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FEAD position on the proposal for a Regulation on Packaging and Packaging Waste

FEAD, the European Federation for Waste Management and Environmental Services, representing the private waste and resource management industry across Europe, welcomes the Commission's legislative proposal on Packaging and Packaging Waste, as it reaffirms recycling as the core element of circularity.

FEAD supports the European Commission's ambition reflected in the packaging and packaging waste proposal, as we strongly believe that **the sector must be stimulated through strong, binding measures to achieve a "real" circular economy**. We, as the waste management industry, are an important part of the circle, and the proposed measures, such as **mandatory recycled content**, support our activities by creating a real demand for recyclates and therefore trigger investments in separate collection, sorting and highly innovative recycling. Our role and added value as producers of sustainable secondary raw materials, which are crucial for the packaging industry, is finally fully recognised.

The packaging waste management sector is crucial towards sustainability. Among different waste flows, packaging is one of the most interesting in terms of yearly generated volumes, growth rates, environmental issues and also missing business opportunities.

FEAD knows how delicate and important the role of the waste management industry is in order to achieve ambitious targets and meet the challenges of the present and the future. Therefore, in order to contribute, FEAD identified a number of critical issues that need to be taken into account in the forthcoming decisions of the Parliament and the Council:

- To the extent that the Regulation proposal contains specific rules on the management of packaging waste, it would be appropriate to base the Regulation, in as far as those specific rules are concerned, on Article 192 TFEU, in addition to the Internal Market legal basis;
- Avoid elements of uncertainty for important measures such as recyclable packaging and mandatory recycled content, and provide for the involvement of all stakeholders, including the waste management industry, in the drafting of the delegated and implementing acts;
- Include separate collection of packaging waste generated by private households as one of the necessary requirements for recyclable packaging, a prerequisite for achieving the ambitious objectives in the proposal;
- Prioritise more sustainable recycling technologies which have a high efficiency and at the same time the lowest carbon footprint, such as mechanical recycling;
- Limit the use of compostable plastic packaging only to products that bring environmental benefits and do not affect the treatment of bio-waste and the quality of separately collected organic waste, compost and soil;
- Support the proposed labelling requirements as an essential step towards improving separate collection, but some improvements can be done to enable targeted measures in the coming years and develop further technologies;
- Deviations from the requirements for the mandatory use of reusable packaging must be possible where the use of recyclable one way packaging is the better option according to a life cycle analysis;
- Requirements for the deposit and return system (DRS) shall be improved in order to avoid monopoly situations and the control of a single actor, leaving the Member States to implement it according to the local context;

- Reject the “priority access” or “right of first refusal” proposed by the beverage industry because it would lead to a distortion of the Single Market rules and a monopolistic control of recycled materials

1. Legal basis

The proposed Regulation will 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. Such measures should ensure transition to a circular economy and the long-term competitiveness of the Union and should contribute to the efficient functioning of the internal market, while taking into account a high level of protection of the environment.

Therefore, to the extent that the Regulation contains specific rules on the management of packaging waste, it is appropriate to base it, in as far as those specific rules are concerned, on Article 192 TFEU.

Given the differences between the Member States about the organisation and levels of management of packaging waste, there is a risk that the Commission's proposal will be watered down in the legislative process and that the desirable high level of environmental protection will be lowered. Due to its adoption as a Regulation and no longer as a Directive, some Member States could argue against the ambition of the proposal and the related targets.

Therefore, FEAD believes that the proposal should be based on a dual legal basis, in order to allow Member States to go beyond the agreed level of environmental protection of the Regulation and set more ambitious environmental protection measures.

2. Uncertainty undermines the long-term developments and investments

There are many elements of uncertainty in the Commission's proposal that refer to future decisions, which cannot be evaluated and taken into account in the analysis of the entire text at this time, although they are very important.

