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Pack Sizes in the EU: – Public Consultation

8 November 2002 – 31 January 2003

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This is a report by the Enterprise DG of the European Commission.

The aim is to reflect and analyse the opinions collected during the public consultation on policy as regards pack sizes.

The public consultation of stakeholders is part of the Commission's extended impact assessment process of the revision of existing Community legislation in the field of pre-packaging. Other elements of the assessment have included a survey of consumers, a study on innovation aspects, and a Commission services working paper.

This report does not commit the European Commission as regards any future policy proposal.

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Background

Between 8 November 2002 and 31 January 2003, the Enterprise DG held a public Internet consultation in 11 languages with consumers, producers and retailers, following the Commission's new minimum consultation standards¹. The parties were asked to give their views on maintaining existing pre-packaging legislation on fixed sizes or allowing free pack sizes. A Commission staff working paper setting out the key issues served as the main background paper.

Large publicity was given to the launch of the consultation and an estimated 5000 hits were recorded during its 10 week duration. The consultation included an inter-active online discussion forum, which received 85 contributions, mostly from producers, and an on-line survey with over 500 completed questionnaires, mostly from consumers.

The public consultation was not aimed to be representative, but rather to collect new ideas and arguments. The survey consisted of questions formulated by the Commission services, while the forum allowed respondents to contribute as they liked.

The results will feed into the extended impact assessment already underway to analyse the issues at stake, the alternative policy options and their likely impact. Other elements of the impact assessment have included a Eurobarometer consumer survey, a Joint Research Centre – Institute for Prospective Technological Studies study on innovation and pre-packaging, and the Commission working paper.

¹ COM(2002/704final, 11.12.2002

Main findings

The answers in the Interactive Policy Making Survey (IPM) show consumer behaviour to be in line with what is assumed by the European Court of Justice and what is described in the Working Paper². Most currently sold sizes are preferred by consumers, in general and in sectors where sizes are fixed, so there does not seem to be much reason to further pursue these questions in a statistically representative Eurobarometer.

The questions to retailers and producers indicate a highly competitive retail market and competitive producer markets. It would seem that where sizes are fixed, size is not a major element of management decision, while where sizes are not fixed, size is an important consideration for decision makers. This also reflects the findings of the study on innovation aspects and the Working Paper.

The discussion in the Interactive Online Forum has not led to new insights concerning the lines of the main arguments mentioned in the working paper.

On the other hand, a number of new arguments have been brought forward:

- The big difference between currently fixed sizes (+43%), which make offers of “+10% free” impossible within the legal framework, and therefore limits competition.
- The difficulty to fix sizes, which are easy to understand, e.g. if the current range for tins and jars would remain, it would be illegal to sell sizes of 250gr or 500 gr.
- The cost to taxpayers of legislating and market surveillance of fixed pack sizes.
- Obstacles to trade when fixed sizes differ between the EU and third markets, e.g. spirits, where the EU size is 70cl and most third countries have fixed sizes at 75cl.

These new arguments should be taken into account in the assessment of alternatives.

² The reference for the Court is the “average consumer, reasonably well informed and reasonably observant and circumspect” (Case [C-220/98](#) Estée Lauder Cosmetics v Lancaster Group [2000] ECR I-117, § 30 which was referred to in [Case C-3/99](#), 12 October 2000, Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Ltd.)

Annex 1: Interactive Policy Making Survey (IPM)

Main Findings

The answers in the Interactive Policy Making Survey (IPM) show consumer behaviour to be in line with what is assumed by the European Court of Justice and what is described in the Working Paper³. Most currently sold sizes are preferred by consumers, in general and in sectors where sizes are fixed, so there does not seem to be much reason to further pursue these questions in a statistically representative Eurobarometer.

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General Statistics

Respondents

Overall, 571 questionnaires were answered. Replies to the survey came from all EU countries, but in particular from Finland (18%), Germany (15%), Belgium (12%), and the United Kingdom (10%). Of the respondents, 535 (94%) were consumers and the remaining 36 (6%) were retailers or producers. It cannot be identified whether they were individual respondents or organisations representing a larger constituency.

