



KEY CONCLUSIONS OF STUDY FOR DG ENTERPRISE ON IMPLEMENTATION OF THE PACKAGING DIRECTIVE AND IMPACT ON THE INTERNAL MARKET

Impact on recycling, reuse and disposal:

- Although much packaging recycling would have happened anyway, the impact of the Directive on recycling rates has increased year by year and will continue to do so. Rates in the Member States who started systematic recycling policies in response to the Directive are converging on those whose legislation predates the Directive.
- For 2001, the Directive resulted in a 10% reduction in the tonnage of packaging waste in EU-15 for final disposal.
- Taking account of the recycling that would have taken place without the Directive, we believe that the incremental cost of the Directive would have been a maximum of €50 million in 1997, rising to €230 million in 2001.
- Without the Directive, waste management costs would have been distributed differently. Industry bears around 65% of the cost of packaging recovery in the EU (excluding companies' internal administration costs), and that amounted to some €2.8 bn in 2001.
- Even if all Member States had adopted measures on reuse after 1994 in response to Article 5 of the Directive, these would have had little effect. The measures taken in Germany, Portugal and Austria failed to arrest the decline in the demand for refillable beverage containers.

Market Access Issues:

- Hitherto all Member States have transposed the Essential Requirements but only three have put an enforcement mechanism in place. Now that the references to the CEN standards have been published (February 2005), other Member States may now establish their own enforcement regime. There may be conflicts between these new requirements, and new EU mechanisms may be necessary to resolve them.
- The notification procedure has generally been very effective in preventing barriers to trade from national measures. However, disagreements over refill protection measures have caused uncertainty, and challenges to national fiscal measures have been limited.

Beverage containers:

- Intervention to protect refillable beverage containers that is mild enough to avoid market distortions is unlikely to achieve its intended goals in the face of powerful forces such as consumer choice.
- The European Court of Justice has ruled, in connection with the German refill provisions, that the Directive does not say that reuse is automatically superior to recovery. The ECJ challenged the link between failure to meet refill quotas and a mandatory deposit. A mandatory deposit is acceptable subject to certain conditions, such as smooth implementation, but the ECJ has not said whether or not refill quotas are acceptable.
- The established deposit systems for non-refillable beverage containers are harder for importers to cope with than domestic producers, are generally more expensive than multi-sector recovery organisations, but do not generate higher overall recycling rates for packaging waste.
- Germany's unilateral introduction of the concept of "environmentally advantageous" packaging could set a dangerous precedent. The Internal Market would be fragmented if other Member States were to do the same, based on their own views of what is environmentally advantageous or disadvantageous.

Packaging taxes:

- The Commission's lack of success hitherto in challenging national taxes on packaging may encourage Member States to introduce taxes that give rise to trade barriers or distortions without risk of legal challenge. Some stakeholders believe that greater legal powers are available to the Commission than its current stance suggests.

Non-mainstream approaches to implementing the Directive:

- The different approaches in Denmark, Netherlands and the UK have only a limited effect on the Internal Market. However, there have been some problems with secondary raw material markets.

National recovery organisations:

- Differences in recovery organisation fees are inevitable because of differences in legal obligations and arrangements. Distortions could arise if fee structures favoured domestic producers, but we found no evidence of this.
- However differences in national reporting requirements give rise to administrative costs and thus to barriers to trade for importers.

Impact on recycling markets:

- National targets exceeding the Directive's maxima have had the potential to distort markets for secondary raw materials. However Member States are unlikely to wish to exceed the new 80% maximum recycling target.

- We expect more materials to be exported for recycling in the Far East in future. This could threaten European recyclers. It could also be problematic if recyclers in third countries want less European material in future. In the short term, these exports are resolving recycling capacity shortages except for glass, for which we identified capacity problems.

Further harmonisation:

- *Support for reuse:* Reuse of transport packaging does not appear to need legislative support and legislative support for refillable beverage containers has not been effective.
- *Uniform targets* may be inappropriate for a few Member States which are at a permanent structural and geographical disadvantage, and we have suggested that the Commission study this issue further.

OVERALL

The Directive has brought about convergence of national recycling rates, and the notification procedure has succeeded in resolving most Internal Market issues. However, problems remain on measures to protect refillable beverage containers, and care is needed on national taxes on packaging.

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