

COMMENTS ON THE REVISION OF THE PACKAGING DIRECTIVE

Article	European Commission (Legislative proposal, 30/11/2022)	(Proposal)	European Recycling Platform (Justification)
<p>Article 6 Paragraphs 4 and 6</p>	<p>4. The Commission is empowered to adopt delegated acts in accordance with Article 58 to supplement this Regulation in order to establish design for recycling criteria and recycling performance grades based on the criteria and parameters listed in Table 2 of Annex II for packaging categories listed in Table 1 of that Annex, as well as rules concerning the modulation of financial contributions to be paid by producers to comply with their extended producer responsibility obligations set out in Article 40(1), based on the packaging recycling performance grade, and for plastic packaging, the percentage of recycled content. Design-for-recycling criteria shall consider state of the art collection, sorting and recycling processes and shall cover all packaging components.</p> <p>The Commission is empowered to adopt delegated acts in accordance with Article 58 to amend Table 1 of Annex in order to adapt it to scientific and technical development in material and product design, collection, sorting and recycling infrastructure.</p> <p>6. The Commission shall, for each packaging type listed in Table 1 of Annex II, establish the methodology to assess if packaging is recyclable at scale. That methodology shall be based at least on the following elements:</p> <p>(a) amounts of packaging placed on the market in the Union as a whole and in each Member State;</p> <p>(b) amounts of separately collected packaging waste, per packaging material listed in Table 1 of Annex II, in the Union as whole and in each Member State;</p> <p>(c) recycling rates of packaging waste per packaging type listed in Table 1 of Annex II, in the Union as a whole and in each Member State or, when such data on recycling rates for packaging waste per packaging type cannot be made available, assumptions made based on average loss rates as referred to in Article 47(3);</p>	<p>4. The Commission shall, no later than 1 January 2025, adopt delegated acts in accordance with Article 58 to supplement this Regulation in order to establish design for recycling criteria and recycling performance grades based on the criteria and parameters listed in Table 2 of Annex II for packaging categories listed in Table 1 of that Annex, as well as rules concerning the modulation of financial contributions to be paid by producers to comply with their extended producer responsibility obligations set out in Article 40(1), based on the packaging recycling performance grade, and for plastic packaging, the percentage of recycled content. Design-for-recycling criteria shall consider state of the art collection, sorting and recycling processes and shall cover all packaging components.</p> <p>The Commission is empowered to adopt delegated acts in accordance with Article 58 to amend Table 1 of Annex in order to adapt it to scientific and technical development in material and product design, collection, sorting and recycling infrastructure.</p> <p>6. The Commission shall, no later than 1 January 2030, for each packaging type listed in Table 1 of Annex II, establish the methodology to assess if packaging is recyclable at scale. That methodology shall be based at least on the following elements:</p> <p>(a) amounts of packaging placed on the market in the Union as a whole and in each Member State;</p> <p>(b) amounts of separately collected packaging waste, per packaging material listed in Table 1 of Annex II, in the Union as whole and in each Member State;</p> <p>(c) recycling rates of packaging waste per packaging type listed in Table 1 of Annex II, in the Union as a whole and in each Member State or, when such data on recycling rates for packaging waste per packaging type cannot be made</p>	<p><i>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.</i></p> <p><i>We therefore propose that the two delegated acts be adopted five years before each of the above-mentioned dates.</i></p>