The purpose of the survey was to gather information on respondents' individual preferences and to see whether the answers would justify later use in representative surveys.

Evaluation of the Questionnaire

Of the respondents, 60% expressed that the survey had not met their expectations, while the expectations of 40% of the respondents were met. Of those people who did not find the questionnaire appropriate 40% did not say why (no response), but it was mostly criticised for being too general (24%), for being irrelevant in content (23%), before being too short (10%).

The rate of response was high and the 'non-response' rate was low (only 3%-8% per question)⁴. On the basis of this criterion, the satisfaction of the respondents would seem to be quite high.

³ The reference for the Court is the "average consumer, reasonably well informed and reasonably observant and circumspect" (Case [C-220/98](#) Estée Lauder Cosmetics v Lancaster Group [2000] ECR I-117, § 30 which was referred to in [Case C-3/99](#), 12 October 2000, Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Ltd.)

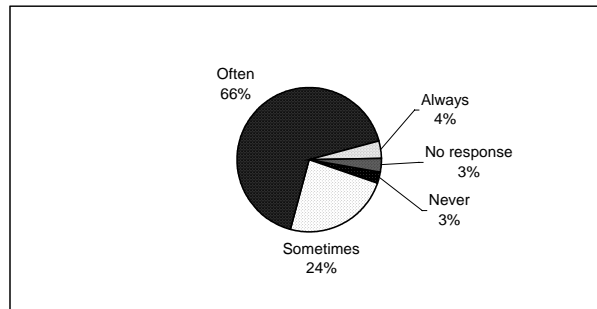
⁴ Normally a high non-response rate indicates dissatisfaction or not understanding.

Details of Findings

Consumer behaviour

Twice as many males as females answered⁵. Of the respondents, 25% lived in households of 4 or more persons, but 56% lived in households with one or two persons⁶.

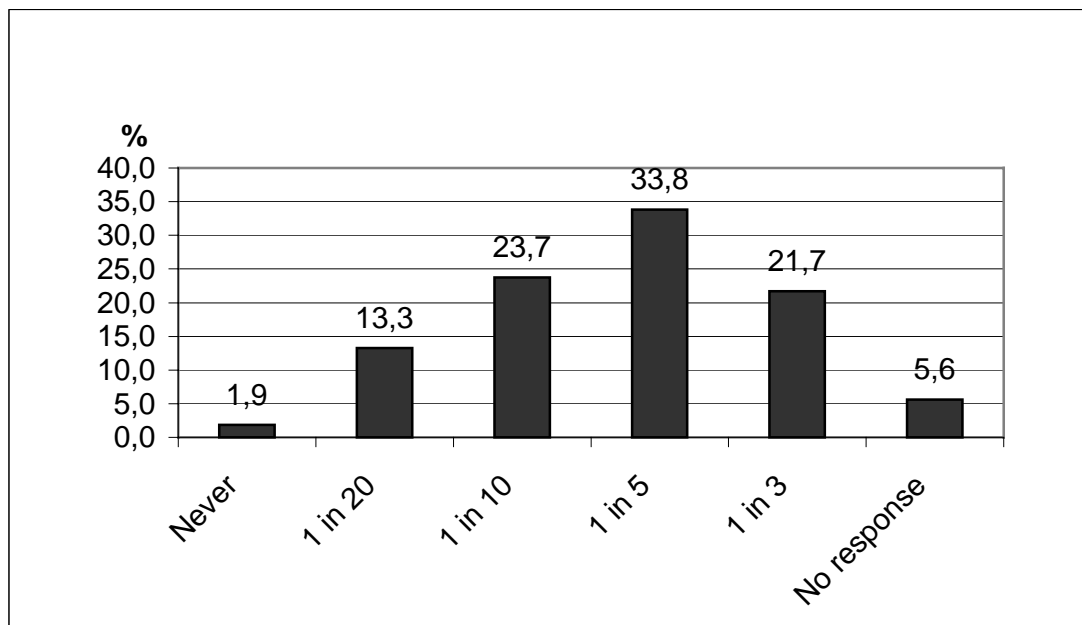
Table 1: Do you buy the same brand repeatedly when you go shopping?



