



Council of the European Union  
General Secretariat

Brussels, 17 November 2023

**Interinstitutional files:**  
**2022/0396 (COD)**

**WK 15367/2023 INIT**

**LIMITE**

**DOCUMENT PARTIALLY  
ACCESSIBLE TO THE  
PUBLIC  
(...)**

**ENV  
MI  
ENT  
IND**

**CONSUM  
COMPET  
CODEC  
AGRI  
FOOD**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

## **REQUEST FOR CONTRIBUTION**

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 15581/22 + ADD 1
Subject:	Packaging and packaging waste: Follow-up to the WPE on 17 November 2023: Presidency presentation and call for comments

Following the WPE of 17 November 2023 on the above, delegations will find attached the presentation shown by the Presidency.

Delegations are invited to send written comments on the text set out in document ST 15073/23, and in particular on the points outlined in the steering note circulated in WK 14874/2023, to the Presidency (

;) with copy to the Council Secretariat

(;) by **Monday 20 November 2023**  
**cob.**

WK 15367/2023 INIT

**LIMITE**

**EN**



PRESIDENCIA  
ESPAÑOLA  
CONSEJO DE LA  
UNIÓN EUROPEA

Working Party on the Environment

# Packaging and Packaging Waste Regulation

17 November 2023

#EU2023ES

@eu2023es



# Key issues for discussion

---

Deadline  
20<sup>th</sup> of NOVEMBER

PUBLIC

## Round 1

Cluster 1. Sustainability requirements

Cluster 3. Re-use

Cluster 7. Green Public Procurement

## Round 2

Cluster 5. General provisions including the legal basis

Cluster 2. Labelling

Cluster 7. Waste prevention

## Round 3

Cluster 6. Management of packaging waste

Cluster 8. Remaining obligations of economic operators

Cluster 9. Conformity

Cluster 10. Safeguard procedures

Cluster 11. Final Chapters

# Round 1

PUBLIC

Cluster 1.  
Sustainability  
requirements

Cluster 3.  
Reuse

Cluster 7.  
Green Public  
Procurement

Part 1

# Article 6, recycled at scale and recyclability performance grades

## Recycled at scale (RaS)

Packaging waste which is separately collected, sorted and recycled in installed infRaStructure, using established processes proven in an operational environment which ensure at EU level a quantity of recycled material **equal or greater than recycling targets set out in Article 46 (1)(d) referring to the mass of each packaging category, listed in table 1 Annex II**, as placed on the market by 2035. This includes such packaging waste exported from the Union for the purpose of waste management which can be considered as meeting the requirements of Article 47(12).



- New RaS definition
- New temporary exception for packaging that does not comply with RaS requirements (maximum period of 5 years).
- RaS method in Art.6(6): precise measuring point; data reported in accordance Articles 39 and 50 and Annex IX; assessment in the RPG pursuant to Table 2 in Annex II including RaS thresholds.
- Additions in 6(6) RaS DA: if necessary, exception for packaging materials or categories PoM in very small quantities (less than 1% by weight) in UE; Commission shall review the RaS thresholds where appropriate; and shall assess the granularity of the RaS data reporting to make it more efficient and less burdensome.
- New 6(b): Commission review data reported in Art. 50(2) and publish Union data to know its evolution annually and facilitate RaS assessment in the recyclability performance grades (RPG).
- Regrouping: timelines to meet recyclability requirements; relocating Art.6(3a).
- Removing the direct link to the closed loop (packaging to packaging) (Art. 6(2)).
- Reduction of RPG: 3 grades (A, B, C)
- 3 years to comply with new or updated DA regarding DfR.
- Innovative packaging Art. 6(4a) and (9): if does not comply with DfR criteria may be placed on the market for a maximum period of 3 years. Mention to the procedure to follow regarding national authority.
- Removing the sunset date in Art.6(10) and replacing it with a review clause.
- Table 1 of Annex II has been replaced (from 30 to 22 categories).
- Table 2 of Annex II has been replaced with an explanation of the RPG methodology including DfR and RaS thresholds.
- Regarding definitions, 'high-quality recycling' amended and added 'or similar applications' at the end of packaging.

## Article 7, minimum recycled content

---

- 7 (11a): The Commission shall review the state of biobased plastics in 6 years instead of the usual 8 years and present a legislative proposal if necessary.

## Article 8, compostable packaging

---

- Article 8(1): only refers to compostable packaging.
- Article 8(2):
  - Member States have been empowered to require that some packaging is compostable when they apply the second paragraph of article 22.1 from WFD and have established an adequate infrastructure to allow the treatment of compostable packaging.
  - Other packaging included whether it had been required by Member States to be compostable before the date of entry into force of the regulation.
- Amendments in definition (Art. 3.1 point (41)) to delete last sentence to be more neutral in relation to the application of Art. 22.1 from WDF.

