

# European Union Law: packing it in

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## I. Introduction

In recent times, the environmental movement has gathered apace. Although much of the debate has concerned global warming, 2007 has witnessed an increase in momentum in the drive to reduce excess packaging and packaging waste in the UK. As well as new legislation in this area, there have been a variety of campaigns and initiatives proposed by MPs, the press and retailers which seek to overcome what is depicted as an unnecessary and undesirable burden on society.

Yet whilst manufacturers and retailers appear to be amenable to reducing excess packaging and packaging waste, the extent to which minimal packaging is required is subject to much debate. Although packaging has been virtually demonised in some quarters, its exponents claim that its uses and importance are often overlooked. Particularly salient in the context of food products is the way in which packaging is used to convey information, ranging from the marketing information for which packaging is often criticised to the essential information required by various legislation.

Accordingly, why are further reductions in packaging and packaging waste being proposed? To what extent is this necessary and what, if anything, needs to change?

## II. Legislative overview

The two principal pieces of legislation in the UK are the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (the Producer Regulations) and the Packaging (Essential Requirements) Regulations 2003 (the Essential Requirements). These implement Council Directive 94/62/EC on Packaging and Packaging Waste (as amended) which seeks to reduce the impact of packaging and packaging waste by introducing recycling and recovery targets and encouraging the minimisation and re-use of packaging.

The Producer Regulations came into force on 16 March 2007, setting the UK a business recovery tar-

get of 70% to ensure that the UK meets an overall recovery target of 60% and an overall minimum recycling target of 55% by 31 December 2008. The regulations apply to those businesses having a turnover of £2 million or above and/or which handle fifty tonnes or more of packaging in a calendar year. Those businesses which meet these criteria have a choice of registering and reporting to the relevant enforcement agencies or joining a compliance scheme on an annual basis. The business (or compliance scheme on its behalf) must then purchase evidence of compliance from an accredited reprocessor or exporter to demonstrate that the required amount of recovery and recycling has been carried out.

Meanwhile, the Essential Requirements require that packaging be minimised, that it be capable of recovery and recycling and that it contains only restricted amounts of certain hazardous substances. The main requirement is that no person who is responsible for packing or filling products into packaging or importing packed or filled packaging into the UK may place that packaging on the market unless it fulfils the Essential Requirements, including that:

- packaging, volume and weight must be of a minimum amount to maintain the necessary levels of safety, hygiene and acceptance for the packed product and the consumer; and
- packaging must be manufactured so as to permit re-use or recovery in accordance with specific requirements.

## III. Facts and figures

Notwithstanding this legislation, 2007 has witnessed a variety of prominent campaigns and initiatives seeking to minimise packaging and packaging waste. It is claimed that the legislative regime is

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insufficient and that further measures are required to tackle packaging waste, which increased by 12% from 1999 to 2005<sup>1</sup> and reportedly accounts for 4.6 million tonnes of household waste annually and 17% of the average household food budget<sup>2</sup>. In contrast, Germany, with a population approximately 25% larger than the UK, disposes of less than half the amount of rubbish into the ground<sup>3</sup>. Local government leaders have warned that without bold reforms the targets in the EU Landfill Directive will not be met<sup>4</sup>. This could result in local authorities facing fines of up to £150 per tonne which could constitute a £200 million burden on the UK taxpayer<sup>5</sup>. Even more concerning is the prospect that, at the present rate of dumping, landfill space would run out in nine years<sup>6</sup>.

