

Packaging Supply Chain Guiding Principles on EPR fee modulation & the legal review of the Essential Requirements for packaging

May 2019

In the context of the EU's Circular Economy Package and particularly the Extended Producer Responsibility (EPR) general minimum requirements in the revised Waste Framework Directive (WFD) and the ongoing legal review of the Essential Requirements (ER) for packaging as laid down in the Packaging and Packaging Waste Directive (PPWD), the 58 undersigned organisations¹ wish to share the following common guiding principles and recommendations for consideration as part of the ongoing related studies.

The following guiding principles are relevant for both policy initiatives. In addition, we make more specific recommendations for each of them, including with regard to the definition of “necessary costs” in relation to litter clean-up² which is due to be partly covered within the guidelines on EPR fee modulation.

Guiding Principles

1. Packaging serves multiple functions, which must not be overlooked. Packaging is designed to protect a specific product (e.g. from air, humidity, light, external pressures during transport, bacteria etc.), convey product information, prolong shelf-life and make it safe and easy-to-use for consumers. The design of packaging consists of finding the right compromise between packaging's ability to fulfil all these functions and environmental considerations. Therefore, we consider that the concept of “problematic packaging” is inappropriate as it seeks to negatively label packaging, solely based on its current ability to be collected, sorted and recycled at its end-of-life, without considering the functions the pack must perform during its use phase. Such a concept also risks stifling investment and innovation in design, materials and sorting and recycling technologies.

2. Packaging should be considered together with the packaged product. Changes to packaging design can have environmental consequences for other stages of a packaged product's life-cycle (e.g. transport, shelf-life, food waste). Progress in packaging sustainability should be assessed within the context of the overall environmental impact of the packaged product to ensure a net environmental improvement over the whole life-cycle of the packaged product.

3. The ER and EPR fee modulation criteria must be coherent across the EU and future-proof. Conflicting design requirements and economic incentives risk undermining investment and innovation. To ensure policy coherence, EU definitions, notably for “recycling”, “recyclability” and “reusability”, should be clarified, harmonised and, to the extent possible, aligned with international definitions and other broadly recognised and used definitions. Any definition of recycling needs to include mechanical, organic and feedstock (chemical) recycling, in accordance with the technology-neutral approach laid down in the WFD. The ER and EPR fee modulation must also be coherent with other existing policies and requirements (including the

¹ This statement does not preclude the undersigned organisations from issuing individual positions that are more focused on their specific sectors.

² As per article 8 of the Single Use Plastics Directive, which concerns certain packaging items, as listed in Annex E of the Directive.

waste hierarchy) that impact packaging design, such as consumer protection, safety and hygiene.

4. The ER and EPR fee modulation (including the definition of “necessary costs” in relation to litter clean-up) must be EU harmonised. Diverging national packaging design requirements or economic incentives increase complexity for packaging and packaged goods producers supplying products in more than one Member State. They will likely divert resources from investments in sustainable innovations for the EU single market towards legal compliance with multiple sets of national requirements. An EU harmonised approach is necessary to reduce administrative burden, compliance costs and market fragmentation.

5. The review of the ER and the calculation behind EPR fee modulation and the “necessary costs” for litter clean-up must be evidence-based. In particular, EPR fee modulation should draw upon readily quantifiable and/or verifiable characteristics, while calculation of the quantities of litter and share of each product in recovered litter should be based on empirical evidence to allow for transparent and proportionate accounting. It should also not introduce any additional administrative complexity or operational burdens in measuring and reporting fees.

6. The ER and EPR fee modulation must be formulated in a way that allows sufficient flexibility to preserve future innovation. The ER and EPR fee modulation must not hamper innovation and progress in packaging design and infrastructures to collect, sort and recycle these materials after they become waste. The ER also needs to be sufficiently flexible to take into account the functionalities of packaging. Prescriptive quantifiable requirements would quickly become outdated and risk hampering innovation. There should be a regular review process to take into account technological progress.

Additional recommendations for EU guidelines for EPR fee modulation for packaging

Guidelines for EPR fee modulation should further be:

- **Harmonised at EU level** in order to avoid divergent national approaches that potentially create contradictory packaging design signals. This requires guidance and monitoring from the European Commission.
- **Consistent with the agreed purpose** in the WFD³. Other objectives which are not directly linked to EPR schemes’ responsibilities or which are not related to operational factors should be covered through other policy tools.
- **Proportionate** to the existence and development of local sorting and recycling technologies, infrastructures and markets for secondary raw materials, **regardless of the material**.
- **Based on the net-cost principle**, which requires taking into account revenues from recovered materials when ascribing costs to the obliged industry. EPR fee modulation should not facilitate or rely on cross-subsidisation between materials.

³ According to Article 8a(4b) of the Waste Framework Directive 2008/98/EC, EPR fees shall be modulated to take into account durability, reparability, re-usability, recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and where available, based on harmonised criteria in order to ensure a smooth functioning of the internal market.

- **Coordinated and consistent in the case of multiple, competing producer responsibility organisations** to ensure a competitive, level playing field and to avoid cherry-picking by producer responsibility organisations or producers.
- **Transparent and developed in consultation with the obliged industry** to ensure transparency and proportionality.
- **Applicable to all market players across distribution channels** as much as possible and subject to a *de minimis* threshold which is **as low as possible**, in order to **avoid free-riding**.