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	(d) installed infrastructure capacities for sorting and recycling in the Union as a whole for each packaging type listed in Table 1 of Annex II.	available, assumptions made based on average loss rates as referred to in Article 47(3); (d) installed infrastructure capacities for sorting and recycling in the Union as a whole for each packaging type listed in Table 1 of Annex II.	
Article 6 Paragraphs 7 and 11	<p>7. The criteria and requirements referred to in paragraph 3 shall establish:</p> <p>(a) the manner in which to express the result of the recyclability assessment in recyclability performance grades from A to E, as described in Table 3 of Annex II, based on the percentage of the packaging unit, in weight, which is recyclable according to paragraph 1;</p> <p>(b) detailed design for recycling criteria for each packaging material and category listed in Table 1 of Annex II;</p> <p>(c) a description, for each packaging category listed in Table 1 of Annex II, of the conditions for compliance with the respective performance grades;</p> <p>(d) the modulation of the financial contributions to be paid by producers to comply with their extended producer responsibility obligations as referred to in Article 40, based on the packaging performance grade;</p> <p>(e) the manner in which to assess the recyclability at scale for each packaging category listed in Table 1 of Annex II in order to establish, as of 2035, updated recyclability performance grades.</p> <p>11. The financial contributions to be paid by producers to comply with their extended producer responsibility obligations as referred to in Article 40 shall be modulated on the basis of the recyclability performance grade, as determined in accordance with the delegated acts referred to in paragraphs 4 and 6 of this Article and, as regards plastic packaging, also in accordance with the Article 7(6).</p>	<p>7. The criteria and requirements referred to in paragraph 3 shall establish:</p> <p>(a) the manner in which to express the result of the recyclability assessment in recyclability performance grades from A to E, as described in Table 3 of Annex II, based on the percentage of the packaging unit, in weight, which is recyclable according to paragraph 1;</p> <p>(b) detailed design for recycling criteria for each packaging material and category listed in Table 1 of Annex II;</p> <p>(c) a description, for each packaging category listed in Table 1 of Annex II, of the conditions for compliance with the respective performance grades;</p> <p>(d) as of 1 January 2030, the modulation of the financial contributions to be paid by producers to comply with their extended producer responsibility obligations as referred to in Article 40, based on the packaging performance grade;</p> <p>(e) the manner in which to assess the recyclability at scale for each packaging category listed in Table 1 of Annex II in order to establish, as of 2035, updated recyclability performance grades.</p> <p>11. As of 1 January 2030, the financial contributions to be paid by producers to comply with their extended producer responsibility obligations as referred to in Article 40 shall be modulated on the basis of the recyclability performance grade, as determined in accordance with the delegated acts referred to in paragraphs 4 and 6 of this Article and, as regards plastic packaging, also in accordance with the Article 7(6).</p>	<p><i>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.</i></p> <p><i>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. 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.)</i></p> <p><i>Since harmonised criteria will only be defined later by the delegated act pursuant to Article 6(3), the modulation should not start before the adoption of this act (which, however, is also not yet foreseen – see comment above). Moreover, the starting dates for Articles 6(7d) and 7(6) shall be aligned avoiding confusion and allowing for an integrated modulation approach.</i></p> <p>We therefore suggest setting the starting date for the provision in Article 6(7) to the 1 January 2030.</p> <p><i>Moreover, we would appreciate clarity on 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 before 2030. We suggest that</i></p>

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			Member States be required to pause any related initiatives until the adoption of harmonised design criteria.
Article 6 Paragraph 8	<p>8. Compliance with the requirements set out in paragraphs 2 and 3 shall be demonstrated in the technical documentation concerning the packaging as set out in Annex VII.</p> <p>Where a unit of packaging includes integrated components, the assessment of compliance with the design for recycling criteria and with the at scale recyclability requirements shall include all integrated components.</p> <p>Where a unit of packaging includes separate components, the assessment of compliance with the design for recycling requirements and with the at scale recyclability requirements shall be done separately for each separate component.</p> <p>All components of a unit of packaging shall be compatible with the state of the art collection, sorting and recycling processes and shall not hinder the recyclability of the main body of the unit of packaging.</p>	<p>8. Compliance with the requirements set out in paragraphs 2 and 3 shall be demonstrated in the technical documentation concerning the packaging as set out in Annex VII. The Commission shall adopt a delegated act in accordance with Article 58 to specify the methodology to objectively and unambiguously assess whether or not a given packaging is recyclable.</p> <p>Where a unit of packaging includes integrated components, the assessment of compliance with the design for recycling criteria and with the at scale recyclability requirements shall include all integrated components.</p> <p>Where a unit of packaging includes separate components, the assessment of compliance with the design for recycling requirements and with the at scale recyclability requirements shall be done separately for each separate component.</p> <p>All components of a unit of packaging shall be compatible with the state of the art collection, sorting and recycling processes and shall not hinder the recyclability of the main body of the unit of packaging.</p>	<p><i>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 Commission’s proposal does not describe any kind of methodology to objectively and unambiguously assess whether a given packaging is recyclable or not. In addition, it is unclear 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 document such as the technical documentation referred to in Article 6(8). We therefore propose that the European Commission be required to adopt a delegated act defining the methodology for the recyclability assessment to carry out the recyclability assessment. Overall, correct and comparable declarations must be ensured to enable a level playing field between producers.</i></p>
Article 7 Paragraph 7	<p>By 31 December 2026, the Commission is empowered to adopt implementing acts establishing the methodology for the calculation and verification of the percentage of recycled content recovered from post-consumer plastic waste, per unit of plastic packaging, and the format for the technical documentation referred to in Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3).</p>	<p>By 31 December 2026, the Commission is empowered to adopt implementing acts establishing the methodology for the calculation and verification of the percentage of recycled content recovered from post-consumer plastic waste, per unit of plastic packaging, and the format for the technical documentation referred to in Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3). They shall consider and define the methodology for calculation and verification of each individual and existent recycling technology processing post-consumer plastic waste. For chemical recycling, the industry accepted mass balance approach shall be considered to calculate the percentage of chemically recycled content in packaging.</p>	<p><i>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.</i></p> <p><i>Following this argumentation, the Regulation shall require the implementing acts planned to be adopted by the Commission to define the methodology for calculation and verification of each individual and existent recycling technology processing post-consumer plastic waste and consider the industry accepted mass balance approach for chemical recycling.</i></p>