A so-called 'flagship example' of excess packaging was the focus of various surveys during the Easter period. It was reported that the 80 million Easter eggs sold in the UK annually generate approximately 4,370 tonnes of cardboard and 160 tonnes of foil waste<sup>7</sup>. The Liberal Democrat MP Jo Swinson claimed that on average Easter eggs comprise merely 15% of the volume of their packaging, with one egg comprising only 9% of the volume of the package<sup>8</sup>. Meanwhile, a survey on behalf of Friends of the Earth (Scotland) revealed that consumers were sometimes spending more on packaging that would be discarded than on the Easter eggs themselves. A particularly notable example was a £4.98 Cadbury's Dairy Milk Variety egg (containing 295g of chocolate), of which, it was claimed, up to £3.37 (equivalent to approximately two-thirds of the sale price) could be towards the packaging of

the chocolate egg<sup>9</sup>. A similar example was highlighted in a television documentary during the summer, in which the cost of ingredients for shower gel was a third of the packaging cost<sup>10</sup>.

#### IV. Moves to reduce excess packaging and packaging waste

In this context, the drive towards minimising packaging and packaging waste has gathered momentum, with a view to reducing the burden on both the environment and the taxpayer. This has been paralleled by campaigns and initiatives in Parliament and by the press and retailers, in particular regarding the need for tighter regulation and greater enforcement.

A particular bone of contention has been the lack of successful prosecutions under the Essential Requirements. Only four companies have been successfully prosecuted under these regulations, and even then the size of any fine (a maximum of £5,000 on summary conviction) is not seen as a deterrent for larger companies. Much of the blame for the lack of successful prosecutions is attributed to the broad defences available. Extra packaging is allowed where there is "consumer acceptance", a need to "provide identification" or for "stimulating purchase", and these so-called loopholes have come under sustained attack. In May, the EU environment commissioner was asked to look into the fact that companies using too much packaging can claim they need it for marketing purposes. Consumers have also been urged to report excessive packaging to the trading standards authorities, and earlier this year a television documentary did just that<sup>11</sup>.

This is not the only potential legislative development. Earlier this year, the Retail Packaging Recycling Bill was introduced in Parliament, requiring certain retailers with stores over 250 square metres to provide free of charge a collection point for any packaging materials sold or supplied by them and to recycle or safely dispose of such materials. Similarly, an Early Day Motion has been signed by approximately a quarter of MPs concerning excess levels of packaging<sup>12</sup>, whilst in May 2007 the government published the Waste Strategy for England 2007 containing a number of initiatives aimed at reducing the amount of packaging dumped annually.

1 Local Government Association press release, 12 February 2007.

2 Early Day Motion 814.

3 Local Government Association press release, 7 January 2007.

4 Local Government Association press release, 7 January 2007.

5 Local Government Association press release, 7 January 2007.

6 Claim made by Sandy Bruce-Lockhart, chairman of the Local Government Association, referenced in "MPs sign up to the campaign against excess packaging", *The Independent*, 27 April 2007.

7 Friends of the Earth (Scotland) Press Release, 2 April 2007.

8 "What a load of rubbish, says Lib Dem MP", *The Guardian*, 5 April 2007.

9 Friends of the Earth (Scotland) Press Release, 2 April 2007.

10 Channel 4 documentary entitled "Packaging is Rubbish".

11 Channel 4 documentary entitled "Packaging is Rubbish".

12 Early Day Motion 814.



Simultaneously, there have also been various campaigns to tackle the problem of waste, the most prominent of which have included the Independent newspaper's 'Campaign Against Waste'. This has been paralleled by a number of initiatives by retailers and packaging manufacturers, a number of whom have signed up to the Courtauld Commitment to 'design out' the rise in packaging by 2008 and to cut packaging waste by 2010. Meanwhile, two small towns have attempted to become 'plastic shopping bag free' as retailers have stopped issuing plastic bags when products are purchased. A new London local authorities bill proposes similar measures for London. Similarly, earlier this year Sainsburys put on sale 20,000 cotton bags by the designer Anya Hindmarch as an alternative to disposable bags, prompting shoppers to begin queuing to purchase them at 2am. Asda has also announced various initiatives, including a trial scheme at two of its northern stores in which customers were invited to return examples of over-packaging to these stores. One of the most innovative responses has been seen at Lush Cosmetics, which uses popcorn for the transportation of products, claiming that it not only costs 10% less energy to transport but saves 4.6 million bags annually.