Respondents answering in the capacity of consumers stick to brands: 70% often or always buy the same brand, while only 27% sometimes do, or never do. This means the majority of respondents shop conservatively.

Respondents, however, are also curious for new products. Over half of the respondents say they buy new products regularly, with one new product in four they are familiar with or even 1 new product in two products they know.

Table 2. How many first time purchases and/or changes of a brand do you make when you go shopping?

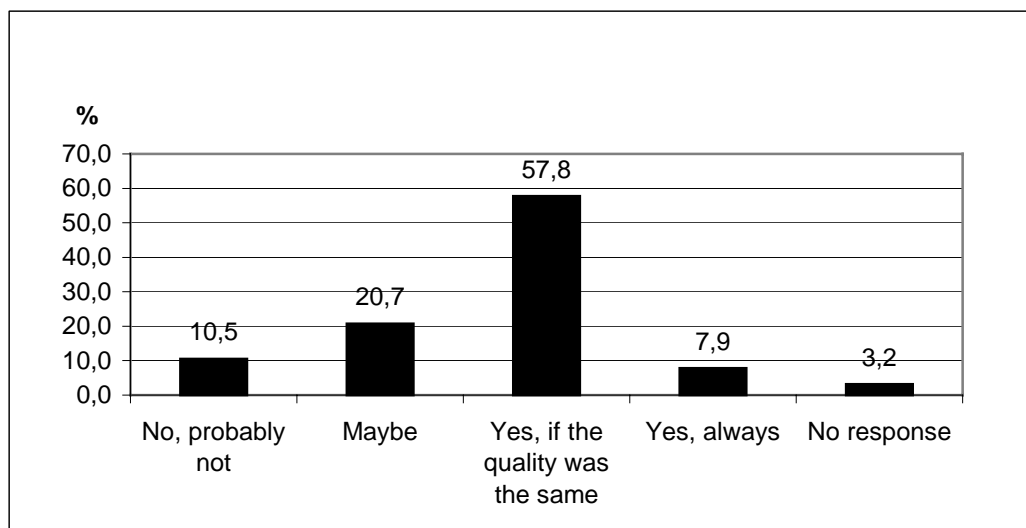


⁵ This finding contrasts with the statistically representative Eurobarometer survey 113 that in 75% of all cases women were responsible for household shopping.

⁶ This corresponds with the Eurostat figures mentioned in the Working paper.

Two thirds of respondents are willing to change the brand if the quantity is more to their liking mostly under the condition that the quality is the same.

Table 3: Would you change brand if the quantity contained in a pack or a bottle was more to your liking?



The following conclusion from the three questions regarding consumer behaviour can be drawn:

- Most consumers stick to the same brand.
- Most consumers also regularly try out new brands and products.
- Most consumers will change to a different size if quality is guaranteed.

Pack sizes

Regarding the question if consumers were happy with the pack sizes in general, 54% agreed. However a significant minority of 38% wanted different sizes, smaller (19%) or larger (19%). The non-response rate was 8%.

In industry sectors that want sizes to remain fixed, consumers are happy to buy the most sold pack sizes. This contentment is lowest for spirits where only 38% of respondents are happy with the 70cl bottle and highest for wine where 64% is happy with the 75cl bottle. On average, the six sectors together show that 47% are happy with the most sold size while 32% favour different sizes than the most sold. This conforms with the answer to the general question above.

Table 4: Answers in the survey to the question whether pack sizes should change or not, in general and for specific products with currently regulated fixed sizes.

% of total	No change	Change	No response	Do not buy
All products (in general)	54	38	8	
<i>6 products with fixed sizes:</i>	<i>47</i>	<i>32</i>	<i>4</i>	<i>17</i>
roasted and ground coffee (250g)	40	38	4	18
soluble coffee (200g)	20	25	4	50
Wine (75cl)	64	25	4	7
Spirits (70cl)	38	39	5	18
Flour (1 kg)	54	36	5	5
Sugar (1 kg)	62	31	4	4

Of the respondents who say they buy the product, the majority is happy to buy the most sold size for wine, sugar and flour, while it is 50-50 for spirits and coffee.

