

# Legislative drivers for the circularity of packaging

A review on the measures of the EC's proposal for a Packaging and Packaging Waste Regulation

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EuRIC represents the European recycling industry at a EU level. Gathering the vast majority of national recycling federations from EU/EEA Member States, the Confederation represents about 5.500+ recycling companies – from market leaders to SMEs – generating an aggregated annual turnover of about 95 billion € by treating various waste streams including packaging.

The European Recycling Industry welcomes the EC's proposal for the new [Regulation on Packaging and Packaging Waste](#) [COM (2022) 677] and acknowledges the Commission's commitment to set ambitious measures to boost packaging circularity.

This paper outlines the key cross-cutting positions of the European Recycling Industry on the EC's public consultation on "[Reducing packaging waste – review of rules](#)" and the proposal for a Regulation on Packaging and Packaging Waste (PPWR). EuRIC looks forward to working closely with the European Commission to ensure the introduction of harmonized rules on packaging that reflect better the principles of circular economy. The recycling industry stands ready to provide support in the development of delegated acts and implementing provisions.

### EuRIC's position in a nutshell:

→ **Strong support to the definition of recyclable packaging.**

Packaging that is designed for recycling is not the same as recyclable packaging.

→ **Call for bringing the recyclability targets forward.**

Design for recycling should be implemented as soon as possible and by 2030, all packaging should comply with the **recyclability at scale** requirements.

→ **Strong support to minimum recycled content targets for plastic packaging.**

Recycled content targets for other packaging materials should be analyzed as well. Recycled plastics prices, especially if compared to virgin plastics prices, should not be a decisive factor to derogate from the recycled content targets.

→ **Call for strong measures to avoid the** contamination of recyclable plastics by "compostable" ones.

→ **Concerns over the consistency of widespread reuse targets with other objectives pursued.**

Recycling and reuse are complementary and should be prioritized on the basis of their environmental performances. Packaging with high circularity performance should be exempted from reduction and reuse targets.

→ **Call for measures to increase collection rates**, which are instrumental to achieve recycled content targets. Single use plastic bottles and cans should not be the sole focus for investments into packaging collection. Equally, Deposit Return Systems shall not be considered as the silver bullet to increase collection rates.

→ **Request the full integration of recyclers into the governance** of the recyclability assessment, collection schemes and Extended Producer Responsibility schemes.

## General Comments

**Legal Instrument** - EuRIC supports the change of the legal format from a Directive to a Regulation in order to ensure a harmonized implementation and enforcement of the new rules, which are essential to preserve a smooth functioning of the internal market as well as high level of circularity of packaging products placed on the market across the EU.

**Delegated Acts** - The Regulation proposal cannot be assessed conclusively, as the EU Commission makes numerous references to the delegated acts to be defined. The delegated acts have not yet been made available for inspection and can therefore not be assessed.

**Material recycling** - The present draft remains technologically neutral when it comes to recycling technologies that may be used to achieve the targets set by the PPWR. Mechanical recycling is by far the most mature technology to recycle plastics packaging, including food-grade quality, with the lowest carbon and energy footprint. In order to ensure that the most environmentally efficient technology is used, it is essential that Directive 2008/98/EC (Waste Framework Directive) is amended to define chemical recycling as solely being considered as recycling when this set of technologies is used for material-to-material recovery and adapt the waste hierarchy by classifying chemical recycling technologies between mechanical recycling (above) and incineration (below).

## Recyclable packaging (Article 6 & Annex II) – Increasing the level of ambition

Recyclability is one of the key requirements to facilitate the drive towards circularity in the packaging and packaging waste sector. Measures to ensure that “*all packaging on the EU market is reusable or recyclable in an economically viable way by 2030*”, as promised in the new Circular Economy Action Plan (CEAP), are welcomed by the European recycling industry. The ambition of having all recyclable packaging by 2030 can’t be watered down and should be strengthened by pushing the deadlines forward.

