



Council of the European Union
General Secretariat

Brussels, 13 January 2023

Interinstitutional files:
2022/0396 (COD)

WK 461/2023 INIT

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC
(09.03.2023)**

LIMITE

**ENV
MI
ENT
IND
CONSUM
COMPET
CODEC**

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

CONSULTATION

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Packaging and packaging waste: Follow-up to the WPE meeting on 12 January 2023: call for comments

Following the above WPE meeting, delegations are kindly invited to send comments and questions on cluster 1 (Article 3(1)-(5) and Annex I, Article 5, Article 6 and Annex II, Article 7) and cluster 7 (Article 57) in the attached table to the Presidency ([REDACTED]), the Commission ([REDACTED]), with copy to the Council Secretariat ([REDACTED]), by Monday, 23 January, cob.

WK 461/2023 INIT

LIMITE

EN

Dear Delegates,

Kindly find attached the articles discussed at the meeting on 12 January 2023 – parts of the Commission proposal for the PPWR in a table form. We kindly ask for your comments by **23 January 2023**.

Kindly note the following important instructions when completing the table:

- Do not delete any lines or squares from the table;
- Do not insert any new lines or squares;
- Insert your comments into the 2nd and 3rd columns of the table only, in the line/square corresponding to the provision concerned.
- For drafting suggestions please highlight amendments in **bold** and deletions in ~~**bold**~~.

You are free to change header/footer of the attached file as you wish - but please keep the table intact.

Commission proposal	Drafting Suggestions	Comments
2022/0396 (COD)		
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC		
<i>Article 3 Definitions (1) – (5)</i>		
(1) ‘packaging’ means items of any materials that are intended to be used for the containment, protection, handling, delivery or presentation of products and that can be differentiated into packaging formats based on their function, material and design, including:		

Commission proposal	Drafting Suggestions	Comments
(a) items that are necessary to contain, support or preserve the product throughout its lifetime without being an integral part of the product which is intended to be used, consumed or disposed of together with the product;		
(b) components of, and ancillary elements to, an item referred to in point (a) that are integrated into the item;		
(c) ancillary elements to an item referred to in point (a) that are hung directly on, or attached to, the product and that performs a packaging function without being an integral part of the product which is intended to be used, consumed or disposed of together with the product;		
(d) items designed and intended to be filled at the point of sale, provided that they perform a packaging function;		
(e) disposable items sold, filled or designed and intended to be filled at the point of sale, provided that they perform a packaging function;		
(f) tea or coffee bags necessary to contain a tea or coffee product and intended to be used and disposed of together with the product;		

Commission proposal	Drafting Suggestions	Comments
(g) coffee or tea system single-serve unit necessary to contain a coffee or tea product and intended to be used and disposed of together with the product;		
(2) 'sales packaging' means packaging conceived so as to constitute a sales unit consisting of products and packaging to the final user or consumer at the point of sale;		
(3) 'grouped packaging' means packaging conceived so as to constitute a grouping of a certain number of sales units at the point of sale whether the latter is sold as such to the end user or it serves only as a means to replenish the shelves at the point of sale or create a stock-keeping or distribution unit, and which can be removed from the product without affecting its characteristics;		
(4) 'transport packaging' means packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packages, including e-commerce packaging but excluding road, rail, ship and air containers, in order to prevent physical handling and transport damage;		
(5) 'e-commerce packaging' means transport packaging used to deliver products in the context		

Commission proposal	Drafting Suggestions	Comments
of sale online or through other means of distance sales to the end user;		
Chapter II Sustainability requirements		
<i>Article 5 Requirements for substances in packaging</i>		
1. Packaging shall be so manufactured that the presence and concentration of substances of concern as constituents of the packaging material or of any of the packaging components is minimised, including with regard to their presence in emissions and any outcomes of waste management, such as secondary raw materials, ashes or other material for final disposal.		
2. Without prejudice to the restrictions on chemicals set out in Annex XVII of Regulation (EC) No 1907/2006 or, where applicable, to the restrictions and specific measures on food contact packaging in Regulation (EC) No 1935/2004, the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium resulting from substances present in packaging or packaging components shall not exceed 100 mg/kg.		
3. Compliance with the requirements set out in paragraph 2 shall be demonstrated in the technical		