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<p>Article 7 Paragraph 9</p>	<p>By 1 January 2028, the Commission shall assess the need for derogations from the minimum percentage laid down in paragraph 1, points b and d, for specific plastic packaging, or for the revision of the derogation established under paragraph 3 for specific plastic packaging.</p> <p>Based on this assessment, the Commission is empowered to adopt delegated acts in accordance with Article 58 to amend this Regulation in order to:</p> <p>(a) provide for derogations from the scope, timing or level of minimum percentage laid down in paragraph 1, points b and d, for specific plastic packaging, and, as appropriate,</p> <p>(b) revise the derogations established in paragraph 3, where suitable recycling technologies to recycle plastic packaging are not available because they are not authorised under the relevant Union rules or are not sufficiently installed in practice.</p>	<p>By 1 January 2028, the Commission shall assess the need for derogations from the minimum percentage laid down in paragraph 1, points b and d, for specific plastic packaging, or for the revision of the derogation established under paragraph 3 for specific plastic packaging.</p> <p>Based on this assessment, the Commission is empowered to adopt delegated acts in accordance with Article 58 to amend this Regulation in order to:</p> <p>(a) provide for derogations from the scope, timing or level of minimum percentage laid down in paragraph 1, points b and d, for specific plastic packaging, and, as appropriate,</p> <p>(b) revise the derogations established in paragraph 3, where suitable recycling technologies to recycle plastic packaging are not available because they are not authorised under the relevant Union rules or are not sufficiently installed in practice, also defining criteria whether an infrastructure can be regarded as sufficient, or not.</p>	<p><i>The Regulation shall avoid any unambiguous requirements. From the current text it is not clear what could be regarded as “not sufficiently installed”.</i></p>
<p>Article 11 Paragraph 8</p>	<p>8. Packaging included in an extended producer responsibility scheme or covered by a deposit and return system other than that referred to in Article 44(1) may be identified by means of a corresponding symbol throughout the territory in which that scheme or system applies. That symbol shall be clear and unambiguous and shall not mislead consumers or users as to the recyclability or reusability of the packaging.</p>	<p>8. Packaging included in an extended producer responsibility scheme or covered by a deposit and return system other than that referred to in Article 44(1) may be identified by means of a corresponding symbol throughout the territory in which that scheme or system applies. That symbol shall be clear and unambiguous and shall not mislead consumers or users as to the recyclability or reusability of the packaging. The Commission shall adopt a delegated act in accordance with Article 58 to specify this provision, in particular as regards requirements for symbols and the actor responsible for enforcement.</p>	<p><i>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. More clarification is needed. We therefore propose that the European Commission be required to adopt a delegated act defining harmonised criteria as well as the responsible actor for assessing whether a symbol is clear and unambiguous and does not mislead consumers.</i></p>
<p>Article 12</p>	<p>12. By 1 January 2028, labels that enable the separate collection of each material specific fraction of packaging waste that is intended to be discarded in separate receptacles shall be affixed, printed or engraved visibly, legibly and indelibly on all waste receptacles for collection of packaging waste.</p>	<p>12. By 1 January 2028, labels that enable the separate collection of each material specific fraction of packaging waste that is intended to be discarded in separate receptacles shall be affixed, printed or engraved visibly, legibly and indelibly on all waste receptacles for collection of packaging waste.</p> <p>The Commission shall, no later than 1 January 2026, adopt a delegated act in accordance with Article 58 to specify the</p>	<p><i>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</i></p>