Additional recommendations for the definition of “necessary costs” in relation to litter clean-up⁴

- **Clear demarcation:** There must be a clear demarcation of the role and responsibilities of each actor. A fair demarcation should be established of how costs should be calculated and distributed among producers of packaged items covered by the Single-Use Plastics Directive (SUP) as opposed to non-packaging items covered by the Directive.
- **Clear geographical scope and scale of clean-up activities:** The geographical scope and scale of clean-up activities and level of cleanliness should be proportionate and limited to activities undertaken by public authorities. Such activities include litter prevention and collection in streets, markets and other public spaces and during public events, but should not include operations, including sea and ocean clean-up, for which public authorities are not responsible. Also, as per SUP recital 21 and article 8.4, costs *“shall not exceed the costs that are necessary to provide those services in a cost-efficient way”*. A clear definition of “cost-efficiency” is needed in that respect.
- **Adaptability of costs in correlation with litter:** Decreasing costs when litter decreases over time is crucial to provide an incentive to all actors to reach the litter reduction objectives.
- **Transparency and stakeholder consultation:** As per SUP recital 21 and Article 8.4 of the Single-Use Plastics Directive, the process for calculating the costs should be *“established in a transparent way between the actors concerned”*. All actors concerned by the measures, including producers, should therefore be properly consulted and involved in the process and dialogue.

Additional recommendations for the Legal Review of the Essential Requirements

- The ER are laid down in the PPWD, which covers all packaging. Therefore, **the overarching principles** underpinning the ER **need to be relevant for any type of packaging**. Packaging materials shall be **treated equally**, in a **non-discriminative way**.
- **Compliance with the related CEN standards** should entail a **presumption of conformity** with the ER and provide producers with full access to all countries in the European Economic Area. Should the ER be reviewed and the CEN standards updated accordingly, a transition period will be needed for compliance with the new standards.

⁴ As per article 8 of the Single Use Plastics Directive, which concerns certain packaging items, as listed in Annex E of the Directive.

- **The ER review should maintain an EU harmonised approach and the “due diligence defence principle”**, which means that companies must prove their compliance according to their means and resources as this is essential for SMEs.
- **Enforcement** of the ER by Member States should be **improved through the development of European and/or national guidance** to encourage and facilitate the application and enforcement of the ER.

The undersigned 58 organisations are as follows (in alphabetical order):



AFISE - Association Française des Industries de la Détergence, de l'Entretien et des Produits d'Hygiène Industrielle, France



AGMPM, Association of the Greek Manufacturers of Packaging & Materials, Greece



AGVU - Arbeitsgemeinschaft Verpackung und Umwelt e.V., Germany



AIM - European Brands Association



A.I.S.E. - The International Association for Soaps, Detergents and Maintenance Products



ANIA - Association Nationale des Industries Alimentaires, France



APEAL - The Association of European Producers of Steel for Packaging



ARAM - Association for Packaging and the Environment, Romania



BSDA- Bulgarian Soft Drink Association, Bulgaria



CEPI - Confederation of European Paper Industries



CICPEN - Industrial Coalition on Packaging and the Environment, Czech Republic



CITEO- Packaging Recovery Association, France



CITPA – International Confederation of Paper and Board Converters in Europe



Coop de France Métiers du Lait, France



Cosmetics Europe - The Personal Care Association



CPME - Committee PET Manufacturers Europe



DSD - Der Grüne Punkt Dual System for Packaging Recycling, Germany



EAFA - European Aluminium Foil Association



EFBW - European Federation of Bottled Waters



ELIPSO - Les entreprises de l'emballage plastique et souple, France



Emballasjeforeningen - The Norwegian Packaging Association, Norway



EPRO - European Association of Plastics Recycling & Recovery Organisations



EuPC - European Plastics Converters



EuPIA - The European Printing Ink Association



EuroCommerce



European Aluminium



European Bioplastics



European Dairy Association



European Retail Round Table



EUROPEN - The European Organization for Packaging and the Environment



EXPRA - Extended Producer Responsibility Alliance



FCD - Fédération du Commerce et de la Distribution, France



FEA - European Aerosol Federation



FEBEA - Fédération des Entreprises de la Beauté, France



FEFCO - European Corrugated Packaging Association



FEVE - The European Container Glass Federation



FIAB- Spanish Food & Drink Federation, Spain



Flexible Packaging Europe



FNIL - Fédération Nationale des Industries Laitières, France



FoodDrinkEurope - The organisation of Europe's food & drink industry



GIFLEX - Italian association of flexible packaging producers, Italy



Hungarian Mineral Water, Fruit Juice and Softdrink Association, Hungary



IK Industrievereinigung Kunststoffverpackungen e.V, Germany



INCPEN - The Industry Council For Research On Packaging And The Environment, UK



Independent Retail Europe



Metal Packaging Europe



Miljöpack - The Trade & Industry Group, Sweden



Pack2Go Europe - Europe's Convenience Food Packaging Association



Pakkaus - Packaging Association, Finland



PCEP- Polyolefin Circular Economy Platform



Petcore Europe



PlasticsEurope - Association of Plastics Manufacturers



SEPEN - Association for Packaging and Environmental Protection, Serbia



Serving Europe - Branded Food and Beverage Service Chains Association



SLICPEN - Industrial Coalition on Packaging and the Environment, Slovakia



Sociedade Ponto Verde, S.A. - Packaging Recovery Organisation, Portugal



TIE - Toy Industries of Europe



UNESDA - Union of European Soft Drinks Associations