While **EuRIC supports the definition of recyclable packaging**, the compliance of all packaging with the laid down criteria seems insufficient for ensuring that all packaging is effectively recyclable on the basis of this Regulation: **compliance with design for recycling criteria is a prerequisite but not enough for packaging to be considered recyclable**. With the Commission’s proposal, packaging recyclers will have to deal with unfit input streams until 2035. By 2030, there could be packaging that is recyclable in theory, but is not being recycled in practice. By 2035, 25% of the Union’s population could still be using packaging that actually couldn’t be recycled in practice. It goes also without saying that, if there is no recyclable material input, there cannot be a high-quality recycled materials output. Thus, in pursuit of high-quality recycling, all non-recyclable packaging should be singled out and phased out as soon as possible. **EuRIC calls on the Commission to bring forward the dates for the recyclability targets**. Design for recycling (DfR) should be implemented as soon as possible, before 2030, and the requirements to ensure that packaging is recycled at scale should apply by 2030, in coherence with the CEAP.

As Article 6 (2) states, **design for recycling** is the first point that recyclable packaging must comply with, but not the only one. Thus, packaging that only complies with the design for recycling criteria can’t be considered recyclable packaging. While design for recycling criteria already exist, the standard setting procedure by delegated act for an applicability in 2030 would unnecessarily delay the compliance of packaging with recyclability requirements. EuRIC calls on the Commission to **speed up the applicability of design for recycling criteria** building on **already mature DfR guidelines for plastics and other packaging materials**. The delegated acts to be adopted by the Commission will have to be developed

within a reasonable timeframe and based on the cooperative work of the sector directly calling on the expertise of actors active in material recovery. The review of delegated acts will have to be set within sufficiently frequent timeframes to allow for technical progress in packaging and recycling.

The requirement for recyclable packaging to be **“recycled at scale”** where the packaging is collected, sorted and recycled through installed state-of-the-art infrastructure and processes, covering at least 75% of the Union population, remains unclear and in any case insufficient for ensuring packaging circularity. This means that around 100 Million EU citizen would still be using packaging that is either not collected, sorted or recycled by 2035. In coherence with the CEAP, the requirements to ensure that packaging is recycled at scale **should apply by 2030**.

While EuRIC acknowledges that there may be reasons for a time-limited derogation for **innovative packaging**, the current wording of Article 6 (9) and the corresponding definition of ‘innovative packaging’ under Article 3 (37) could provide a loophole for free-riders. Whereas there would be no existing systems for recycling at scale for innovative packaging, all packaging, including innovative packaging, should be **designed for recyclability**, and it should be possible to **effectively collect, sort and recycle this packaging** to ensure circularity and **avoid contamination** of other recyclable packaging.

Finally, EuRIC considers the self-declaration by manufacturers on the recyclability of packaging to be insufficient for ensuring effective compliance and control of all market actors with the requirements laid down in this Regulation. For a robust and neutral assessment of recyclability of packaging, EuRIC calls instead for the introduction of a **third-party certification**. The recyclability certification should be carried out by entities independent from the packaging makers, packer-fillers or retailers. The methodology shall be established in accordance with European standards and, subsequently, certified by qualified personnel, as the only way the uniformity throughout Europe and a level-playing field for all market actors is ensured.

## Minimum recycled content in plastic packaging (Article 7)

EuRIC strongly supports the proposed mandatory targets for recycled content in plastic packaging at different levels depending on the contact-sensitivity of different plastic packaging applications. The targets for the recycled content of PET bottles set under the SUP Directive have proven to be the only manner to de-correlate recycled PET prices from oil-based ones and thus to drive investments in capacity-building along the recycling value chain. Thus, recycled content targets are the **most efficient tool to reward recycling environmental benefits**, to **pull the demand for recycled materials** in new products and **level the playing field with extracted raw materials**.

The proposed measures will not only increase the use of recycled materials in Europe but will also **drive-up the demand for our high-quality recycled materials**, therefore **increasing recycling rates**. **Investments and innovation are taking place** at an accelerated pace in the mechanical recycling industry, in particular in (1) food contact recycling of PET trays, colored PET, opaque PET in closed-loops (moving away from fiber and insulation markets), (2) food contact recycling of HDPE and PP, (3) high quality LDPE. The proposed targets, including those for contact sensitive packaging plastics other than PET, will be achieved thanks to the **push on investments in R&D** through a mandatory demand that **secures the investments to improve the recycling capacity**.

EuRIC entirely supports the fact that **recycled content shall apply to all plastic packaging, including recyclable and re-usable ones**. The exception for compostable plastics must be limited to the compostable packaging formats that go to the biowaste stream, according to Article 8. EuRIC supports a restrictive scope on compostable plastic packaging. A non-level playing field and unfair competition



between conventional packaging subject to recycled content obligations and compostable packaging, not subject to the same obligations, shall be prevented.

