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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Packaging and packaging waste: Follow-up to the WPE on 16 February 2024 – Proposal from a delegation and CALL FOR COMMENTS

Delegations are invited to send their written comments on the steering note in WK 2610/2024 INIT to the Presidency [REDACTED], [REDACTED] and [REDACTED], with copy to the Council Secretariat ([REDACTED]); [REDACTED] by Wednesday, 21 February 2024 cob.

Delegations will also find attached, for information, an explanatory note by the DE delegation.

DEU non-paper on Article 26 paragraph 15(-a) of General approach – line 486a

Background of pooling

- Adapted from pooling approach in Article 6 of Regulation [\(EU\) 2019/631](#)
 - o Allows car manufacturers to form pools in order to meet their obligations regarding emission targets
 - o Defines which data is to be provided to the COM, the maximum duration of a contractual pool agreement, the responsibility of the pool manager and safeguards relating to antitrust law

Advantages of pooling in the beverage sector

Pooling enables all manufacturers and final distributors to achieve the reuse targets in a cost efficient way:

- Not all **manufacturers** need to establish the infrastructure to fill beverages in reusable bottles
 - o i.e., a large brewery that makes available on the market a high share of beer in reusable packaging could - by contractual agreement - form a pool with one or two other breweries that do not have bottling lines for reusable bottles. This can be especially advantageous for small and medium size manufacturers that do not have the space or financial resources for a bottling line for reusable bottles.
- Likewise, not all **final distributors** need to establish the respective infrastructure (storage space, new reverse vending machines, etc.).

Pooling

- does not reduce the actual amount of beverages sold in reusable bottles (ambition is kept),
- can be clearly enforced (based on sales data),
- does not depend on data that is subject to regular changes,
- ensures that the potential for reuse is realised where the economic costs are lowest.

Further questions

Why set a limit of 3 economic operators for a pool?

- The limit “3” ensures a reasonable balance between flexibility for economic operators and enforceability of the reuse-quota. If the number of distributors/manufacturers allowed in the pool was not limited, it would be more complex for authorities to verify whether the pool fulfils the reuse-quota. However, we are open to discussions on the exact number.
- Moreover, for economic operators that are legally independent persons but use the same brand name (e.g. because they are part of a cooperative or group structure, such as supermarkets that are independent legal persons run under the same brand name), we propose not to apply this limit in order to reduce the bureaucratic burden (see updated text proposal on pooling below).

Why is the solution limited to the reuse-quota for beverage packaging?

- The solution could be applied to other quotas of Article 26, e.g. the quotas for take-away packaging in paragraphs 2 and 3. However, we consider that the need for flexibility exists in particular for beverage packaging as the establishment of the necessary infrastructure seems to be more complex (specific bottling lines or return infrastructure, s. above). In contrast, final distributors of take-away food or drinks can make available their products in reusable packaging with far smaller efforts.

What about possible issues regarding antitrust-law?

- The exchange of information between companies can according to our understanding indeed cause problems in terms of competition law. We thus propose to add a new subparagraph on the lines of Article 6 (5) of Regulation (EU) 2019/631 (see updated proposal on pooling below).

What about reporting on the arrangements to the competent authorities?

- The structure of final distributors in the beverage and wholesale sector differs from Member State to Member State. We therefore propose to delete the requirement for reporting on the arrangements within the pool. Instead, Member States may set such information/reporting requirements if they deem it necessary.

Suggestion for an updated text proposal on pooling

Article 26 paragraph 15(-a)

Members states may allow that economic operators form pools for the purpose of meeting their obligations under paragraph 4. These pools may consist of up to 3 manufactures or up to 3 final distributors. **For manufacturers, these pools and may only cover one of the beverage categories according to paragraph 4 made available on the market by all pool members mentioned in paragraph 4. The limitation to 3 manufacturers or 3 final distributors does not apply if the manufacturers or final distributors operate under the same brand name.**

If Member States grant the possibility under this paragraph, the information provided for by the pool to the authority of the Member State must consist, at a minimum, of:

- (a) the economic operators included in the pool, and
- (b) the economic operator nominated as pool manager who will be the contact point.

Member states ~~may shall, as appropriate,~~ set further information requirements that are necessary for the enforcement of ~~economic operators the obligations according to paragraph 4 of this Article in conjunction with this paragraph.~~

~~Economic operators part of a pool shall report to the competent authorities which are the arrangements between them in contributing to reach the targets under paragraph 4 and how the allocations of tasks are within the pool.~~

Economic Operators shall ensure that their agreements comply with Articles 101 and 102 TFEU. Without prejudice to the general applicability of Union competition rules to such pools, all members of a pool shall in particular ensure that neither data sharing nor information exchange may occur in the context of their pooling arrangement, except in respect of the information mentioned in Article 27 paragraph 2, also in relation to prospective sales data.

[By 1 January 2028], the Commission shall adopt delegated acts supplementing this Regulation to establish and specify the detailed conditions and reporting requirements to be applied to these pooling arrangements, taking into account the type and quantity of packaging each operator places on the market each calendar year and the place where the economic operators are located.

Reporting

Regarding reporting, the following amendment to Article 28 could be made instead of the delegated acts according to Article 26 paragraph 15(-a), last subparagraph:

1. The economic operators referred to in Article 26(1) to (10) shall report to the competent authority, referred to in Article 35 of this Regulation, data concerning the attainment of the targets laid down in Article 26 for each calendar year. **If economic operators are part of a pool according to Article 26 15(-a), the data of all pool members shall be reported by the pool manager in an aggregated and non-aggregated form.**

Alternative wording of Article 28 paragraph 1, if Article 26 paragraph 15(-a), last subparagraph is kept:

“Without prejudice to the delegated acts according to Article 26 paragraph 15(-a), last subparagraph, the economic operators [...]”