Commission proposal	Drafting Suggestions	Comments
documentation drawn up in accordance with Annex VII.		
4. Recyclability requirements established in delegated acts adopted pursuant to Article 6(5) shall not restrict the presence of substances in packaging or packaging components for reasons relating primarily to chemical safety. They shall address, as appropriate, substances of concern that negatively affect the re-use and recycling of materials in the packaging in which they are present, and shall, as appropriate, identify the specific substances concerned and their associated criteria and limitations.		
5. In order to take account of the scientific and technical progress, the Commission may adopt delegated acts in accordance with Article 58, to amend this Regulation in order to:		
(a) lower the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium resulting from substances present in packaging or packaging components referred to in paragraph 2;		
b) determine the conditions under which the concentration level referred to in paragraph 2 shall not apply to recycled materials and to product loops, which are in a closed and controlled chain, as well as to determine the types of packaging		

Commission proposal	Drafting Suggestions	Comments
which shall be exempted from the requirements laid down in that paragraph. Such delegated acts shall be time-limited, provide for appropriate marking and information requirements, and contain requirements for regular reporting in order to ensure that the exemption is regularly reviewed.		
<i>Article 6 Recyclable packaging</i>		
1. All packaging shall be recyclable.		
2. Packaging shall be considered recyclable where it complies with the following:		
(a) it is designed for recycling;		
(b) it is effectively and efficiently separately collected in accordance with Article 43(1) and (2);		
(c) it is sorted into defined waste streams without affecting the recyclability of other waste streams;		
(d) it can be recycled so that the resulting secondary raw materials are of sufficient quality to substitute the primary raw materials;		

Commission proposal	Drafting Suggestions	Comments
(e) it can be recycled at scale.		
Point (a) shall apply from 1 January 2030 and point (e) shall apply from 1 January 2035		
3. Recyclable packaging shall, from 1 January 2030, comply with the design for recycling criteria as laid down in the delegated acts adopted pursuant to paragraph 4 and, from 1 January 2035, also with the recyclability at scale requirements laid down in the delegated acts adopted pursuant to paragraph 6. Where such packaging complies with those delegated acts, it shall be considered to comply with paragraph 2, points (a) and (e).		
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		

Commission proposal	Drafting Suggestions	Comments
<p>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>5. From 1 January 2030, packaging shall not be considered recyclable if it corresponds to performance grade E under the design for recycling criteria established in the delegated act adopted pursuant to paragraph 4 for the packaging category, to which the packaging belongs.</p> <p>These criteria shall be based at least on the parameters as listed in Table 2 of Annex II.</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>		

Commission proposal	Drafting Suggestions	Comments
(a) amounts of packaging placed on the market in the Union as a whole and in each Member State;		
(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;		
(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);		
(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.		
<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>		

Commission proposal	Drafting Suggestions	Comments
<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>9. From 1 January 2030, and by way of derogation from paragraphs 2 and 3, innovative packaging may be placed on the market for a maximum period of 5 years after the end of the calendar year when it has been placed on the market.</p> <p>Where use is made of this derogation, innovative packaging shall be accompanied by technical documentation, referred to in Annex VII, demonstrating its innovative nature and showing compliance with the definition in Article 3(34) of this Regulation.</p> <p>After the period referred to in the first subparagraph, such packaging shall be accompanied by the technical documentation referred to in paragraph 8.</p>		
<p>10. Until 31 December 2034, this Article shall not apply to the following:</p>		

Commission proposal	Drafting Suggestions	Comments
(a) immediate packaging as defined in Article 1, point (23), of Directive 2001/83/EC and in Article 4, point 25, of Regulation (EU) 2019/6;		
(b) contact sensitive plastic packaging of medical devices covered by Regulation (EU) 2017/745;		
(c) contact sensitive plastic packaging of in vitro diagnostics medical devices covered by Regulation (EU) 2017/746.		
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).		
<i>Article 7 Minimum recycled content in plastic packaging</i>		
1. From 1 January 2030, the plastic part in packaging shall contain the following minimum percentage of recycled content recovered from post-consumer plastic waste, per unit of packaging:		

Commission proposal	Drafting Suggestions	Comments
<p>(a) 30 % for contact sensitive packaging made from polyethylene terephthalate (PET) as the major component;</p> <p>(b) 10 % for contact sensitive packaging made from plastic materials other than PET, except single use plastic beverage bottles;</p> <p>(c) 30 % for single use plastic beverage bottles;</p> <p>(d) 35 % for packaging other than those referred to in points (a), (b) and (c).</p>		
<p>2. From 1 January 2040, the plastic part in packaging shall contain the following minimum percentage of recycled content recovered from post-consumer plastic waste, per unit of packaging:</p> <p>(a) 50 % for contact sensitive plastic packaging, except single use plastic beverage bottles;</p> <p>(b) 65 % for single use plastic beverage bottles;</p> <p>(c) 65 % for plastic packaging other than those referred to in points (a) and (b);</p>		
<p>3. Paragraphs 1 and 2 shall not apply to the following:</p> <p>(a) immediate packaging as defined in Article 1, point (23), of Directive 2001/83/EC and in Article 4, point (25), of Regulation (EU) 2019/6;</p> <p>(b) contact sensitive plastic packaging of medical devices covered by Regulation (EU) 2017/745;</p> <p>(c) contact sensitive plastic packaging of in vitro diagnostics medical devices covered by Regulation (EU) 2017/746;</p>		