Article 7(10) substantially restricts the requirements of minimum recycled content in plastic packaging in case of lack of availability or in case of overshooting recycled material prices. Recyclers who ensure that the ambitious targets from the present draft are achieved by **investing in research, technologies, plants and infrastructure must not be hindered** in their efforts by derogation clauses that can also take effect **in the event of short-term distortions in the markets**. The fallback option from Article 7(10) opens the **possibility for market participants to specifically undermine all requirements of the new Regulation**. At a minimum, in the assessment for the setting and/or amending of minimum recycled content targets, **the price of recycled materials should not be a decisive factor to derogate to recycled content targets**. In particular, recycled materials prices should not be compared to virgin polymer prices, as virgin materials fail to internalize environmental externalities, fluctuate drastically depending on oil prices and geostrategic factors and have no link with recycled material production costs in Europe. The **derogation based on availability is too blurry and thus leaves a too wide margin of appreciation**. It shall either be qualified or deleted as a whole.

**Beyond plastics, recycled content targets should further be analysed for other material categories.** Though some producers already claim to achieve high recycled content (i.e., for aluminium and glass), a target matching current practices would ensure that laggards are not able to avoid their responsibility to ensure circularity. **EuRIC calls on the Commission to review the use of recycled materials in packaging, other than plastics, three years after the Regulation comes into force.** Binding measures to incentivize circular materials' use are key drivers to strengthen recycling markets and ensure the much-needed drive towards the circular economy. Thus, a continued and consistent focus is required on this level of ambition to provide visibility and incentive to both the packaging and the recycling industries.

Moreover, a **strong methodology for all recycled content targets and reporting obligations are crucial to avoid possible green-washing opportunities**. EuRIC supports real-life criteria ensuring recycled content is measured at product level. Facility and product-level methodologies will ensure that the recycling incentivized by targets is ensured harmoniously across all EU-27 Member States, rather than creating a fractured market.

Last but not least, **EuRIC is strongly opposed to the right of first access to recycled materials** asked for by some stakeholders. Recycled materials shall not be subject to a legal monopoly that will benefit exclusively multinational companies. To achieve circular value chains requires incentives to level the playing field with extracted raw materials, as well as free and fair end-markets. Captive markets that restrict end-markets for recycled materials would ruin the benefits of such pull measures and divert investments towards value chains not subject to such obligations. In order to ensure that every sector plays its role, EuRIC has always advocated for mandatory recycled content targets in other sectors, such as for automotive or construction, as pointed out in the [EuRIC call for Recycled Plastic Content in Cars](#) and [EuRIC Plastic Recycling Factsheet](#).

## Compostable packaging (Article 8 & Annex III)

As stressed at length in [EuRIC's position on the Impacts of Biodegradable Plastics on Circularity](#), EuRIC does not see any legitimate justification or added value in the focus on compostable packaging, in regard to achieving circular economy objectives. Most biodegradable plastics (BDPs) are not properly discarded of at their end-of-life (EoL) and mixed with traditional recyclable plastics. This creates a **negative impact on the efficiency of conventional plastic sorting and recycling systems** across the EU and **jeopardizes recycled material quality** because BDPs - contrary to bio-based plastics - act as contaminants, lowering the quality of recycled materials. When mixed with bio-waste, BDPs **often**

**feature poor in-real-life composting performance**, which is the reason why BDPs, even if EN 13432 certified, are not allowed in the bio-waste collection schemes of many Member States. As a consequence, BDPs from packaging are removed from both the bio-waste and the recyclable packaging and **incinerated in waste to energy plants or landfilled**.

In order to avoid the contamination of the conventional plastic packaging waste and bio-waste, which leads to lower quality of the recycled materials and the bio-fertilizers, **EuRIC supports a closed list of packaging formats made of biodegradable plastic polymers that can be discarded in bio-waste collection schemes**, when the environmental benefit of using that packaging is assessed against strict criteria for 'home compostable' BDPs instead of 'industrial compostable' BDPs to be able to respond to the **breakdown time of an industrial composting plant which is no longer than 3 weeks**. **Discarding compostable plastic with all other household packaging for recycling should not be allowed**, as it leads to an **unclear sorting message for consumers** and **disrupts the sorting and plastic recycling process**.

