

The EU packaging value chain calls on the EU institutions to protect the integrity of the Single Market

September 2020

The undersigned industry associations have come together under the Packaging Chain Forum to voice their common concerns about the integrity of the Single Market for packaging and packaged goods. Alongside some recent developments at the EU level, we observe a worrying trend of divergent national provisions. The risk is further erosion of the fundamental principles of the Single Market and the undermining of the EU sustainability goals for a climate neutral, circular and competitive European economy.

The Green Deal and the Circular Economy Action Plan 2.0 intend to create the conditions for the EU industry to lead the transformation towards a sustainable economy. Rigorous implementation and enforcement of the Single Market principles are key to ensure harmonised legal requirements facilitating economies of scale, long-term investments and strengthening the business case for innovative products and technologies. This is not only a precondition for the free movements of packaged goods and packaging materials across the EU, but it is essential to strengthen the implementation of packaging and packaging waste targets in all Member States and to encourage the development of fully integrated EU markets for secondary raw materials.

Clearly defined and harmonised EU provisions are the necessary first step to avoid the adoption of diverging and disproportionate national measures, which result in overly restrictive national requirements and EU market fragmentation. However, core elements of EU provisions on packaging (e.g. definitions, scope, criteria to impose restrictions or grant exemptions) are often ambiguous and insufficiently defined in the main body of EU legislation and they must be further clarified through the lengthy adoption of non-binding Commission guidelines (e.g. EU guidelines on EPR fees modulation and SUP product definitions). As well as jeopardising the EU Green Deal's ambitions, this negatively impacts legal certainty, the effective enforcement of environmental targets and the free movement of packaging and packaged goods. Core provisions should instead be clearly enshrined in the main EU legislative text or in its implementing acts.

Secondly, when implementing and transposing EU law on packaging and packaged goods, national legislators must ensure compliance with the Single Market principles and with article 18 of the Packaging and Packaging Waste Directive (PPWD). Our longstanding concerns are especially relevant today, in the context of the upcoming review of the PPWD as well as the transposition and implementation of the revised Waste Framework Directive (WFD), the PPWD, the Single-Use Plastics Directive (SUP) and of other EU packaging policies.

The further erosion of the Single Market for packaging and packaged goods can and must be prevented through joint commitments and actions by the European Commission and the Member States.

We call on Member States to:

1. Respect the Single Market principles when transposing EU law and refrain from introducing national legislation that would hinder the free movement of packaging and packaged goods across EU internal borders or create unfair market distortions against producers from other Member States.
2. Scrutinise, i.e. via the TRIS consultation procedure, the transposition of EU laws by other Member States and oppose the introduction of national legislation which could threaten the integrity of the Single Market.
3. Notify their draft national legislation to the European Commission, in compliance with EU law¹, and adapt or withdraw it if the Commission considers it incompatible with the Single Market principles.

We call on the European Commission to:

1. Choose the appropriate legal basis to protect the free movement of packaging and packaged goods across the EU. In light of the upcoming review of the Packaging and Packaging Waste Directive, the Single Market legal basis (Article 114 TFEU) must be upheld.

¹ Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

2. Ensure that EU rules on packaging and packaged goods are designed in compliance with the Single Market principles and support their harmonised implementation across the EU. This requires enshrining core principles, targets and clear definitions in the body of the legislation or its implementing acts, thus preventing diverging national measures from occurring in the first place.
3. As the guardian of the Treaties, systematically intervene against any national provisions on packaging and packaged goods that fail to comply with the Single Market principles, independently of the type of material or application targeted.
4. Duly screen, via the TRIS consultation procedure, the Single Market implications of any national measures to ensure that they do not introduce restrictions to the free movement of packaging and packaged goods, which would be disproportionate and/or unnecessary from an environmental protection standpoint and could cause unfair EU market distortions.

Annex

Examples of national legislative developments threatening the integrity of the Single Market for packaging and packaged goods

The disparate national developments we are observing, stemming from the transposition and implementation of EU packaging law, are giving rise to increasing concerns as to the effective and harmonised enforcement and implementation of the EU provisions in the Member States. Two recent examples of this worrying trend are the French law on the fight against waste and on the circular economy and the Spanish draft law on Waste and Contaminated Soils. By introducing multiple restrictive national requirements for the placing on the market of packaging and packaged goods, which are disproportionate or insufficiently justified from an environmental standpoint, they will cause major obstacles to the ability of companies to effectively operate in the Single Market.

