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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Regulation of the European Parliament and of the Council on packaging and packaging waste (WPE-Meeting on July 14 - Comments from a delegation)

Delegations will find attached comments from the DE delegation.

German written comments regarding the questions outlined in the presidency steering note for the WPE Meeting on July 14th

Cluster 1: Sustainability Requirements

Recitals and Definitions

Article 3 (1) d - Service packaging

- Germany does not support the proposed definition. The additional text “designed and intended to be filled” is subjective and would lead to an unclear definition. We also do not believe that examples are necessary in the definition. Annex I is sufficient.
- Regarding the responsibility for EPR participation, Germany supports clear responsibilities for one actor of the supply chain. This simplifies the enforcement by the public authorities. Defining one responsibility also simplifies the process of EPR-participation for the different actors. We suggest to obligate the final distributor as this is consistent with a reasonable producer definition.
- In Germany, it is possible for "fillers" to transfer the responsibility for fulfilling their EPR obligations to the sellers of service packaging from whom they purchase it. DEU asks PRES to consider such a regulation also for PPWR. At the minimum an opening clause that allows MS to maintain such a rule needs to be included in the regulation.

Article 3 (5) – Transport packaging

- In most Member States, such as Germany, packaging is grouped as either household packaging or large-scale commercial packaging. While household packaging is mostly collected close to households via collective systems (PROs), large-scale commercial packaging (including transport packaging) is usually collected individually directly at the place of its origin. This is associated with significant cost differences, since commercial packaging and transport packaging waste is partly collected in mono-collection of easily recyclable fractions, so that collection and recovery are often considerably cheaper as compared to collection and recovery of (mixed) household packaging waste.
- Therefore, e-commerce packaging should qualify as sales packaging and thus correspond to primary packaging. This would also be in line with the previous Article 3(1)(a) Directive 94/62/EC.

- For the same reason e-commerce packaging should be explicitly mentioned in recital 67 and 68 in addition to transport packaging. Article 3 definition 4 and 5 as well as Article 26 would need to be adapted accordingly.
- **We suggest the following wording:** 'e-commerce packaging' means ~~transport~~ packaging **used or designed to facilitate** ~~to~~ the delivery **of** products in the context of sale online or through other means of distance sales to the end user;
- This change makes adoptions in the following recitals necessary (recitals shortened here to the part where changes are necessary):

(10) This Regulation should apply to all packaging placed on the market in the Union and to all packaging waste, regardless of the type of packaging or the material used, **with the exception of packaging of hazardous goods**. For reasons of legal clarity the definition of packaging under the previous Directive 94/62/EC should be restructured without changing the substance. Sales packaging, **e-commerce packaging**, grouped packaging and transport packaging should be defined separately avoiding duplication of terminology. Consequently, sales packaging, **e-commerce packaging**, corresponds to primary packaging, grouped packaging to secondary packaging and transport packaging to tertiary packaging.
- (41) In order to comply with the packaging minimisation requirements, particular attention should be paid to limiting the empty space, ~~of~~ grouped and transport packaging, **including and of** e-commerce packaging.
- (45) [...] Considering that it is not collected through municipal waste collection systems, the use of those symbols should not be mandatory for transport packaging **with the exception of the e-commerce packaging**.
- (67) In order to reduce the increasing proportion of packaging that is single use and the growing amounts of packaging waste generated, it is necessary to establish quantitative re-use and refill targets on packaging in sectors, which have been assessed as having the greatest potential for packaging waste reduction, namely food and beverages for take-away, large-white goods, **e-commerce packaging** and transport packaging. [...]
- (68) [...] The targets should be calculated as a percentage of sales in reusable packaging within a system for re-use or through refill or, in case of transport

packaging **and of e-commerce packaging**, as a percentage of uses. The targets should be material neutral. [...]