## V. The need for packaging

Whilst reducing excessive packaging and packaging waste is no bad thing, the current drive appears to be in danger of forgetting that packaging can be essential and is not necessarily 'un-green'. Indeed, it is debatable whether the problem lies within the packaging industry or the public's antisocial treatment of packaging.

Packaging performs an essential function in a number of ways and it is not necessarily in companies' interests to produce unnecessary packaging (with the possible exception of packaging for purposes of marketing); rather, packaging exists overwhelmingly in response to some need or demand.

Firstly, packaging protects and preserves its contents. In practical terms, much of the packaging criticised as excess may, unbeknownst to the suspicious examiner, in fact be required. This was highlighted in parliamentary debates earlier this year, during which the House of Commons discussed whether cucumbers needed to be wrapped in cling film, with one supporter arguing that, given the

amount of moisture in cucumbers, they benefit from being packaged<sup>13</sup>. Indeed, with increased demand for fewer preservatives in food, more protection from packaging is required to provide the same shelf-life.

Such preservation is important as it reduces food waste. It has been claimed that 30% of food purchased is thrown away<sup>14</sup> and that the environmental impact of avoidable food waste in household waste is at least eight times greater than the impact of total packaging waste going to landfill<sup>15</sup>. This not only applies to food packaged for sale, but during the movement and transportation of the produce to its point of sale. Accordingly, the amount of food in the UK supply chain lost between it growing in a field and reaching supermarket shelves is less than 3%<sup>16</sup>. In contrast, 40% of the food produced in India is lost<sup>17</sup>.

Not only does packaging protect and preserve the good itself, but it protects both the public and other items from cross-contamination (particularly relevant for people with allergies), including from organisms such as *E. coli*. It also protects consumers from accidents – for example, grapes are bagged to stop loose grapes escaping onto shop floors and causing consumers to slip – and acts as security, preventing tampering with products or accidental poisoning, for example of young children.

In many ways, the development of packaging is also a response to changes in consumer lifestyles. The contrast with fifty years ago is obvious. Consumers did not have refrigerators or freezers nor vehicles to transport bulk shopping, and conse-

13 Eric Illsley MP, Hansard, 12 June 2007, Column 196WH. Text of this parliamentary debate available on Internet: <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070612/hallindx/70612-x.htm>.

14 Lorely Burt MP, Hansard, 12 June 2007, Column 198WH. Text of this parliamentary debate available on Internet: <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070612/hallindx/70612-x.htm>.

15 Eric Illsley MP, Hansard, 12 June 2007, Column 191WH. Text of this parliamentary debate available on Internet: <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070612/hallindx/70612-x.htm>.

16 Eric Illsley MP, Hansard, 12 June 2007, Column 190WH. Text of this parliamentary debate available on Internet: <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070612/hallindx/70612-x.htm>.

17 Eric Illsley MP, Hansard, 12 June 2007, Column 191WH. Text of this parliamentary debate available on Internet: <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070612/hallindx/70612-x.htm>.



quently they shopped locally for fresh produce. Nowadays, most people are convenience shoppers, as symbolised by the growth in the ready meal industry, the total UK sales of which reached £1.78 billion in 2001, a rise of 46% from 1997. Supermarkets have also responded to this trend by extending the volume and range of products for sale beyond traditional food products. This in part has been driven by changing demographics, with more single occupancy households, more disposable income and a longer-living population. Consequently, by 2000 there were more than 40,000 product lines on many supermarket shelves<sup>18</sup>. Not only are more products available, but more of the same product type. Amongst the 40,000 product lines mentioned above there were 18 types of organic cheese, 600 kinds of coffee and over 400 brands of shampoo<sup>19</sup>. The growth of the globalised food economy has in part facilitated this as retailers source the cheapest possible produce from abroad irrespective of whether there are acceptable local substitutes.