Also, some recycling solutions already render obsolete the shift towards compostable coffee capsules. In Belgium for instance, from January 2023, plastic and aluminum coffee capsules can be disposed together with the household plastic and metal packaging waste, in the blue bag, for recycling. Prescribing that compostable coffee capsules shall be compostable can lead to an unclear sorting message for consumers and would **hamper innovative recycling developments**. In implementing Article 8, attention should be paid to the full degradability of "biodegradable plastic". The EU legislator should therefore **refer here to a revised "EN 13432" standard** that ensures the ultimate degradability of bioplastics.

## Reuse and refill targets (Article 26)

Reuse systems (e.g. pallets) and efficient deposit systems (e.g. beverage packaging) play a central, complementary role. However, the promotion of reusable should first and foremost take place where reusable packaging is demonstrably ecologically beneficial and geographically applicable. The ecological benefit should be based on a comprehensive scientific consideration, which compares the comprehensive collection, return, cleaning and refilling of reusable packaging with the production, filling and collection and high-quality recycling of corresponding disposable packaging. **Refill and reuse targets should be established when they can demonstrate clear benefits for the environment and society**. Aspects of GHG emissions, water and energy use, as well as measures on hygiene, health and safety need to be evaluated for every packaging category and system in terms of environmental and carbon footprint.

To tackle these issues and the fact that for some material and packaging application, recycling can have a better environmental impact than reuse, it is suggested to create an exemption from reuse and refill targets for the types of packaging complying with demanding circularity criteria in terms of (1) recyclability performance, (2) an overall collection rate of 90% or above and (3) higher recycled content than the mandatory recycled content targets set out in Article 7. The assessment of the recycling, collection and incorporation targets should be carried out by manufacturers and certified by an independent third party through the data collected by its PRO. This measure will help to highlight and encourage the achievement of significant eco-design and recycling performances of the packaging.

Moreover, reuse targets can have a negative impact on the access to markets for materials poorly fit for reuse but highly fit for recycling, such as paper and cardboard. It could be detrimental to the use of recycled materials. As the performance of reuse systems will need to match that of the paper and board recycling model, **the targets set out in the Commission's legislative proposal should focus on markets where circularity performance needs to be improved**.

## Register of producers (Article 39)

In order to improve the traceability of packaging, from its design, its contribution to EPR, to its collection and recyclability, both in terms of administrative and technical aspects, EuRIC proposes the implementation of a **mandatory individual marking (serialization) of all household packaging by 2030**. While the marking should ensure that confidentiality of data of all stakeholders is protected, as indicated in Article 41, the associated technology with this marking should be open sourced to be actually generalized and used both for statistical purposes and innovative collection solutions (digital Deposit Return System). It should be noted that the announced replacement of the barcode with QR codes by 2027 is an opportunity to deploy serialization without imposing additional costs, as the modification of labelling systems would have to be carried out anyway.

## Producer Responsibility Organization (Article 41)

As outlined in [EuRIC's position paper on Extended Producer Responsibility \(EPR\) schemes](#), representatives from the waste management and recycling sector need to be fully integrated into the governance of EPR schemes for ensuring the effective eco-modulation of EPR fees in the PRO of all EU Member States. Representation of collectors, sorters and recyclers is necessary for ensuring an appropriate balance of interest amongst the most relevant actors in the value chain. Not only packaging producers cover the costs related to waste management operations, but also recyclers are contributing through their investment in recycling facilities and assuming operating losses in case of insufficient prices. In view of the development of the operational activities of EPR schemes, it is essential, in order to **preserve conditions of fair competition**, to explicitly **prohibit the use of data and information collected by EPR Schemes** in the context of their statutory missions of general interest (monitoring and calculation of recycling rates, for example) for the purposes of developing their own activities on the competitive sorting, recovery and recycling markets.

Besides, **EPR schemes must not have any operational role on the market**, i.e. on treating waste for end-of-life products for which they have the organizational responsibility, and this should be clearly prohibited in the requirements for EPR schemes. It is equally clear, that **no priority access shall be given to manufacturers at any stage of the packaging waste management**. European packaging recyclers are dedicated to ensure sufficient supply to European packaging manufacturers.

