

COMMENTS ON THE PROPOSAL FOR A NEW REGULATION ON PACKAGING AND PACKAGING WASTE

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European Recycling Platform (ERP) appreciates the opportunity to provide feedback on the European Commission's proposal for a new Regulation on Packaging and Packaging Waste (PPWR). We support the proposal's ambition to further harmonise the European internal market and to create a level playing field for all actors involved in the pre- and post-consumer phase of packaging. While the proposal is a step in the right direction, several aspects need to be reviewed and shortcomings need to be addressed, as we explain below.

Summary

In a nutshell, we would like

1. to ask for clarification on **when to expect the adoption of the delegated acts** referred to in Article 6 and propose those to be adopted five years before application of the recyclability requirements referred to in this Article; we further would like to suggest the **creation of a technical committee** under the authority of the European Commission to assist in the development of these acts;
2. to suggest that the requirement to **modulate the financial contributions** paid by producers to start only **after the adoption of the delegated act** laying down harmonised design criteria;
3. to ask for clarification on **how to determine and enforce the recyclability** of packaging in practice;
4. to provide the necessary **regulatory certainty for alternative recycling technologies** such as chemical recycling;
5. to ask for **clarification on how to practically implement an EU-wide harmonisation of labels** on separate collection **considering existing national waste infrastructures** as well as on **the planned process and criteria to decide whether symbols** of extended producer responsibility schemes or deposit and return systems are **misleading to consumers**;
6. to strongly suggest to define a **list of clear criteria** that would allow the withdrawal of a PRO's authorisation **avoiding ambiguous terms such as "in particular"** as well as to ask **which additional incentives PROs shall create to reduce packaging waste** considering that the PPWR already sets strict rules requiring packaging minimisation;
7. to recommend implementing **effective and ideally cross-border enforcement also of the provisions on EPR** in order to combat free-riding; and
8. to ask for **clarification for tea and coffee related packaging** disposed of together with the product residue and their intended **treatment** process.

In the following chapters, we provide further and more specific comments on the proposed provisions of this Regulation.

1. Delegated acts (Article 6)

According to Article 6, recycled packaging has to comply with certain design criteria by 1 January 2030 as well as recyclability at scale requirements by 1 January 2035. The Commission intends to define these requirements through delegated acts, but does not provide a timeframe for their adoption. However, such a timeframe is important to allow stakeholders along the packaging value chain to plan ahead and to ensure an effective implementation of the Regulation. **We therefore propose that the two delegated acts be adopted five years before each of the above-mentioned dates.**

Furthermore, the development of these delegated acts requires specialised knowledge and therefore needs to be based on a thorough consultation process in order to ensure that they work in practice. **We therefore suggest the creation of a technical committee under the authority of the European Commission** involving national authorities from all Member States as well as representatives of the packaging value chain, such as packaging material producers, fillers, producer responsibility organisations (PROs), collectors and recyclers.

2. Modulation of financial contributions (Article 6)

We **strongly welcome the harmonisation of fee modulation criteria** since this modulation can only work (i.e. have the desired effect on product design) when the necessary critical economic impact is established. This in turn is only possible with EU-wide harmonised criteria (for a pan-European impact and in order to avoid that the criteria and the level of fee modulation are subject to competition). However, there are **several points to be clarified**.

According to Article 6(7d), the financial contributions to be paid by producers to comply with their extended producer responsibility obligations shall be modulated based on the recyclability performance grade. Again, however, the **proposal does not specify a date from which this provision should apply**. In contrast, **Article 7(6)**, which provides for additional modulation for plastic packaging based on the **percentage of recycled content**, **explicitly sets 1 January 2030 as the starting date**.

Since harmonised criteria will only be defined later by a delegated act, the modulation should not start before the adoption of this act (which is also not yet foreseen – see above). Moreover, the **starting dates for Articles 6(7d) and 7(6) shall be aligned** avoiding confusion and allowing for an integrated modulation approach.

It also remains **unclear how Member States shall proceed** with the already implemented **provisions on the modulation of financial contributions based on Article 8a of the Waste Framework Directive**. It needs to be clarified whether these provisions should **continue to apply** for the time being and, if necessary, be adapted when the harmonised design criteria are available **or whether Member States shall pause any related initiatives**.

3. Recyclability (Article 6)

While we welcome a harmonised approach on the recyclability of packaging, there is uncertainty as to how the recyclability of packaging can be determined in practice and how compliance with the requirements of Article 6 can be enforced. While Article 6 sets out generic criteria which, if met, should qualify packaging as recyclable, **the Regulation does not describe any kind of methodology to objectively and unambiguously assess whether a given packaging is recyclable or not**. Again, this is left to a delegated act without specifying a date for its publication.

In addition, **it is unclear to us which actor should assess the recycling performance of packaging in practice and how this assessment should be carried out**, e.g. on the basis of laboratory tests or examination of documents.

4. Recycled content (Article 7)

The proposal sets very ambitious targets for the recycled content of plastic packaging. While **we support this ambition**, we believe that meeting the targets set **will require a regulatory openness to new recycling technologies**, supported by an effective packaging waste sorting system.