This has contributed to the need to distinguish products from one another and resulted in a greater emphasis on marketing. Packaging is one way in which this is achieved, as recognised by the fact that "stimulating purchase" is one of the defences to a charge of excessive packaging under the Essential Requirements. Whilst this facilitates the exercise of consumer choice it is also seized upon as a cause of excess packaging, the classic example being the packaging of Easter eggs to attract young children and chocoholics alike. Yet when consumers are faced with 600 kinds of coffee, branding is necessary to differentiate one product from another.

Marketing information is not the only information conveyed on packaging. The drive for greater consumer choice necessarily means that the consumer requires as much relevant information as possible to make that choice. The obvious place for that information is packaging and consequently

packaging contains an extensive amount of information, ranging from details of the ingredients and health and nutritional information to animal welfare information and conditions of use. Much of this information is required by various legislation, including the Food Labelling Regulations which prescribe general labelling requirements for food which is ready for delivery to the ultimate consumer or to a catering establishment, and also make provision with regard to claims, nutrition, labelling and misleading descriptions of food. There are also specific legislative requirements for particular types of food product, an example being that containers of raw milk need to be marked with the wording 'This milk has not been heat-treated and may therefore contain organisms harmful to health'. Similarly, there are provisions concerning the manner of the marking or labelling of this information, including as to its placement, ease of understanding, visibility, legibility and indelibility. All of this plainly has the potential to impact upon the size, volume or shape of the packaging.

## VI. Consumer responsibility

Yet it is not only a regulatory drive which has been responsible for the increase in the amount of information on labelling and packaging. Such information is also desired by consumers, as evidenced in a survey conducted by YouGov, which indicated that over 60% of shoppers have at least occasionally used many types of product labels containing information about health, environmental and social issues, and between 20-40% have used many of these labels often<sup>20</sup>. In contrast, other sources of information such as in-store information and store staff were used much less than product packaging information and labelling. Indeed, that a product is packaged can itself convey information – bananas are sometimes bagged to distinguish Fairtrade and organically grown bananas from regular ones.

Yet many of the various schemes and initiatives described above have been driven by consumer demand as well as by regulatory bodies and the campaigns of various organisations and the press. For example, in a MORI survey of 1,000 supermarket shoppers earlier this year 92% of people surveyed said they wished to see a reduction in the overall amount of packaging and 93% wanted to see a rise in recyclable packaging<sup>21</sup>. However, such

18 Report available on Internet: [http://news.bbc.co.uk/2/hi/uk\\_news/724080.stm](http://news.bbc.co.uk/2/hi/uk_news/724080.stm).

19 Report available on Internet: [http://news.bbc.co.uk/2/hi/uk\\_news/724080.stm](http://news.bbc.co.uk/2/hi/uk_news/724080.stm).

20 The results were detailed in a paper prepared by Chris Gribben and Matthew Gitsham of Ashridge Business School entitled 'Food labelling: Understanding consumer attitudes and behaviour' dated March 2007.

21 "Shoppers want less packaging, survey shows", *The Independent*, 9 July 2007.



surveys are not necessarily indicative of the way in which the public actually treats packaging and packaging waste. In practice, there is far less enthusiasm when it involves altering life habits and infringing upon the limited time available in hectic modern day lifestyles. A notable example was the public's opposition to fortnightly rubbish collections, one of the UK government's tactics for reducing waste going to landfill. Similarly, a 'pay as you throw' proposal whereby households would be charged for the amount of rubbish they generate has also faced criticism. Meanwhile, Asda abandoned a scheme to reduce excessive packaging trialled at two of its stores (which it had intended to extend nationwide had it been successful), after a lack of enthusiasm amongst customers for returning examples of over-packaging.