## Article 26, reuse and refill targets

---

- Final distributor will be the responsible to make available **wine** in reusable packaging within a system for reuse or by enabling refill.
- Reuse targets for transport packaging in paragraphs 12 and 13 applying to all materials, including cardboard.
- Possibility to adjust the threshold in paragraph 14 and 15 according to national conditions.
- Flexibilities for Member States:
  - MS may set targets beyond minimum (Art. 15a).
  - MS may request the Commission to prevent the ability of an economic operator to comply with targets (Art. 26(1) to (13)) under some circumstances.
- Guidelines for beverages products in the scope of para. 4 and 5.
- Deletion of paragraph 16 (a)



- Clarification about the scope of Regulation under the application of Directives (UE) 2014/24 and 2014/25 (Art. 57 (1))
- The mandatory minimum GGP requirements developed by the COM may contain one or more of the following: technical specifications, selection criteria, contract performance conditions and contract award criteria.
- Implementing act

# Questions to discuss from part 1

---

The Presidency would like to know the delegations' views on:

- The recycled at scale definition, methodology and assessment in the performance grades (included in Article 3(32), Article 6 2a), 6(6) and 6(6b), Table 2 of Annex II and recital 21 and 22).
- The review of the state of biobased plastic in six years and legislative proposal, if necessary (in Article 7 (11a)).
- Amendments in Article 8.
- The possibility to adjust the threshold in Article 26(14) and 26(15) according to national conditions and the flexibility for Member States added in paragraphs 15a and 15b.

# Round 2



Cluster 6.  
Management of  
packaging waste

Cluster 8.  
Remaining obligations  
of economic operators

Cluster 11. Final  
chapters

Part 3

# Definitions

---

- The definition of ‘producer’ (Article 3(10)) has been reworded to bring more clarity, as follows:

***‘producer’ means any manufacturer, importer or distributor, who, irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU, either:***

- i. is established in a Member State and makes available for the first time within the territory of that Member State service packaging, reusable packaging or primary production packaging; or***
- ii. is established in a Member State and makes available for the first time within the territory of that Member State products packaged in packaging other than any of the above; or***
- iii. is established in a Member State or in a third country and makes packaged products available for the first time within the territory of another Member State, by means of distance contracts directly to end users.***

# Definitions

---

- The definition of ‘manufacturer’ (Article 3(9)) has also been amended to include the ‘manufacturer of the packaged product’ which may be the ‘producer’ in letters (ii) and (iii) of Article 3(10), as follows:

***‘manufacturer’ means any natural or legal person who, under its own name or trademark, manufactures packaging or a packaged product, or who has packaging or a packaged product designed or manufactured under its own name or trademark.***

# Extended producer responsibility

---

- **Article 39(7):** includes a change to clarify that if a MS establishes that only producers can be registered, pursuant to paragraph (2) of the same Article, the provisions in paragraph 7 do not apply to PROs. The same clarification has been included in paragraph (7a).
- **Article 39(7a):** establishes a threshold of 10 tons of packaging placed on the market within the territory of a MS to define when producers shall report according to **part C of Annex IX** (reduced reporting obligations). However, flexibility for MS to define their own threshold has been included, providing that it is lower than 10 tons.

# Extended producer responsibility

---

- **Reporting obligations (Article 39 and Annex IX):**

The Presidency has proposed several amendments to clarify the responsible for reporting and the information to be reported in each case.

**Article 39(5)** establishes the information to be provided in the application for registration, set out in **part A of Annex IX**:

- When the registration is carried out by a **PRO** (when entrusted by the producer as referred to in Article 41(1)): the information to be submitted by the PRO is detailed in **paragraph 3** of part A of Annex IX.
- When the registration is carried out directly by **producers** (if established by MS according to Article 39(2)): the information to be submitted by producers is detailed in **paragraphs 1 and 2** of part A of Annex IX.

**Art. 39(7) and (7a)** establish that **producers** are responsible for the annual submission of the information on **parts B and C of the Annex IX** (packaging made available in the market of the MS).

When a producer has **entrusted a PRO**, these obligations shall be met by the **PRO** (unless otherwise specified by the MS, according to Art. 39(2)), providing the information of each producer individually

# Extended producer responsibility

---

- **Reporting obligations (Article 39 and Annex IX):**

**Article 39(7b)** establishes the information on packaging waste management information to be submitted annually, set out in **part D of Annex IX**:

- By **producers**, in the case of individual fulfilment of EPR obligations, or
- By the entrusted **PRO**, in the case of collective fulfilment of EPR obligations.

## **Annex IX**

Part A: a new letter (aa) in paragraph (1) has been added to include the obligation to submit the information of the authorised representative for the EPR when it has been appointed by the producer.



# Extended producer responsibility

---

- **Article 40(2)** includes an amendment regarding producers established in third countries, that may be obliged to appoint an authorised representative for the EPR when making packaged products available on the market for the first time within their MS.

The possibility to exempt producers under Article 39(7a) from the obligation of appointing an authorised representative for the EPR has been deleted, as it could make it difficult to monitor the compliance with the Regulation.