Art. 3 (32) - Recycled at scale

- Germany has proposed a definition for recycled at scale, which takes 75 % of packaging material as a base. The proposal of 75 % of union population is not practical as no waste management data for such a base exists. We kindly ask to consider our written proposal.
- With regards to the presidency's proposal, we would like to point out the following issues:

Regarding packaging waste accepted for recycling by producers in case of individual compliance with EPR obligations:

- It does not seem appropriate to require that a producer "accepts" his own packaging waste for recycling.

Regarding data availability

- We support the general notion to require proof of recycling in reality and referring to infrastructure proven in an operational environment. However, we would like the Presidency or Commission to elaborate on current data availability that contains the required information and, if that data does not exist, how it will be generated. Also, it is unclear how exactly the calculation should be done and which data should be used for it.

Regarding the reference to 75 % of population:

- As pointed out before, we see multiple difficulties with this reference as it is not a relevant scale in waste management.
- The PRES proposal's reference to "75 % of the combined population of the Member States where the packaging is made available" instead of to "75 % of the Union Population where the packaging is placed on the market" is more precise. However, it raises many questions as to how recyclability requirements can be enforced. Due to sales chains with multiple distributors the producer would also have difficulties to really know which Member States are relevant.

- We suggest: "'recycled at scale' means that for the relevant packaging at the end of life, assuming it is disposed of in the designated waste collection, sorting and high-quality recycling capacities are available and at least 75 % of the corresponding packaging material, based on the practice of sorting and high-quality recycling in relation to the quantity of waste collected in the Union, is allocated to these capacities; the practice of sorting and high-quality recycling refers to currently established processes proven in an operational environment at an industrial scale;"

Regarding the proposed changes in part (ii) of the definition

- GER is sceptical about the exemption in Art. 3 (32) (ii). The exemption does not contribute to a circular economy. According to the wording of the exemption, every packaging format for which there is a recycling process proven in operational environment would be considered recycled at scale, irrespective of the weather the recycling technology is established in practice. This would contradict the original idea of the recycled at scale-approach. We would like to refer to our proposal for a revised definition of "recycled at scale" submitted after WPE of 22/23 June. Moreover, the compromise text already provides for an exemption from the "recycled at scale"-criterion for "innovative packaging" provided for in Article 6 para. 9. It is not clear, why there should be an additional exception in Art. 3 (32) i.

Art. 3 (41) - compostable packaging

- Scrutiny reservation regarding the presidencies proposal. We will come back to this point at a later point in time with a clear position.

Art. 3 (41a) home-compostable packaging

- Scrutiny reservation regarding the presidencies proposal. We will come back to this point at a later point in time with a clear position.

Article 5 - Requirements for substances in packaging

- DE supports the proposal to clarify in Article 5 (1b) (b) that the Commission can suggest the use of the REACH restriction procedures as follow-up measures for

substances of concern in packing materials which primarily affect the human health or the environment.

- DE rejects the proposal to enable the Commission via Article 5 (5) to restrict the use of substances of concern, especially PFAS, under the PPWR on an interim basis for reasons of chemical safety. Such substances of concern should be addressed via restrictions under REACH or the EU POP Regulation.

Article 6 – Recyclable packaging and Annex I and II

- Germany is in favour of clear requirements for recyclability of packaging. Recyclability is an essential requirement to increase circularity. To reduce the complexity, Germany has proposed a revision of article 6 for better understanding and clarity. We kindly ask the presidency to consider our written proposal.
- Annex II Table 2a: we do not agree with the proposal to include the future development of sorting and recycling technology in the Design-for-recycling assessment. Packaging is disposed of quickly after purchase. Therefore, only the currently available infrastructure is relevant for the assessment of recyclability.
- We support the new subparagraph (8). The same approach is used in the German minimum standard for determining recyclability.

Article 7 – Minimum recycled content in plastics packaging

Biobased plastics:

- To decarbonise the plastics production, renewable sources will be necessary in the future. This renewable feedstock shall not lead to land conflicts with food production, to deforestation or other negative environmental impacts. Therefore, sustainability criteria limiting the feedstock to residues/waste material or products from non-arable land are necessary. Further, only “drop-in” plastics that structurally resemble conventional plastics and can be recycled together with them shall be used to ensure recyclability.
- The criteria and certification schemes of the renewable energy directive are not suitable for this purpose as they focus on carbon content.
- At this point in time, the potential for plastics production from these sustainable sources is unclear. Therefore, an assessment of the potential is needed.

