



Beverage industry comments on indicative roadmap concerning EU environmental law – implementation review 2022

UNESDA Soft Drinks Europe, Natural Mineral Waters Europe (NMWE) and the European Fruit Juice Association (AIJN) welcome the environmental implementation review as a tool to improve the implementation of EU environmental policy in EU member states, and would like to take the opportunity of the [2022 review](#) to raise their concerns regarding specific aspects of waste and packaging legislation, including the implementation of the Single-Use Plastics Directive.

We are committed to accelerating the transition to a circular economy, as is also the objective of the EU Circular Economy Action Plan. UNESDA and NMWE, in particular, have their Packaging Vision towards 2030 whereby they are making several far-reaching commitments, going well beyond EU law, on recyclability, collection, recycled content and reuse of our beverage packaging. AIJN, on its side, is developing the Sustainable Juice Industry Roadmap towards 2030 to articulate the EU fruit juice industry's commitment to environmentally conscious, sustainable production, including packaging.

To support us in our ambitions, a proper implementation of EU environmental law by Member States is paramount. Unfortunately, we keep observing diverging, disproportionate measures which threaten both EU environmental ambitions and the EU Single Market.

This paper aims at bringing the European Commission's attention to those situations.

We have observed an increasing number of diverging and disproportionate national measures that are being adopted to transpose EU environmental laws. Some of those measures go way beyond the scope of EU legislation, without proper environmental justification, and risk undermining our shared efforts towards a more sustainable and circular economy.

Indeed, when implementing and transposing EU law on packaging and packaged goods, Member States do not always comply with the Single Market principles and with Article 18 of the Packaging and Packaging Waste Directive (PPWD), which states that "*Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive.*"

As a first example, some Member States announced plans to ban some products covered by the Single-Use Plastics Directive: France wants to ban all single-use plastics by 2040, while Spain wants to see the end of the commercialization of plastic beverage bottles by 2050.

We believe that if single-use plastic products complying with the requirements of the Single-Use Plastics Directive and Packaging and Packaging Waste Directive are authorized on the EU market, it should not be possible for Member States to ban them unilaterally. Indeed, contrary to other products, our products are not banned under the Single-Use Plastics Directive. Instead, the Directive obliges us to meet specific requirements such as collection rates and a certain rPET content. Should those targets be met, placing on the market of our products should not be hampered.



We believe this is a wrongful use of the EU legislative framework to introduce new measures not covered by EU law, **creating a fragmented and incoherent market.**

Those announcements are also counter-productive as they are **disincentivizing investment in more circular and greener initiatives.**

In recent years, our sector has been investing in the circularity of its packaging and is committed to keep doing so. However, it is extremely discouraging to learn that even if our products comply with all EU requirements (in terms of collection, design, share of recycled content,...) and even if most companies took commitments to go way beyond those, our products may still be banned in some Member States in a near future.

Another example of this is the introduction of unilateral national targets. Most recently, both [France \(2021/510/F\)](#) and [Austria \(2021/262/A\)](#) notified draft legislation defining a minimum proportion of reused packaging to be placed on the market.

We support an increase in the use of refillable bottles wherever they can contribute to our objective to reduce the environmental footprint of our sectors. However, the introduction of refill quotas needs to be supported by solid environmental analysis. In addition, in order to guarantee a well-functioning internal market in the EU, any reuse requirement should be introduced at EU and not at Member State level. The European Commission is currently working on the revision of the Packaging and Packaging Waste Directive with reuse being considered.

It is our opinion that the proposed refillable quotas constitute a **significant restriction of the free movement of goods** within the European Union, that they are **not suitable to achieve the pursued environmental goals**, and that they are **discriminatory, excessive and disproportionate.**

- [Restriction of free movement of goods:](#)

The freedom of goods prohibits measures capable of hindering, directly or indirectly, actually or potentially intra-community trade. This is inter alia the case if requirements for the presentation, labelling and packaging of goods force the manufacturers to change their packaging even if they apply without distinction to domestic and imported products according to settled case law (see i.a. ECJ Case C-470/93, Mars, par 13, C-3/99, Cidrerie Ruwet, par 46ff). Therefore, in the absence of EU legal framework, national regulations on mandatory reusable packaging violate the free movement of goods. Furthermore, if a mandatory quota for reusable packaging has a significant effect on the appearance of a product, such as e.g. for products that hitherto have been offered mainly or solely in metal cans, it exerts a de facto prohibitive effect. This prohibition might lead to a material substitution with negative environmental effects.