I. French Law on the fight against Waste and on the Circular Economy and its implementing Decrees

In February 2020, France adopted new waste legislation² (Circular Economy Law) to transpose the revised Waste Framework Directive (WFD), the revised Packaging and Packaging Waste Directive (PPWD) and the recently adopted Single-Use Plastics Directive (SUP Directive). The law is being complemented by a series of draft implementing Decrees.

Firstly, the adoption of the Circular Economy Law presents a fundamental procedural flaw. France failed to notify to the European Commission articles of the law with significant Single Market implications, as they introduce mandatory technical regulations for the marketing or use of packaging products. While some of the draft implementing Decrees are being notified to the Commission, the lack of notification of those articles of the Law results in an infringement of France's obligations under the TRIS procedure foreseen by Directive 2015/1535, as per CJEU jurisprudence.³

Secondly, several provisions of the Circular Economy Law and its draft implementing Decrees, introducing bans and other restrictive measures to the marketing of certain products, will create new trade barriers and cause harm to the functioning of the Single Market for packaging and packaged goods. These measures are also disproportionate with regards to the intended policy objectives of the WFD, PPWD and SUP Directive.

As an example, the Circular Economy Law and its implementing Decrees introduce phasing-out targets and bans on several types of packaging: article 7 lays down the objective of banning all single-use plastic packaging from the French market by 2040; article 66 foresees that France intends to reduce by 50% the number of single-use plastic beverage bottles put on the market by 2030; article 77 sets out the progressive prohibition of several types of plastic packaging products. National measures imposing bans on the marketing of a specific product are the most restrictive measures from a Single Market standpoint. Therefore, they must be duly scrutinised by the Commission to ensure they are necessary and proportionate to the environmental objective pursued and they do not infringe the principle of free movement of goods enshrined in Articles 34-36 of the TFEU and article 18 of the PPWD.

Furthermore, article 17 of the Circular Economy Law introduces a compulsory labelling requirement (the Triman logo) on the packaging of products that are subject to the principle of Extended Producer Responsibility. This obligation will impose a considerable financial burden on manufacturers active in cross-border trade and will de-facto have an effect equivalent to quantitative restrictions under Article 34 of the TFEU.

² French Loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire.

³ Case C-279/94, Commission v. Italy, ECLI:EU:C:1996:396, paras. 38-42; Case C-145/97, Commission v. Belgium, ECLI:EU:C:1998:212

II. Spanish draft Law on Waste and Contaminated Soils

In June 2020, Spain published a draft Law on Waste and Contaminated Soils⁴ (draft Waste Law) to transpose the revised WFD and the SUP Directive.

Title VIII of the draft Waste Law introduces a tax on the production, import and intra-EU acquisition of non-reusable plastic packaging, set to enter into effect on 1 July 2021 at a rate of EUR 0.45 per kilogramme. The proposed design of the tax, however, will discriminate between Spanish and non-Spanish products. Article 68 provides that the tax base may only be reduced by the amount of recycled plastic used by the packaging manufacturer if the recycled plastic comes from products used in Spain. This will impose a local content requirement, making it very difficult for a manufacturer outside Spain to claim a tax reduction compared to a Spanish manufacturer and preventing manufacturers in Spain using recycled material of non-Spanish origin. The added financial and administrative burden will not only result in an unfair competitive advantage for Spanish competitors versus non-Spanish ones, but it will also run counter to the goal of developing fully integrated EU markets for secondary raw materials.

Furthermore, companies established outside the national territory will have to appoint a tax representative in Spain and fill in and submit specific registers to the relevant authorities every three months. Additionally, the draft Waste Law will introduce bans and restrictive provisions going beyond the scope of the SUP Directive, such as prohibiting cosmetics containing microplastics. These unilateral national bans create an uneven playing field across the EU. The draft Waste Law will also require entities supplying SUP cups and food containers intended for immediate consumption to charge a fee to consumers, which must be shown visibly on the sale ticket. Moreover, the placing on the market of these items will have to be reduced by 50% by 2026, and by 70% by 2030, compared to 2022 levels.