- In general, GER is opposed to integrating the question of biobased content into Article 7 as this would not contribute to the circularity of packaging. It seems to be a suitable alternative, to establish a hierarchy and include sustainable biobased drop-in plastics as a back-up to recycled content for the situation where recycled material is not sufficiently available.
- Since the potential for the use of biobased plastics from residues/waste material and products from non-arable land should be assessed; an obligation for the Commission to publish a report amongst others related to the feasibility and availability of biobased plastics used as a backup for recycled plastics content shall be included in the proposal. This report shall include sustainability criteria for biobased plastics from residues/waste and from feedstock from non-arable land. It needs to be published prior to article 7 coming into force to serve as a decision basis.
- Germany can therefore support option C (as defined in the steering note to the WPE Meeting on July 14th) and an establishment of this hierarchy in Art. 7 para 10.
- Option B can also be supported if requirements for the setting of targets for biobased plastics are specified. We welcome a proposal by PRES.
- There are certain types of plastic based packaging parts in food contact packaging (e.g. sealing rings in metal lids used on glass packaging on bottles) that cannot contain recycled material as they are made from elastic material which makes them vulnerable to contaminants and off-flavours. GER would like to point out this issue. An exemption for these types of materials appears considerable. The Commission should be empowered to regularly assess the exemption based on new technological developments.

Article 7 – Regarding recycled content quotas for contact sensitive packaging

Scrutiny reservation regarding the recycled content quotas in contact sensitive packaging

Article 8 – Compostable Packaging

- Scrutiny reservation regarding the presidencies proposal. We will come back to this point at a later point in time with a clear position.

Cluster 3: Reuse and Refill

- The German government aims at decreasing waste production, i. a. by strengthening ecologically advantageous reuse systems. We support ambitious and implementation-oriented rules for reuse.

Suggestion for a new recital

- When setting up new reuse systems, it is important to keep the packaging design in mind. A uniform design greatly enhances reuse systems. It enables the participation of many manufacturers and reduces transport distances. A new recital addressing this issue is therefore proposed:
- (68 a): Economic operators are encouraged to develop uniform reuse packaging solutions (e.g. uniform bottle design, uniform box design, etc.). Umbrella organisations can play an important role in this process. Uniform design enables the participation of a large proportion of economic operators. This leads to transport minimisation, shorter dwelling times of each packaging and higher numbers of rotation.

Article 25 – Regarding the presidency’s question on refill stations in the retail sector:

- Scrutiny reservation regarding the presidencies proposal. We will come back to this point at a later point in time with a clear position.

Article 26 – Regarding the presidency’s question about a separated accountability and targets for reuse and refill

- As already brought forward, Germany is advocating for a separation of quotas for reuse and refill. The quotas in article 26 shall only address reuse. Reuse and refill are two very different concepts that should not be comingled. Especially with regards to the reuse quotas for beverages in Article 26, a refill option as an alternative is not practically feasible. For example, carbonated lemonades, beer, etc. or beverages with a longer shelf live can be sold in reusable packaging but not for refill. Refill options do have a much smaller impact on packaging minimisation, as they require pre-planning by consumers to bring their own containers. Where reusable packaging is offered by the seller, the consumer is able to decide in the moment to choose reusable over single use packaging.

- For paragraphs 2 and 3 Germany continues to advocate to set a general obligation to offer reusable packaging and to accept containers brought by consumers instead of a sales quota. This reduces the administrative burden. To promote sales in reusable packaging, other measures, e.g. price differences, could be considered.
- Germany would like to point out that subsuming different types of beverages in one quota as done in Document REV_01 has a significant impact on waste reduction potentials. The overall ambition is lowered and MS might risk not reaching the prevention targets set in Article 38. Member States that wish to increase reuse quotas based on Art. 45 2 (d) (REV_01) should be enabled to differentiate between the different beverages covered by Art. 26, para. 4, when setting these higher reuse targets. This enables Member States to target those areas, where waste prevention potential is highest.