The proposal envisages several implementing and delegated acts to establish criteria and technical aspects that influence investment choices in the waste management sector. We feel it is important to provide below a list of the acts that have the greatest impact on the activities of our members:

- In Article 6, the **criteria for the design of recycling** and the **methodology to assess if packaging is recycled at scale** will be established in delegated acts to be adopted by the Commission
- In Article 7, the Commission will adopt an implementing act to establish the **methodology for the calculation and verification of the percentage of recycled content** recovered from post-consumer plastic waste and the format for the related technical documentation. Moreover, the Commission is empowered to adopt delegated acts to revise and provide for derogations from the scope, timing or level of minimum recycled content, and amend **the minimum percentage of recycled content recovered from post-consumer plastic waste**, “*where justified by the lack of availability or excessive prices*”
- In Article 8, the Commission is empowered to adopt delegated acts to amend the **list of packaging that needs to be compostable**
- In Article 11, the Commission is empowered to, by implementing acts, establish **harmonised labelling requirements** and **formats for packaging and waste receptacles** as well as for identifying the material composition of packaging means of digital marking technologies.
- In Article 26, the Commission may adopt delegated acts laying down more specific **re-use targets and further exemptions**
- In Article 27, the Commission shall adopt implementing acts establishing **detailed calculation rules and methodology regarding re-use and refill targets**
- In Article 50, the Commission shall adopt implementing acts establishing **rules for the**

calculation, verification and reporting of data, including the methodology for determining packaging waste generated, and the format for the reporting.

All these aspects, which are directly referred to the Commission for the adoption of specific acts, are of primary importance for waste management companies. All those decisions in the hands of the Commission in **delegated and implementing acts could jeopardise the business plans, due to the lack of possibility to carry out a prior risk assessment**.

FEAD well understands the technical nature of some delegated acts, but believes **that the essential elements of an area shall be reserved for the legislative act** and accordingly shall not be the subject of a delegation of power (art. 290 TFEU). In order to achieve such ambitious goals, it is necessary to know the rules of the game so that we can organise accordingly.

With reference to the delegated acts that require significant work by the Commission, **FEAD strongly requests to be part of the drafting and to be involved by the Commission as a stakeholder**.

Recyclable packaging

FEAD fully supports the concept of designing packaging with the objective of its recycling, because once it becomes packaging waste, it is one of the most efficient measures to improve the packaging circularity and raise packaging recycling rates and the use of recycled content in packaging.

It is necessary to define the concept of recyclability through relevant common criteria applicable to all products, and to standardise the rules defining the environmental requirements and performance of products throughout the European single market, without Member States being able to derogate from them.

The design for recycling criteria should also consider the climate impact of the different recycling technologies, prioritising on the one hand those with a minor impact, but without hindering the development of new technologies. Measures such as design for recycling are important to achieve this goal.

Only for plastic packaging, FEAD sees the necessity to define recyclability criteria for mechanical recycling, giving priority to treatment with the least impact, without excluding other types of technologies.

For example, a study¹ based on the figures from LCAs, shows that pyrolysis of plastic packaging causes much higher GHG emissions than mechanical recycling (pyrolysis emissions are nine times higher than mechanical recycling). Therefore, chemical recycling should only play a complementary role to mechanical recycling, providing an alternative option for processing waste otherwise sent to energy recovery or landfill.

It is important to highlight that the requirement of mechanical recyclability also grants the use and development of other recycling technologies, such as chemical recycling that *allows the transformation of all types of plastic waste back into its original chemical components*².

Moreover, essential rules need to be set in the Regulation itself and not only in Delegated Acts. For example, the parameters of the "Design for Recycling" criteria should already be set in the Regulation itself for example concerning additives, adhesives, label size, small parts, material composition, coatings, ease of emptying, etc, as it was foreseen in the previous version of the proposal in Annex II Part B.