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		labelling system as well as a methodology to ensure a harmonised implementation throughout the European Union.	<i>is quite costly. We therefore suggest to require the European Commission to specify those aspects in a delegated act.</i>
Article 38 Paragraph 3	3. For the purpose of paragraph 2, Member States may use economic instruments and other measures to provide incentives for the application of the waste hierarchy, such as measures referred to in Annexes IV and IVa to Directive 2008/98/EC, or other appropriate instruments and measures, including incentives through extended producer responsibility schemes and requirements on producers or producer responsibility organisations to adopt waste prevention plans. Such measures shall be proportionate and non-discriminatory and be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.	3. For the purpose of paragraph 2, Member States may use economic instruments and other measures to provide incentives for the application of the waste hierarchy, such as measures referred to in Annexes IV and IVa to Directive 2008/98/EC, or other appropriate instruments and measures. Such measures shall be proportionate and non-discriminatory and be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.	<i>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 therefore suggest do delete this reference.</i>
Article 42 Paragraph 5	5. The competent authority may decide to revoke the relevant authorisation in particular if the producer or producer responsibility organisation no longer fulfils the requirements with regard to the organisation of the treatment of packaging waste or fails in relation to reporting to the competent authority or in relation to the notification of any changes that concern the terms of the authorisation, or has ceased operations.	5. The competent authority may decide to revoke the relevant authorisation if the producer or producer responsibility organisation no longer fulfils the requirements with regard to the organisation of the treatment of packaging waste or fails in relation to reporting to the competent authority or in relation to the notification of any changes that concern the terms of the authorisation, or has ceased operations.	<i>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.</i>
Article 56	Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned: (a) the EU declaration of conformity has not been drawn up (b) the EU declaration of conformity has not been drawn up correctly; (c) the QR code or data carrier referred to in Article 11 do not provide access to the required information in accordance with that Article; (d) the technical documentation referred to in Annex VII is not available, is not complete or contains errors; (e) the information referred to in Article 13(6) or Article 16(3) is absent, false or incomplete;	Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned: (a) the EU declaration of conformity has not been drawn up (b) the EU declaration of conformity has not been drawn up correctly; (c) the QR code or data carrier referred to in Article 11 do not provide access to the required information in accordance with that Article; (d) the technical documentation referred to in Annex VII is not available, is not complete or contains errors; (e) the information referred to in Article 13(6) or Article 16(3) is absent, false or incomplete;	<i>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 so far does not cover non-compliance with the Regulation's provisions on EPR (i.e. Chapter VII). We strongly recommend the 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.</i>

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	<p>(f) any other administrative requirement set out in Article 13 or Article 16 is not fulfilled;</p> <p>(g) the requirements on restrictions on uses of certain packaging formats and on excessive packaging set out in Articles 21 and 22 are not complied with;</p> <p>(h) in relation to reusable packaging, the requirements on the establishment, operation and participation in a system for re-use referred to in Article 24 are not fulfilled;</p> <p>(i) in relation to refill, the information requirements set out in Article 25(1) and (2) are not fulfilled;</p> <p>(j) the requirements on the refill stations set out in Article 25(3) are not fulfilled;</p> <p>(k) the re-use and refill targets in Article 26 are not achieved.</p> <p>2. Where the non-compliance referred to in paragraph 1, points (a) to (f), persists, the Member State concerned shall take all appropriate measures to prohibit the packaging being made available on the market or ensure that it is recalled or withdrawn from the market.</p> <p>3. Where the non-compliance referred to in paragraph 1, points (g) to (k), persists, Member States shall apply the rules on penalties applicable to infringements of this Regulation which are laid down by the Member States in accordance with Article 62.</p>	<p>(f) any other administrative requirement set out in Article 13 or Article 16 is not fulfilled;</p> <p>(g) the requirements on restrictions on uses of certain packaging formats and on excessive packaging set out in Articles 21 and 22 are not complied with;</p> <p>(h) in relation to reusable packaging, the requirements on the establishment, operation and participation in a system for re-use referred to in Article 24 are not fulfilled;</p> <p>(i) in relation to refill, the information requirements set out in Article 25(1) and (2) are not fulfilled;</p> <p>(j) the requirements on the refill stations set out in Article 25(3) are not fulfilled;</p> <p>(k) the re-use and refill targets in Article 26 are not achieved;</p> <p>(l) the requirements in Chapter VII are not fulfilled.</p> <p>2. Where the non-compliance referred to in paragraph 1, points (a) to (f), persists, the Member State concerned shall take all appropriate measures to prohibit the packaging being made available on the market or ensure that it is recalled or withdrawn from the market.</p> <p>3. Where the non-compliance referred to in paragraph 1, points (g) to (l), persists, Member States shall apply the rules on penalties applicable to infringements of this Regulation which are laid down by the Member States in accordance with Article 62.</p>	
<p>Article 58 Paragraph 4</p>	<p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.</p>	<p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. Before adopting delegated acts pursuant to Article 6(4) and Article 6(6), the European Commission shall additionally set up a technical committee involving national authorities from all Member States as well as representatives of the packaging value chain to assist in the development of the respective acts.</p>	<p><i>The development of the delegated acts referred to in Article 6 require specialised knowledge and therefore need 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.</i></p>

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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.

For more information on ERP, please visit: www.erp-recycling.org