## Authorization on fulfilment of extended producer responsibility (Article 42)

EuRIC believes that the authorization process for EPR Schemes and individual systems provided for in the PPWR proposal is not appropriate and that it should be thoroughly reviewed. The assessment of the application dossier by an "independent expert" is not a realistic option given the technical nature of the operations associated with the collection, sorting, recycling and reuse of packaging: it is not clear how an expert could be totally independent of the eco-organizations or the regulatory authority. **EuRIC supports the principle of a collegial evaluation** of the applications of eco-organizations and individual systems, carried out by all stakeholders.

Similarly, the PPWR proposal does not provide for consultation with stakeholders, in particular the collection, sorting and recycling industries. The consultation must be held within a timeframe that is compatible with an in-depth study of the application files. Furthermore, Article 42 (3) (d) implies that sorting and recycling capacities are proposed and decided by the eco-organizations, which presupposes an operational (and not financial) EPR that intervenes directly in the field of market activities. In such a framework, EPR schemes would have a monopoly on the organization of the market for which they are responsible and in which they would have an operational role. This should absolutely be prevented to

avoid an **uneven playing field and abuses of a dominant positions in the collection, sorting, take-back and recycling markets.**

## Return and collection systems (Article 43)

To achieve high recycling rates and to increase the use of recycled materials in packaging products, the collection systems and rates for all packaging and in particular plastic packaging must be assessed and targeted as well. **Mandatory collection targets**, already set under the SUP Directive for single-use plastic beverage bottles, are essential to supply the recycling industries with the required raw materials. Collection is an essential first step to enable the attainment of the recyclability and recycled content targets. In this regard, the two targets must therefore be consistent and be pushed simultaneously. **In addition to recycling and incorporation rates, this Regulation should impose mandatory collection rate targets of 80% for all packaging types in order to have a lever of action on the global collection performance of Member States.**

## Deposit Return System (Article 44 & Annex X)

Deposit Return Schemes (DRS) might be a well-suited legal instrument to ensure high collection levels for single use plastic beverage bottles and single use metal beverage containers. However, a **cost/benefits assessment shall be a prerequisite** for ensuring that DRS achieves the right goals and benefits at reasonable costs. A general requirement of **DRS for specific material streams shall only be decided at national level**, taking into account the effectiveness of established national collection infrastructure and the country specific situation. Where separate collection leads to high collection and recycling rates, the introduction of DRS system might not be the best viable option. While different types of DRS have been introduced at national level, **maximum leeway should be given to Member States** to set up systems, taking into account **existing infrastructures and collection schemes**. Starting from scratch might be costly and disrupt established value chains.

Also, expanding the use of DRS for household collection of solid packaging containers (plastics, tinplate, aluminum), so-called rigids, would mean that the existing systems for the separate collection of lightweight packaging could become obsolete. However, only the existing lightweight packaging collection systems guarantee that, for example, films and composites - material fractions that are not suitable for automatic machines - are collected, sorted and recycled according to their type. **A system based on harmonized collection targets that pulls the collection performance of all packaging, especially all plastic packaging, would be preferable.** This will ensure fair competition and avoid the replacement of a recyclable material by a less recyclable material.

Additionally, EuRIC supports the principle of using **single-ID QR codes for all packaging, both reusable and single-use packaging subject to DRS**. Such single-ID QR codes would allow to provide better information to the consumer, to create a data set to assess in-real-life recyclability and to develop new collection infrastructure, including digital DRS. Finally, EuRIC strongly supports the principle of **technology neutrality regarding the implementation of DRS. Collection systems in general, and DRS in particular, are fields of intense innovation.** Minimal requirements should not hinder the potential to develop innovative solutions, in particular solutions able to address a wide-scope DRS.

## Recycling targets and promotion of recycling (Article 46)

Article 46 regulates the measures to be taken by Member States to achieve defined recycling targets in their territory. Experience has shown that maintaining the derogation option in Article 46(2) to deviate from the rules of recycling targets defined in Article 46(1) would further promote a Europe at different speeds. Moreover, this option holds the possibility of shifting material flows to those countries where





the leeway from legal rules is used in an ecologically disadvantageous way. In Article 46(4), the proposal provides for a review of the achieved targets only 8 years after the entry into force of the Regulation. This period seems clearly too long and should be set to 4 years.

### **Green Public Procurement (Article 57)**

A functioning GPP can only be established if recycled materials are widely used in manufacturing of different products, such as in packaging for construction materials. For an effective GPP, binding and reliable criteria for the obligatory use of recycled material in public sector purchases must therefore be specified in the present Regulation.