Minimum recycled content

One of the measures strongly demanded by waste management industry, and especially by recycling companies, **is the minimum recycled content**. The substitution of virgin materials with recycled materials ensures circularity and creates a well-functioning market, reducing costs,

¹ https://zerowasteurope.eu/wp-content/uploads/2022/09/zwe_2022_report_climat_impact_pyrolysis_plastic_packaging.pdf

² Chemical Recycling Europe

dependencies and negative environmental impacts coming from the use of primary raw materials. This is why **FEAD warmly welcomes the introduction of the minimum recycled content to create a real market for recycled materials.**

On the other hand, **we are very critical of the derogation in paragraph 10 of Article 7**, which empowers the Commission to adopt delegated acts to adjust the minimum percentages of recycled content, *where justified by the lack of availability or excessive prices of recycled plastics.*

This derogation will have an inhibiting effect for the needed investments and risks sending a controversial and contradictory message to all stakeholders involved who may consider the recycling market too uncertain and volatile, when, on the contrary, the important work done in mechanical recycling has led to excellent results.

The price of recycled materials should never be a decisive factor in comparison to virgin materials. This derogation would once again create real discrimination for recycled materials which, by internalising all environmental externalities, are priced higher than virgin materials. FEAD strongly believes in the circular economy and environmental sustainability, so such an exemption is unacceptable.

Furthermore, the provision of a derogation to the lack of material, without defining the latter, cannot be accepted because it creates ample room for exceptions.

Finally, the proposal provides that *"8 years after the date of entry into force of this Regulation, the Commission shall review the situation regarding the use of recycled packaging materials in packaging other than plastics"*. FEAD believes that 8-year period is definitely too long to have a real impact on these other materials. FEAD therefore requests that this period be reduced to 2 years.

3. Collection, an important lever for circular economy

FEAD believes that in order to make the circular economy work, there are many aspects and steps to consider, all equally important. We recognise that serious consideration has been given to the issue of packaging design and measures to further implement the waste hierarchy, such as prevention and re-use.

It seems, however, that the collection of packaging has not received the deserved attention, considering that in many cases it is one of the critical steps to reach all other targets. For this reason, FEAD believes that a distinction needs to be made between collection and recycling, particularly when talking about recycling at scale.

It is correct to define this concept at European level because not all Member States are able to have all the necessary infrastructure in their territory to complete the recycling steps. Instead, we believe that waste collection should be managed at national level, with obligations on the Member States. For this reason FEAD advocates the inclusion of the concept of 'collected at scale for recycling' as one of the requirements for a packaging to be considered recyclable.

4. Most sustainable technologies and processes

The Commission's proposal often refers to the state-of-the-art separate collection, sorting and recycling processes and infrastructure actually available in the Union, especially with regard to design for recycling.

Today, the waste industry is continuing to invest and improve its processes to make waste management sustainable, valorising it through the production of secondary raw materials (End-of-Waste). This process requires continuous efforts and technology improvements to maintain a high level of quality of products that are placed on the market.

Basing recyclability criteria only on the state-of-the-art technology could hinder the development of new and improved technologies, especially in terms of sustainability.

FEAD strongly believes that the proposal should refer to the most sustainable and least impactful processes and technologies, which have a high efficiency but at the same time the lowest carbon footprint.

This criterion would make it possible to set the entire life cycle of packaging not only on what is possible today, but on what is environmentally sustainable today and tomorrow.

In the context of the revision of the Packaging and Packaging Waste legislation, the European Commission (EC) commissioned Eunomia, to consider the introduction of recycled content targets for plastic packaging by 2030. Based on the estimated future recycling content targets in plastic packaging, Eunomia determined recycle quantities that must come as outputs from chemical recycling or mechanical recycling.

Zero Waste Europe and the Rethink Plastic alliance published the study *“Climate impact of pyrolysis of waste plastic packaging in comparison with reuse and mechanical recycling”*³.

The main findings of the study are the following:

- Based on the figures from LCAs of the industry, it is shown that pyrolysis of plastic packaging causes much higher GHG emissions than mechanical recycling (pyrolysis emissions are nine times higher than mechanical recycling)
- The carbon efficiency of pyrolysis is very low, meaning that over half of the carbon in plastic is lost in the process and has to be replaced by new plastic
- Combining mechanical and chemical recycling to process plastic waste to recycle prevents GHG emissions compared to the use of primary plastic
- Mechanical recycling must be prioritised over pyrolysis wherever possible. Measures such as design for recycling and other innovations must be incentivised in order to achieve this goal.