Producers and Retailers

Of the respondents, 34 were producers and 13 answered the questions for retailers.

Producers

Of the producers, 41% do not feel pressure to change sizes, whereas the remainder do. About half (47%) cannot adjust packing machinery to changes in sizes, while 50% can do so with minor changes to packing machinery. Three quarters of producers at least sometimes feel pressure to follow the market leader.

Retailers

A majority of respondents stock many sizes, but nonetheless sometimes encounter consumers who ask for sizes they do stock. Most allot shelf-space according to turnover and nearly all feel pressure to follow the market leader always or at least sometimes.

Annex 2: Interactive Online Forum

Main findings

The discussion in the [Interactive Online Forum](#) has not led to new insights concerning the lines of the main arguments mentioned in the working paper.

On the other hand, a number of new arguments have been brought forward:

- The big difference between currently fixed sizes (+43%), which make offers of “+10% free” impossible within the legal framework, which limits competition.
- The difficulty to fix sizes, which are easy to understand, e.g. if the current range for tins and jars would remain, it would be illegal to sell sizes of 250gr or 500 gr.
- The cost to taxpayers of legislating and market surveillance of fixed pack sizes.
- Obstacles to trade when fixed sizes differ between the EU and third markets, e.g. spirits, where the EU size is 70cl and most third countries have fixed sizes at 75cl.

These new arguments should be taken into account in the assessment of alternatives.

Statistics

Overall the forum received 85 contributions compared to an average of 350-850 hits on the different language versions for the website over the last 6 weeks of the consultation. 43 contributions were in English, 23 in French and 13 in German and all languages except for Danish and Italian were used. Country-wise, contributions came from France (23) and the United Kingdom (24). There were also 3 contributions from non-EU countries. Mainly producers and their representative organisations made contributions (40), notably from the spirits industry (19). The organisations wrote extensive statements, which were posted by several of their members on the forum, whereas individual contributors wrote shorter contributions.

Views expressed

Among individuals, advocates of regulation and deregulation of pre-packaging seem about equally divided. Although one contributor assumed that liberalisation was for the benefit of the producer, the opinions between business sectors differed. Spirits and wine producers unanimously demanded maintaining fixed sizes. Sugar, salt and tea federations preferred fixed pack sizes, as did a recycling company. Coffee associations, except for one coffee producer, favoured mandatory fixed sizes. In contrast, the chocolate and confectionery organisation, a brewer and a soft drink producer supported liberalisation of pack sizes. The European Brands Association was in favour of free pack sizes.

New arguments

In favour of fixed sizes

More than one contributor requested products of the same physical dimensions in order to fit packs better into kitchen cupboards or in order to have the same space for advertisement on the packaging. (*Commission services comment: It would seem that this kind of detailed legislation is not applied by Member States and is therefore outside the scope of EU harmonisation. However, it could be the subject of voluntary standardisation involving consumers, retailers and producers.*)

Another suggestion was that governments can more easily collect of excise tax on alcohol when sizes are fixed. (*Commission services comment: Excise taxes depend on percentage of alcohol, so size is not the only factor determining the excise.*)

Several contributors suggested replacing product specific ranges by a general range applicable to all products. (*Commission services comment: this could get the form of jumps of 5cl or 5gr. However, it could be constraining for certain products such as prepared meals or portions for people with diabetes. In an environment of free sizes this issue could be addressed by means of voluntary harmonisation.*)

In favour of free pack sizes

A new argument raised for free pack sizes, was the big difference between currently fixed sizes (+33%), which made offers á la “+10% free” impossible within the legal framework. For spirits, the step from 70cl to the next legal size of 1L is an increase of 43%, a promotion producers could not readily afford. (*Commission services comment: it seems a valid comment because, if consumers deem size relevant, it will be an element of competition.*)

Several contributors pointed out that the current fixed sizes for jars, make it illegal to sell sizes of 250g or 500g, which are easy to understand. (*Commission services comment: again this seems to be a valid argument, which would be solved by free sizes.*)