To some extent, retailers and manufacturers are in a difficult position, caught between environmental pressures and consumer demand. In a television documentary earlier this year, a leading supermarket was asked why peppers were sold both loose and collectively in plastic bags<sup>22</sup>. Apparently, the supermarket had raised the issue with its customers but there was demand for peppers to be sold collectively, notwithstanding that the same volume of loose peppers could be purchased loose on an individual basis. Accordingly, the packaging industry's complaint is that it is not responsible for the anti-social disposal of packaging because that is what people do, not what packaging does. Nevertheless, there is still a responsibility to educate and inform consumers and change their habits, and many retailers and manufacturers have been pro-active in this respect.

## VII. Legal measures proposed to tackle packaging and packaging waste

And what of the legal measures proposed? In practical terms, the extent to which such measures to reduce packaging are appropriate or are likely to be effective is uncertain.

As mentioned above, one focus is the lack of prosecutions under the Essential Requirements, in particular given the limited nature of the fines and broad defences available where there is "consumer acceptance", a need to "provide identification" or for "stimulating purchase". Part of the problem appears to be insufficient resources, not least when trading

standards officers are already overstretched. It has been suggested that a new national body should be created to deal with prosecutions of large-scale producers in conjunction with such officers, and this notion was supported at the Liberal Democrat Party Conference in September. As for the regulations themselves, it currently appears unlikely that there will be any immediate change until the next revision of the Packaging and Packaging Waste Directive. At a meeting of the European Technical Adaptation Committee (TAC) on packaging on 4 September 2007, it was decided that there would be further research into the implementation of the Essential Requirements following which it would be considered whether it was necessary to revise the legislation or introduce better enforcement measures<sup>23</sup>.

Meanwhile, the Government's Waste Strategy for England 2007 has proposed that the Producer Regulations be amended to set optimal packaging standards for a product class<sup>24</sup>. Whilst this could be a positive step, the cost implications for small- and medium-sized enterprises will need to be carefully considered, and it remains to be seen whether any such amendment will exclude businesses on this basis.

As far as the Retail Packaging Recycling Bill is concerned, this was due for its second reading in Parliament at the end of the year. Yet whilst it is claimed that similar laws in Germany and Switzerland have successfully saved money and landfill, an attempt to introduce a similar bill seven years ago was unsuccessful, and it would appear that the same result is likely again. In particular, the government is already seeking to tackle excess retail packaging by the above-mentioned Courtauld Commitment (notwithstanding criticism of its voluntary nature). The Bill has also faced opposition, including from the British Retail Consortium which believes that supermarkets and other retailers are taking sufficient action and that the new legislation is impractical and could lead to health and safety risks.

22 Channel 4 documentary entitled "Packaging is Rubbish".

23 Unofficial note attached at the UK Government's Department for Business Enterprise and Regulatory Reform website at <http://www.dti.gov.uk/innovation/sustainability/packaging/Packaging%20in%20the%20EU/page38919.html>

24 Department for Environment, Food and Rural Affairs, Waste Strategy for England 2007, May 2007, page 61.

## VIII. Conclusion

Plainly, further debate is required on the subject of excess packaging and packaging waste. Although the issue of packaging and packaging waste would, on the face of it, seem to be a simple one to resolve, the way forward appears to be anything but straight. Perhaps this is most evident in the conflicting desire to minimise packaging at the same time as extending consumer choice and information. Whilst the Essential Requirements permit what would otherwise be excess packaging on the grounds of "consumer acceptance", a need to "pro-

vide identification" or for "stimulating purchase", there is plainly a tension which needs to be overcome, in perception if nothing else. It is easy to forget that packaging performs important functions, including the protection and preservation of food. Two particularly salient features are its use as a marketing tool and to provide necessary and relevant information, as the extensive food labelling legislative regime implicitly recognises. It is unlikely that legislative developments will end there, and as labelling requirements increase, a careful balance will need to be struck between both excessive and essential packaging and labelling.