FEAD believes that it is very important to take the climate impact of processes into consideration. But we should not stop there, because the goal must remain to achieve the recycling targets.

Therefore, where mechanical recycling has its limits, chemical recycling takes over. In the legislative proposal, a mistake can be made by putting the two technologies on the same level, with the same quality of input waste.

For example, packaging collected through the DRS system has a very high quality, needs less (pre-)treatment (and therefore has less impact) to become secondary raw material through mechanical recycling. If that waste were to be chemically recycled, the impact would be considerably greater and would go in the complete opposite direction of the targets set by the Paris Agreement.

Therefore, **mechanical recycling should be preferred to chemical recycling wherever possible.** Legislative measures and other innovations must be facilitated to achieve this goal.

For as long as regulations do not introduce safeguards, the industry will use the most easily material available (feedstock that can be recycled through mechanical recycling). **Without adequate regulations, efforts to strengthen mechanical recycling will be severely hampered.** Legal equality of chemical and mechanical recycling processes for packaging waste must therefore be prevented. As such, the climate impact of different recycling technologies should be considered when setting targets and designing criteria.

5. Compostable packaging only with environmental benefits

The European Waste Management Industry contributes to making the life cycle of products more

³ https://zerowasteurope.eu/wp-content/uploads/2022/09/zwe_2022_report_climat_impact_pyrolysis_plastic_packaging.pdf

efficient and sustainable, aiming at the protection of the environment and the preservation of resources, and knows the challenges related to compostable packaging because they are already present in the waste flow.

Problems have been registered both in sorting plants and in composting and anaerobic digestion plants, when talking about compostable plastics. In fact, in the first case, they sort out those plastics and they send them to energy recovery or disposal, in the second case, residues and microplastics are found in the compost.

To avoid this kind of problems, it is necessary to:

- **Limit the use of industrially compostable plastics only to specific applications for which environmental benefits are higher than their alternatives, and where they do not have a negative impact on the quality of the compost and the soil;**
- **Ensure compliance and certification of industrially compostable packaging against appropriate standards, that should display the way in which they should be discarded;**
- **Home compostability should also be a requirement to ensure that compostable packaging is fully biodegradable in non-industrial conditions;**
- **Prioritize recycling to keep materials in the loop for as long as possible** while after composting and anaerobic digestion, new feedstock needs to be sourced to make new products.

6. The contribution of packaging labels

FEAD supports the initiative and the Commission's intention, especially in the need to inform consumers and give them all the tools they need to enable them to appropriately discard packaging waste.

Provided criteria such as comprehensibility, reliability, accessibility, transparency and practicability are taken into account, the use of logos, icons and symbols on packaging across the three categories of recyclability, recycle use and information on separate collection can make a significant contribution to the further development of packaging collection in Europe.

FEAD believes that the proposed labelling requirements are an essential step towards improving separate collection, resulting in more sorted waste streams, and significantly facilitating recycling.

Packaging subject to deposit and return systems, referred to in Article 44(1), **shall be marked with a harmonised product specific label**. It is technically feasible today to produce a unique QR code per item (Directive 2001/83/EC, code on medicinal products), therefore a unique identifier would make it possible to know whether a packaging has been correctly collected, sorted, and recovered. This is of paramount importance to avoid fraud within the European market and to enable targeted measures in the coming years, such as the implementation of further technologies (e.g., digital DRS), which could contribute to the achievement of collection and recycling targets.

As a matter of fact, the Irish Waste Management Association (IWMA) identified Smart DRS⁴ (or digital DRS) to have the potential to deliver the same benefits as conventional DRS schemes in terms of materials captured, (largely) using the existing infrastructure and waste collection solutions and the Flemish Waste Agency is currently evaluating the effectiveness of a large number of digital DRS systems⁵.