- **Article 41(4)** includes an amendment to allow MS to define a different responsible for the publication of packaging waste management information, when producers only have financial responsibilities on the EPR schemes.

# Deposit return systems and waste collection

---

- **Article 44(1)**, includes a new paragraph, to keep current rules on the calculation of separate collection, and to align the wording with Single Use Plastics Directive (SUPD). The same paragraph has been included in **Article 47(2)** to align with Packaging and Packaging Waste Directive.
- **Article 44(3)**, the separate collection target of 90% set up in paragraph (1) has not been modified.

If a MS wants to be exempted from the obligation of establishing a DRS, it has to prove that in 2024 or 2025 its separate collection rate is above 85% (paragraph 3(a)), and has to submit an implementation plan to the Commission (paragraph 3(b)) detailing the measures to be taken to ensure the achievement of the target (90%) by the 1st January 2029.

# Deposit return systems and waste collection

---

- Annex X

The Presidency has proposed amendments to address MS comments:

- **Letter (a)**: the general rule will be to only allow a single system operator, but flexibility has been added to allow MS to decide if more than one operator is a better solution, providing that coordination measures are adopted.
- **Letter (l)**: final distributors, regardless their size, have to accept at least the packaging of the products they sell.

Regarding the applicability of minimum requirements for DRS (Annex X) to DRS for reusable packaging and taking into account that Article 45(2) establishes as a measure that **may be adopted** by MS “*the deposit and return systems compliant with minimum requirements in Annex X*”: it is the Presidency understanding that the minimum requirements set out in Annex X are not mandatory for DRS for reusable packaging.

# Recycling

---

- **Article 46(3)**, to address delegations' comments expressing different views on the possibility of postponing the 2030 targets, an amendment has been made to enable the Commission to reject the plan submitted under paragraph (2d) in cases where the plan does not meet the requirements of Annex XI and it is therefore unlikely that the MS will meet the targets within the additional timeframe set.

# Reporting

---

- **Annex XII**
- Amendments have been included to align reporting obligations (Article 50) and national databases (Article 51) content with the information needed to apply recycled at scale provisions:
- Table 4 has been updated and aligned with the categories included in Table 1 Annex II.
- Table 3 of Annex XII has been deleted since the information required in this table has been included in Table 4.
- Article 50(2) has also been amended accordingly.

# Obligations of fulfilment service providers

---

- **Article 18** includes an amendment to establish that producers offering packaging to consumers through fulfilment service providers have to provide them with the information under Article 40(3).

Additionally, if the producer does not comply with this obligation, the fulfilment service provider shall notify it to competent authorities.

- Accordingly, **Article 56** (cluster 10) has been amended.

# Final Chapters

---

- **Article 65(d)** includes an amendment, to address delegations' concerns regarding the entry into force of the modification previously proposed in Article 61, which extend the ban on food and beverages containers and cups made of expanded polystyrene ('EPS') to the ones made of extruded polystyrene ('XPS'). According to delegations' proposals, at least two years will be needed to allow for the adaptation to the new requirement and the consumption of stockpiles.

# Questions to discuss from part 3

---

The Presidency would like to know the delegations' views on:

- The proposed definition of 'manufacturer' and 'producer' in Article 3(9) and (10).
- The threshold set out in Article 39(7a) and the possibility of lowering it if necessary to ensure compliance with the Member States' reporting obligations.
- The reporting obligations set out in Article 39 and Annex IX.



# Round 3

PUBLIC

Cluster 2. Labelling

Cluster 4. Waste  
prevention

Part 2

## Article 11, labelling

---

- Harmonised DRS label rewording to maintain flexibility for MS to require harmonised label to DRS established before the entry into force of Regulation.
- Exemption for open loop system aligned with Annex VI (Annex VI, Part A, 1. General requirements for systems for re-use).
- Transitional period to entry into force ERP scheme symbol: two years

## Article 21, 22 and 38, about waste prevention

---

- Timelines has been delayed in Article 21(1) and (2a) for a better transition. Art 21(1) provision empower the Commission to establish the methodology for the calculation of the empty space ratio.
- Amending 22(4): Changes in Annex V would be allowed only through the ordinary legislative procedure. Only a review clause is included.
- Article 38 (1a): “correction factor” is included to account the effects of the increase or decrease of tourism on waste generation based on the rate of packaging waste generation per tourist and the variation of tourists in relation to year 2018.

# Questions to discuss from part 2

---

The Presidency would like to know the delegations' views on:

- The amendments to Article 11(1) to include paragraph 6 and amendment to match the deadlines of paragraphs 5 and 6 to 24 months.
- The amendments to Article 11(2a) to align it with Annex VI and amendments made therein.
- The proposal to delete the content of article 22(4) and introduce a review clause.
- The criteria for the 'correction factor' to account the effects of the increase or decrease of tourism on waste generation in relation to the base year.



PRESIDENCIA  
ESPAÑOLA  
CONSEJO DE LA  
UNIÓN EUROPEA

  
¡Gracias!

**Deadline for comments**  
**20<sup>th</sup> of NOVEMBER**