Title IV of the draft Waste Law on the establishment of deposit refund systems foresees that producers have to transmit periodical information to the authorities on the products placed on the market. Producers who are not established on the Spanish territory will face the additional burden of having to appoint an authorised representative to fulfil these obligations.

The proportionality of similar measures with regard to their environmental objectives should be duly assessed to avoid creating excessive administrative and financial burdens and ensure that they do not infringe the principle of free movement of goods enshrined in Articles 34-36 of the TFEU and article 18 of the PPWD.

➔ See next page for Signatories

⁴ Anteproyecto de Ley de Residuos y Suelos Contaminados, 02/06/2020.



ACE - The Alliance for Beverage Cartons and the Environment



AG – Asociación Graphispac



AGMPM - Association of the Greek Manufacturers of Packaging and Materials



AGVU - Arbeitsgemeinschaft Verpackung und Umwelt e.V., Germany



AIM - European Brands Association



A.I.S.E. - The International Association for Soaps, Detergents and Maintenance Products



APEAL – The Association of European Producers of Steel for Packaging



AMCHAM - American Chamber of Commerce to the EU



ARAM - Association for Packaging and the Environment, Romania



ASSOBIBE – Italian Soft Drinks Association



AVNM – Slovak Non-Alcoholic Beverages Association



Brewers of Europe – The voice of the European brewing sector



CEFLEX - Circular Economy for Flexible Packaging



CEPI – Confederation of European Paper Industries



CICLOPLAST – Spanish Association of plastics transformers and raw materials producers for promoting plastics packaging recycling



Ceské průmyslové sdružení
pro obaly a životní prostředí

CICPEN - Industrial Coalition on Packaging and the Environment, Czech Republic



CITPA - The International Confederation of Paper and Board Converters in Europe



Cosmetics Europe - The Personal Care Association



CPME - Committee PET Manufacturers Europe



EAA – European Aluminium Association



EAFA – The European Aluminium Foil Association



ECMA - European Carton Makers Association



EFBW – European Federation of Bottled Water



EDANA – European Disposables and Nonwovens Association



EFE - Flexible Packaging Association, Spain



EKO-PAK - Packaging Association, Poland



ELIPSO - Les entreprises de l'emballage plastique et souple, France



EPPA – European Paper Packaging Alliance



EUMEPS - European Manufacturers of EPS



EUPIA – European Printing Ink Association



EuPC - European Plastics Converters



Emballasje foreningen- Norwegian Packaging Association



EUROPEN - The European Organization for Packaging and the Environment



EXPRA – Extended Producer Responsibility Alliance



FEA – The European Aerosol Federation



FEFCO – The European Federation of Corrugated Board Manufacturers



FEVE – The European Container Glass Federation



FoodDrinkEurope - The organisation of Europe's food & drink industry



F.I.E.B./ V.I.W.F. – Belgian Federation of Bottled Waters and Soft Drinks



FPE – Flexible Packaging Europe



IK - Industrievereinigung Kunststoffverpackungen e.V, Germany



INCPEN - The Industry Council for Packaging & the Environment



Independent Retail Europe



INTERGRAF - European Federation for Print and Digital Communication



MPE- Metal Packaging Europe



Miljöpack – Packaging Association, Sweden



Pack2Go Europe - Europe's Convenience Food Packaging Association



Pakkaus - Packaging Association, Finland



PCEP – Polyolefin Circular Economy Platform



Petcore Europe



PlasticsEurope - Association of Plastics Manufacturers



SCS – Styrenics Circular Solution



SEPEN – Association for Packaging and Environmental Protection, Serbia



SEVA – Association of Greek Soft Drinks Industries



Serving Europe – Branded Food and Beverage Service Chains Association



SVNN – Czech Non-Alcoholic Beverages Association



SZZV - Slovak Associations for Branded Products



TIE - Toy Industries of Europe



UNESDA – Union of European Soft Drinks Associations