States"* (free translation of German original).
5. In Chapter IV, paragraph 2(a) of its Reasoned Opinion sent to Germany in July 2000, the Commission states why it believes such rules constitute a barrier to trade *"although they apply indiscriminately to national and imported products, they impose a greater burden on foreign traders, who if they decide to use refillable bottles, must transport the empty ones great distances, with additional costs and the risk of causing greater impact on the environment than if they used non-reusable packaging"*.
6. GVM, Gesellschaft für Verpackungsmarktforschung, *Entwicklung der Abfallbelastung durch Getränkeverpackungen 1970 - 1990 - 1995; Prognose / Simulation 2000*, Studie für die AGVU, Juni 1997
7. Advocate general in his report of 6 May, 2004 concerning case C-463/01
8. ECJ in its December 14, 2004 judgement of case C-463/01, concerning the import of mineral waters to Germany.
9. ECJ in its December 14, 2004 judgement of case C-309/02, concerning imports of soft drinks, fruit juices and other non-carbonated drinks to Germany,
10. *A review of LCA studies commissioned by EUROPEN* - URS study of May 26, 2004.
11. EUROPEN study *Mandatory Deposits on Non-Refillable Beverage Containers in Germany*, April 2004. This study showed that there has been a shift away from lightweight non-refillable packaging to heavier refillable packaging as a consequence of the triggering of deposits on non-refillable beverage containers following the legislated reuse quotas not being achieved in Germany. This (together with a lower return rate for refillables) has also resulted in an overall increase in the tonnage of packaging waste from drinks.
12. Directive 2004/12/EC. This amendment of Directive 94/62/EC set material specific minimum recycling targets of: 60% glass, 60% paper and board, 50% metals, 22.5% plastics (exclusively material recycled back into plastic) and 15% wood.



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