Article 26 – Regarding the presidency’s question on wine and reuse

- Germany advocates to sustain the quotas as presented in the commission proposal (meaning to return to separate quotas). With regards to wine, we submit a scrutiny reservation.

Article 26 – Regarding Germany’s written comment on an obligation to take back reusable packaging

- The SWE PRE’s amendment in article 26, para. 13 b is of great importance for functioning reuse systems. The obligation to take back reusable packaging should address all distributors and not only the final distributors in order to ensure that final distributors can return empty reusable packaging to actors on a higher stage of the distribution chain. This factor is important for a functioning B2B market. Flexibility for member states is important to maintain existing national systems. We refer to our written comment (Part 1) submitted following the WPE of June 22 and 23.

Article 26 – Regarding the question on a definition for take-away

- Germany supports the addition of a definition for “take-away”. We suggest to amend the proposal by adding “filled into a container by the final distributor” for ready prepared food. With this addition, the distinction between pre-packed products (e.g.

a chocolate bar) and food-products that are prepared at the point of sale is clear.

Both can be for immediate consumption and need no further preparation.

- For clarity and to avoid enforcement issues regarding the aspect of defining all elements being part of the “point of sale” we further suggest to use the wording “at the final distributor”.
- **We suggest the following wording:** ‘take-away’ means items purchased at attended points of sale, including cold or hot beverages filled into a container **at the final distributor** ~~at the point of sale~~ and ready-prepared **food filled into a container by the final distributor**, intended for immediate consumption without the need for any further preparation, and typically consumed from the receptacle.

Article 26 – Regarding the proposed changes in paragraphs 14 and 15

- Germany supports the proposed amendments in paragraph 14 and 15 to change the wording from shall to may.
- The amendment 14 (b) cannot be generally supported. High export rates do not need to lead to an exclusion from the reuse quotas. Germany asks the presidency for a compromise proposal for quotas on the European market.
- Products with geographical indications are not per se exported..

Article 26 – Packaging of capital goods

- Capital goods like machinery or their spare parts as well as other means of production are usually highly individualised goods. The use of reusable packaging is not possible in this case. We therefore suggest to exempt economic operators from the obligations in Art. 26 para 12 and 13 if they transport capital goods.
- Suggestion Art. 26, 15 a):
 - Economic operators shall be exempted from the obligations laid down in paragraphs 12 and 13 if they transport capital goods

Article 26 (16a new)

- GER reintroduces Amendment 16a and solicits approval.
- 16a) The obligations of paragraphs 7, 9, 10, 12 and 13 shall not apply if, by ... [four years after the date of entry into force this Regulation] economic operators have individually or collectively implemented a waste management system that ensures the collection and high quality recycling or the reuse of packaging. The Commission

shall adopt by ... [after the date of entry into force this Regulation] a delegated act stipulating the conditions for suitable waste management systems and the means by which the implementation of the waste management systems shall be demonstrated and documented. In case of non-compliance with such self-commitment, the respective paragraph shall be applicable again.

- This amendments needs to be considered in combination with the proposed material neutrality of the reuse quotas for transport packaging.

Article 27 – Regarding the presidencies question on the calculation basis for reuse targets

- Germany is unsure about the different options presented by the presidency. According to the presentation from July 14th, either volume or an “equivalent unit”, e.g. 0,5 L could be considered. Both options are volumes and we do not see a difference.
- Basing the calculation on the volume seems suitable as this data is available. However, especially for those beverages that are sold in different containers in the B2B and B2C sector, basing the calculation on volume can lead to the effect that reuse is not established for private consumers. This is especially true for beer which is in parts sold in casks/barrels to the HORECA sector. These casks/barrels are reusable packaging and a reuse quota can therefore easily be achieved by manufacturers.