⁴ http://iwma.ie/wp-content/uploads/2020/11/201112_Final-IWMA-DRS-Submission-to-DECC-Nov-2020.pdf

⁵ <https://ovam.vlaanderen.be/nl/w/oproep-voor-pilootprojecten-digitale-statiegeldsystemen-kent-heel-wat-interesse?redirect=%2Fnieuws>

7. Re-use targets for transport packaging

FEAD welcomes the proposed measures to reuse packaging because it is necessary to promote circularity and sustainable use of packaging. Nevertheless, the requirements for reusable transport packaging, in particular **plastic pallet wrapping**, should be viewed critically and revised.

The management of plastic pallet wrappings and the resulting waste is characterised in many Member States by a largely closed recycling system. Most of the waste from this transport packaging is generated in the commercial sector, and is collected almost completely and sorted by type, so that it can be comprehensively and specifically recycled. The pallet wrappings made of plastic (film) are designed to be recyclable in the sense of the requirements of the "Design for Recycling" according to Art. 6 of the proposed Regulation.

In this way, the materials and resources used for this packaging are kept permanently in the material cycle with little effort. If this transport packaging were designed as reusable packaging, other materials would have to be used, and other design forms would have to be chosen to enable reusability. This packaging, when reaching its end of life and having to be discarded, would possibly only be recyclable to a much smaller extent, or only with a much bigger technical and energetic effort. As a result, the overall eco-balance of reusable transport packaging to replace plastic (film) pallet wrapping is likely to be worse than the overall eco-balance of single-use plastic films, which can be recycled almost completely, and easily made into new (transport) packaging, requiring only a relatively low energy input.

Within the framework of an ecological balance sheet consideration, it must also be taken into account that reusable transport packaging, due to its necessarily more stable construction or design, will be considerably heavier and also more voluminous than single use plastic wrapping, so that it will lead to more CO₂ emissions during transport.

The requirements for the use of reusable packaging in relation to pallet wrapping should therefore be rejected. However, the aforementioned aspects could also apply to a number of other transport packaging. Therefore, the requirements for the use of reusable transport packaging should be critically reviewed from the point of view of the overall ecological balance, and corrected if necessary.

8. Deposit and Return Systems (DRS) can be useful to improve waste collection performances

FEAD understands the Commission's proposal and recognises the achievements of Member States operating Deposit Return Systems (DRS) that have a high average collection rate of packaging waste included in the system (about 90%⁶⁷). Moreover, the vast majority of the collected beverage containers is subjected to the process of recycling of high quality secondary raw materials.

FEAD believes that the introduction of a DRS at national level can help Member States where efficient collection systems have not been developed and create new opportunities in the waste management sector with companies highly specialised in the treatment and recycling of specific streams. However, the current situation in the different Countries should be taken into account, guaranteeing the possibility of maintaining the system in place for those Member States that already manage to achieve important results. The case of Belgium is illustrative: Fost Plus (the household packing EPR system) reports that in 2021 they already collected 95% of all PET bottles⁸.

The introduction of DRS in some Member States could contribute more quickly to achieving the targets that the Commission intends to set for recycled content in plastic packaging, but **it is important to emphasise, once again, how crucial it is to maintain a free market in the packaging production**

⁶ <https://innowo.org/userfiles/deposit%20refund%20systems%20Manual%20ENG.pdf>

⁷ https://www2.deloitte.com/content/dam/Deloitte/pl/Documents/Brochures/pl_DRS_Brochure_Deloitte.pdf

⁸ https://assets.foleon.com/eu-west-2/uploads-7e3kk3/252/220215_fost_plus_materiaalfiche_en.0c8f7bee38da.pdf

and recycling sector.

The DRS should be set up so that it can be “the means” by which collection targets can be reached quickly, while also increasing the quality of the specific waste stream, and absolutely not become “the ends” to create a monopoly.

DRS’s Organisations could be tempted to seize control and ownership of recycled materials to the sole benefit of their members (i.e. packaging manufacturers or retailers), undermining basic free market principles, and not allowing players in a free market to compete on a level playing field.