Some indicated that taxpayers money is spent on legislation and market surveillance of fixed pack size regulation. (*Commission services comment: this is a prime reason to consider very carefully why fixing sizes is justified – legislation is never for free and each additional controlling tasks by authorities requires human resources.*)

Some producers of spirits, but also of chocolate, identified the existing fixed sizes as an obstacle to exports to third countries. (*Commission services comment: When sizes, that are mandatory, differ between the EU and third countries, producers will be less able to achieve economies of scale and this will especially affect Small and Medium sized Enterprises.*)

Working Paper Arguments

Many contributions reiterated the arguments already exposed in the DG Enterprise working paper. However, those in favour of fixed sizes, did not offer additional detailed analysis of market failures in their sector.

A number of arguments were brought forward in favour of fixed sizes which in the light of the DG Enterprise working paper are misunderstandings of Community law or misrepresent the findings outlined in the Working paper. These arguments are retaken below and in brackets the Commission services comment is given.

Technical Barriers to Trade

Spirits producers stated that free pack sizes would be a barrier to free trade on the EU market, because they expect a return to national sizes. (*Commission services comment: On the basis of the ECJ court case 3/99 ruling, it is clear that national sizes cannot stop the marketing of sizes that are legal anywhere else in the EU, so a return to national sizes should not be expected, if fixed sizes were to be abolished.*)

Some producers indicated that nationally fixed sizes hindered domestic producers to compete with mutually recognised imports. (*Commission services comment: The consequence of the ECJ court case 3/99 ruling is that national sizes discriminate against national production, so this would be the prime reason to retract them.*)

Consumer protection

Many producers motivate fixing sizes to protect consumers from confusion and deceptive packaging. (*Commission services comment: Deceptive packaging is already addressed in Directive 2000/13/EC on labelling and presentation of foodstuffs⁷ and confusion is not apparent in sectors where sizes are free.*)

Both individual contributors and producers highlighted that unit prices are often difficult to read or not uniquely applied. (*Commission services comment: The unit pricing directive is currently being evaluated and its functioning is rated by consumers to be positive and can therefore not be a reason to justify sizes legislation. The unit pricing directive leaves Member States free to determine the size of unit price labelling and to exempt small retailers from applying them.*)

Market transparency

Some producers asked for maintaining fixed pack sizes in order to continue ‘loyal competition’ and to avoid that new entrants with resources to invest into flexible packaging lines will push out existing companies from the market. (*Commission services comment: Competition on sizes will only happen if there is genuine consumer demand and in that case new entrants on the market are good for competition.*)

Environment

Many individual contributors referred to the aspect of environment in relation to the recyclability of packaging material. (*Commission services comment: Currently the Packaging and Packaging Waste (PPW) directive applies to all packaging independently of fixed sizes. Without proof, it cannot be assumed that sectors with fixed sizes achieve the PPW aims better.*)

Producers considered the use of lightweight bottles as important, predominantly for reasons of economic efficiency and compliance with the packaging/packaging waste directive. (*Commission services comment: The case for lightweight glass still needs to be quantified by the firms using it – until now it seems only achievable for large producers who would use such glass to achieve economies of scale even if sizes would be free.*)

Innovation

Companies, in particular wines and spirits, in favour of fixed sizes, explained that they used the revenues gained from economies of scale to invest into highly efficient filling machines in terms of speed. Besides, producers insisted that innovation was

⁷ Article 2 of Directive 2000/13/EC on labelling and presentation of foodstuffs reads:

“The labelling and methods used must not be such as could mislead the purchaser to a material degree, particularly as to:

a) the presentation of foodstuffs, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed;
(b) advertising.”