Commission proposal	Drafting Suggestions	Comments
(d) outer packaging as defined in Article 1, point (24), of Directive 2001/83/EC and in Article 4, point (26), of Regulation (EU) 2019/6 in cases where such packaging is necessary to comply with specific requirements to preserve the quality of the medicinal product.		
4. Paragraphs 1 and 2 shall not apply to compostable plastic packaging.		
5. Compliance with the requirements set out in paragraphs 1 and 3 shall be demonstrated in the technical information concerning the packaging referred to in Annex VII.		
6. By 1 January 2030, the financial contributions paid by producers to comply with their extended producer responsibility obligations as laid down in Article 40 shall be modulated based on the percentage of recycled content used in the packaging.		
7. 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		

Commission proposal	Drafting Suggestions	Comments
adopted in accordance with the examination procedure referred to in Article 59(3).		
8. As of 1 January 2029, the calculation and verification of the percentage of recycled content contained in packaging under paragraph 1 shall comply with the rules laid down in the implementing act referred to in paragraph 7.		
9. 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. Based on this assessment, the Commission is empowered to adopt delegated acts in accordance with Article 58 to amend this Regulation in order to:		
(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,		
(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.		

Commission proposal	Drafting Suggestions	Comments
<p>10. Where justified by the lack of availability or excessive prices of specific recycled plastics that may have adverse effects on human or animal health, security of food supply or the environment, making compliance with the minimum percentages of recycled content set out in paragraphs 1 and 2 excessively difficult, the Commission shall be empowered to adopt a delegated act in accordance with Article 58 to amend paragraphs 1 and 2 by adjusting the minimum percentages accordingly. In evaluating the justification of such adjustment, the Commission shall assess requests from natural or legal persons to be accompanied by relevant information and data on the market situation for this post-consumer plastic waste and best available evidence regarding the related risks to human or animal health, to the security of food supply or to the environment.</p>		
<p>11. By [<i>OP: Please insert the date = 8 years after the date of entry into force of this Regulation</i>], the Commission shall review the situation regarding the use of recycled packaging materials in packaging other than plastics and, on this basis, assess the appropriateness of establishing measures, or setting targets, for increasing the use of recycled content in such other packaging, and where necessary present a legislative proposal.</p>		

Commission proposal	Drafting Suggestions	Comments
Chapter IX Green public procurement		
<i>Article 57 Green public procurement</i>		
1. Contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, shall, when awarding any public contracts for packaging or packaged products or for services using packaging or packaged products in situations covered by those Directives, apply the green public procurement criteria to be developed in delegated acts adopted pursuant to paragraph 3.		
2. The obligation set out in paragraph 1 shall apply to any procedure for procurement by contracting authorities or contracting entities for the awarding of public contracts for packaging or packaged products or for services using packaging or packaged products, which is initiated 12 months or later after the entry into force of the respective delegated act to be adopted pursuant to paragraph 3.		
3. The Commission shall, by [<i>OP: please insert the date = 60 months after the date of entry into force of this Regulation</i>], adopt delegated acts in accordance with Article 58 supplementing this Regulation by establishing minimum mandatory		

Commission proposal	Drafting Suggestions	Comments
green public procurement criteria based on the requirements set out in Article 5 to 10 and on the following elements:		
(a) the value and volume of public contracts awarded for packaging or packaged products or for the services or works using packaging or packaged products;		
(b) the need to ensure sufficient demand for more environmentally sustainable packaging or packaged products;		
(c) the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable packaging or packaged products, without entailing disproportionate costs.		
Those green public procurement criteria shall be developed in accordance with the principles contained in Directive 2014/24/EU and in Directive 2014/25/EU and with the principle that the packaging to be chosen on the basis of those criteria facilitates the achievement of the objectives of this Regulation.		
Annex I - INDICATIVE LIST OF ITEMS IN THE SCOPE OF THE DEFINITION OF PACKAGING IN ARTICLE 3(1)		

Commission proposal	Drafting Suggestions	Comments
ANNEX II - CATEGORIES AND PARAMETERIS FOR ASSESSMENT OF RECYCLABILITY OF PACKAGING		
Table 1: Indicative list of packaging materials, types and categories referred to in Article 6		
Table 2: Recyclability performance grades		
	End	End