- [The quotas are discriminatory against foreign beverage manufacturers:](#)

Regulations on mandatory reusable packaging affect foreign manufacturers more strongly than domestic ones. This is because the costs for both the transportation as well as the organization of reusability systems increase with the distance between the manufacturer and the points of sale, even more so as reusable containers are often much heavier than single-use containers. Thus, foreign



manufacturers will have to produce at lower prices than domestic manufacturers. This constitutes a significant barrier for competitive market access.

This obstacle is even bigger for foreign manufacturers that not only have to bear the additional financial and organizational burdens but also must adjust their packaging and product appearance to offer reusable packaging options. Upon adoption of the quotas, they would have to not only completely change their packaging but also to set up a system for the organization and transport of the reusable packaging. This will entail extensive costs for both the packaging change and the system set-up.

- [The quotas are not suitable to achieve the pursued environmental goals:](#)

Restrictive measures must be suitable to achieve the pursued goals. Reusable containers are only ecologically preferable to other types of packaging under specific circumstances (i.e. short transport routes, reaching certain circulation repetitions, etc.). So far, countries planning to introduce refillable quotas have not provided any proof that this is the case and that those conditions are met.

- [The quotas are excessive and disproportionate:](#)

Even if the quotas were suitable to achieve the pursued environmental goals, they still would not be justified because the proposed measures go beyond what is necessary for the legitimate purpose of the EU legislation. Indeed, national regulations on compulsory forms of packaging are considered an extreme form of interference with the free movement of goods and the European Court of Justice is thus critical towards such measures (see inter alia ECJ case C-3/99, Cidrerie Ruwet, par 45 ff; Case 16/83, Prantl, par 22 ff, Case 302/86, Commission/Denmark, par 17).

With respect to the proposed mandatory quotas, there are numerous alternative measures equally (or even more) suitable to pursue the legitimate goal and that are at the same time less restrictive towards the circulation of goods, thus less likely to interfere with the intra-community trade. For example, in the case of beverage drinks, it is far more efficient to introduce a deposit return scheme (DRS) to increase collection and eliminate litter. Several countries around Europe have shown results above 90% collection thereby de facto removing beverage bottles from the waste equation. In addition, DRS enable closed loop bottle-to-bottle recycling, resulting in the use of more recycled content, even up to 100%, in new beverage bottles. This is the definition of circularity!

In light of the above situations, we ask the European Commission to address diverging and disproportionate implementing measures in its 2022 environmental law implementation review. More guidance should be provided to Member States to direct them towards a proper implementation of EU law, guaranteeing a functioning single market and compliance with EU environmental objectives.

About the European Fruit Juice Association (AIJN)

AIJN is the representative association of the fruit juice industry in the EU. It defends the interests of the juice industry including the entire value chain and promotes the sector by engaging with the EU Institutions and other relevant stakeholders.



www.aijn.eu



About Natural Mineral Waters Europe (NMWE)

Natural Mineral Waters Europe represents almost 550 natural mineral and spring water producers in Europe, most of them small- and medium sized companies. NMWE is dedicated to promoting the unique qualities of natural mineral and spring waters as well as sustainable use of water resources and circular economy. It is signatory to the EU Transparency Register (No: 562370525222-50).

www.naturalmineralwaterseurope.org

About UNESDA Soft Drinks Europe

Established in 1958 UNESDA Soft Drinks Europe is a Brussels-based association representing the European soft drinks industry. Its membership includes both companies and national associations from across Europe producing drinks including still drinks, squashes, carbonates, powders, iced teas, iced coffees, syrups, energy drinks and sports drinks. It is signatory to the EU Transparency Register (No: 25498952296-56).

www.unesda.eu