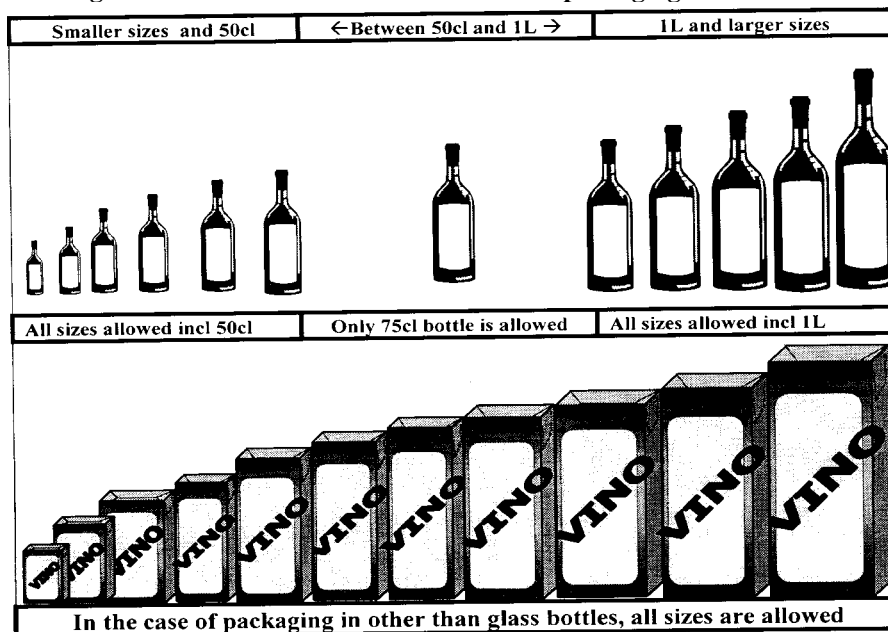
taking place in regard to ingredients of the product rather than the pack size. (*Commission services comment: Product content innovation would seem to be independent of sizes.*)

Policy Options

Wine producers deemed SMEs incapable of investing in new flexible bottling lines. (*Commission services comment: The exclusion zone in the compromise proposal⁸ will save SMEs such investment, because it only allows the most sold size, the 75cl bottle in which most of current sales to consumers is transacted, and prohibits any sizes in glass bottles other than 75cl between 50cl and 1L coming onto the market. Artisanal SMEs would be subjected to the buyer power of large retailers, to supply bottles of close to but different from 75cl, if not protected in this way. The market outside the exclusion zone is very small and apparently not much demanded by consumers, so it is unclear why SMEs would want to invest in that segment.*)

Spirits producers considered the suggested exclusion zone around the currently most sold size a penalisation of small producers, because they would be forced to market their products in the most sold size, where competition was toughest. (*Commission services comment: Currently much spirits is sold in 70cl and 1L bottles both of which would be covered by the exclusion zone, so it is already the case today that small producers are competing where competition is toughest. The compromise, if applied to spirits, would allow them to continue to compete without additional investment.*)

Table 5. Compromise solution for wine: for glass bottles only the size of 75cl would be allowed in the range between 50cl to 1L while sizes of other packaging material would be free. -



⁸ Compromise solution for wine, suggested in the Working Paper, would be to fix an exclusion zone around the most sold size, i.e. the 75cl bottle (in which 90% of current sales are transacted). The aim of the legislation is to exclude any sizes in glass other than 75cl between 50cl and 1L coming onto the market, because if allowed, retailers would exercise their buying power to force artisan Small and Medium-sized Enterprises to supply in non-75cl bottles. Sizes in other packaging than glass would be free, because such packaging is already common in some wine importing states (see graphic illustration in Table 5 above).

Annex 3: Publicity

Publicity policy

The public consultation was announced by means of a Commission press release and a DG Enterprise e-mail alert on 8 November 2002⁹, which contained links to the various sites of the public consultation. It was sent specifically by e-mail to Euro info-centres, which are regularly in contact with EU business, and consumer organisations in all Member States. Informally there were also some direct contacts with the press.

A follow-up announcement to those contacted, notably consumer organisations and press, was made in early January 2003.

Effects of publicity

The sites of the public consultation were visited by 350 to 850 hits depending on the language over the last six weeks that the consultation was open. The sites of the forum and the survey were available in all 11 official languages, so overall it can be estimated that around 5,000 hits were received during the consultation.

Conclusion

Overall, the public consultation was well visited and the publicity would seem to have been such to draw the attention of a sufficient number of consumers and stakeholders.

⁹ IP/02/1635 of 8th November 2002