FEAD believes that the introduction of DRS should be promoted where it offers an added value and among its minimum requirements, there should be:

- each Member State, which does not currently have DRS, should be free to organise it as it sees fit, be it a conventional or a “smart⁹” one, on the basis of an impact assessment at national level, taking into account the existing collection scheme, infrastructure and market, also looking at how to improve the existing collection schemes
- the governance of the system shall include waste management operators and recyclers
- ensure the maintenance of a free and open market, that guarantees fair access to the material for recyclers and fair transfer of ownership of the material
- guarantee the independence of the “organisational system” that should involve the manufacture sector, the retail sector and the waste management sector.

9. Waste materials that have ceased to be waste are the result of recycling

In Article 47(9) ‘Rules on the calculation of the attainment of the recycling targets’, packaging waste materials resulting from a preparatory operation before being reprocessed, are considered to have ceased to be waste (End-of-Waste). **This is contradictory with the Waste Framework Directive.** The reprocessing is denied here to ‘recyclers’ producing EoW, which is only considered a preparatory operation of this reprocessing. This also denies the product status to EoW, whereas at the same time it ceased to be waste, creating a legal gap because this ‘in between’ status does not exist.

Waste materials that have ceased to be waste are the result of recycling. According to Article 3(17) Directive 2008/98/EC, recycling is a recovery operation (and not a preparatory one) by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes.

The paragraph should be changed accordingly, so that the calculation rule is consistent with the definition of recycling and at the same time ensures that only recycled materials that are actually used in end-use products are counted in the recycling targets of the Regulation.

10. The value of the recycled material and the importance of free access

Some European associations representing the soft drinks sector (Unesda, NMWE and AIJN) are calling on the European Parliament to create a binding legal mechanism to have priority access to recycled plastics from their product and introduce the concept of “closed loop recycling” and “high quality recycling”. According to the beverage industry, this principle of “priority access” or “right of first refusal” should be introduced “through the governance of collection schemes (EPR and DRS through minimum requirements/guidelines)”.

FEAD believes that a legal provision in the Packaging & Packaging Waste legislation resulting in beverage producers to have a “monopolised” access to a “fair quota” of the recycled materials deriving

⁹ The possibility of introducing a digital DRS may be considered if it can bring greater benefits to the Member State introducing it (see the case of Ireland http://iwma.ie/wp-content/uploads/2020/11/201112_Final-IWMA-DRS-Submission-to-DECC-Nov-2020.pdf)

from the containers, would lead to:

- a) **Destabilisation of the Single Market rules and monopolistic control of recycled materials, going against free market principles**
- b) **Devaluation of the work carried out by the waste management industries, which are already able to achieve high quality standards with collection systems and recycling plants**

Today, the waste industry is continuing to invest and improve its processes in order to make waste management sustainable, valorising it through the production of secondary raw materials (End-of-Waste). This process requires continuous efforts to maintain a high level of quality of products that are placed on the market and are subsequently subject to the rules of the free market.

Granting the beverage industry a “priority access” (or the right of first refusal) to plastic recycled materials, at a cost that may be to their exclusive advantage, **undermines basic free market principles**, and does not allow players in a free market to compete on a level playing field and advancing in innovation in both production of plastics and management of the waste.

Lower costs for the beverage industry could inevitably lead to a strong impact on the activities of recycling companies which, as they no longer have access to the free market, would have a disincentive to continue investing¹⁰ in the sector.

A “closed loop recycling” and a “priority access” would not be welcomed by the waste management value chain and would be seen as supporting single-use plastics.

Even though recent reports have illustrated that post-consumer recycled PET from beverage bottles is increasingly used by non-food sectors, this does not mean that bottles are downcycled, but in many cases are upcycled.

The production of many other plastic products can be multi-use rather than single use and this should be even better supported by the European legislation. They are part of a longer life cycle rather than the throwaway culture that is associated with plastic beverage bottles.

Imagining a “closed loop recycling”, based on monopolised resources for recyclates, for all materials would severely damage the market and production processes, as all 'long life cycle' products would be excluded from being able to access recycled materials in the short term and would not be able to meet their recycled content targets.

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¹⁰ In 2019, FEAD estimated that in the following 10 years, waste management industry was ready to invest 1 billion of euros.