Chemical recycling is currently the only mature technology that has the potential to recycle certain plastic packaging on a large scale into recycled content suitable for new applications, thus complementing mechanical recycling. Manufacturers of products in packaging, particularly those launching products in flexible packaging, have already expressed their willingness to support the development of the system. However, the proposal remains unclear as to whether recyclates from chemical recycling will count towards the targets set. **We therefore propose to provide the necessary regulatory certainty for chemical recycling, while remaining open to other new recycling technologies.**

Following this argumentation, **the Regulation needs a clear definition of chemical recycling as well as measurement points for the calculation of the recycled content generated by chemical recycling**, e.g. based on the widely accepted mass balance approach.

5. Labelling (Articles 11 and 12)

The Regulation introduces harmonised labelling requirements providing information on material composition and reusability. We welcome this harmonisation, including the prohibition of potentially misleading and confusing labels in relation to sustainability requirements.

While we support the provision that symbols of extended producer responsibility schemes or deposit and return systems shall not mislead consumers and shall be clear and unambiguous, **we wonder how exactly this can be verified and enforced in practice. Again, more clarification is needed.**

With regard to the requirement in Article 12 to affix labels enabling the separate collection of each material-specific fraction, the proposal does not indicate which labelling system is to be used and how harmonisation is to be ensured throughout the EU, given that each Member State has a differently organised separate collection system. **More and timely guidance is needed as changing the labelling on packaging and containers requires a significant lead time and is quite costly.**

6. Management of packaging waste (Articles 35, 38, 42 and 43)

We welcome the requirement in Article 35 for Member States to establish at least one competent authority responsible for the implementation and enforcement of the provisions relating to the management of packaging waste. **We particularly welcome the fact that this requirement applies to all Member States, not just those where multiple organisations implement EPR obligations on producers' behalf**, as required by the Waste Framework Directive. This will create a fair and competitive market environment.

Concerning the possibility for Member States to provide incentives for the prevention of packaging waste, inter alia through EPR schemes or the development of waste prevention plans by producers and PROs as mentioned in Article 38(3), **we would like to point out that PROs have only a limited influence on consumer behaviour, which means that such measures have only a limited impact** – especially considering that the Regulation already imposes strict design requirements aimed at strong prevention of packaging waste.

We welcome the establishment of clear rules for the authorisation of a PRO including the requirement to provide adequate guarantees and the possibility for producers to fulfil this requirement by joining a PRO (Article 42(6)). However, we are deeply concerned about the possibility for the competent authority to revoke the authorisation of a PRO in a seemingly arbitrary manner, as implied by the two words “in particular” in Article 42(5). **We strongly suggest deleting these two words and only allowing withdrawal of authorisation if the PRO no longer fulfils the requirements listed thereafter.**

We also very much welcome the promotion of competition and the requirement for collection systems to be open to participation by economic operators in the sectors concerned (Article 43(3a)). Competition in the waste market stimulates innovative solutions and efficient processes. However, it is essential **that PROs and recyclers act legally, organisationally and operationally independent of each other** to ensure a level playing field between different PROs on the one hand and different recyclers on the other. **Vertical integration**, e.g. in the form of a waste management company owning a PRO or vice versa has negative effects on competition and therefore **shall be prohibited**, as already being the case in several Member States such as France and Portugal.

7. Enforcement (Article 56)

Legal provisions are worthless if not followed correctly. Therefore, it is of utmost importance that all the provisions of this Regulation are properly and actively enforced. Unfortunately, Article 56 does not cover non-compliance with the Regulation's provisions on EPR (i.e. Chapter VII). **We strongly recommend implementation of effective and ideally cross-border enforcement also of these provisions in order to ensure compliance with the EPR provisions and to combat free-riding.**

8. Bio plastics, tea and coffee containers (Article 8)

We **welcome** the clarification that **biodegradable plastics must not affect the recyclability of other waste streams** (Article 8(3)).

Yet we recognized that the proposal lacks thoroughness regarding certain items. Based on the definition given in Article 3(1), **tea and coffee bags as well as coffee or tea system single-serve units** disposed of together with the product residue shall be **treated as packaging**. At the same time, packaging waste shall be sorted into defined waste streams **without affecting the recyclability of other waste streams** (Article 6(2)c). Moreover, those items **need to be compostable** (Article 8(1)), but compostable packaging does disturb today's packaging sorting and recycling processes due to its different chemical nature. Furthermore, they **negatively impact packaging waste statistics due to the large quantities of product residue** versus the weight of the packaging itself.

The Regulation needs to provide clarification regarding two points. **Firstly, the question if product residues are considered packaging weight in the treatment statistics needs to be answered.**

Secondly, clarification regarding the treatment track of these items is important. Currently we recognize three options:

- a) Composting (collection via bio-waste),
- b) composting (separate collection), or
- c) treatment via the packaging waste infrastructure (then probably ending up in thermal energy recovery).

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About ERP

European Recycling Platform (ERP) was founded in 2002 to ensure high-quality and cost-effective implementation of the WEEE, batteries and packaging directives for the benefit of its customers and the environment. In June 2014, ERP became part of the Landbell Group, an international supplier of service and consulting solutions for environmental and chemical compliance. ERP and Landbell Group have collected more than 5 million tonnes of packaging, more than 4 million tonnes of e-waste, and over 100,000 tonnes of portable batteries.

ERP is the first and only pan-European PRO authorised to operate in Austria, Denmark, Finland, Germany, Ireland, Israel, Italy, Norway, Poland, Portugal, Slovakia, Spain, and the UK. By passing on the advantages of multinational recycling operations to customers, ERP has proved to be the most competitive solution for companies in the countries where it operates for WEEE, batteries and packaging compliance, as well as take-back services.