

Permanent Materials Alliance suggestions for Amendments Proposal for a Packaging & Packaging Waste Regulation

28 April 2023

RECYCLABILITY

- Recital 12

Text proposed by the Commission	Amendment
<p>(12) In line with the waste hierarchy set out in Article 4(2) of Directive 2008/98/EC, and in line with life-cycle thinking to deliver the best overall environmental outcome, the measures provided for under this Regulation aim at reducing the amount of packaging placed on the market in terms of its volume and weight, and preventing the generation of packaging waste, especially through packaging minimisation, avoiding packaging where it is not needed, and increased re-use of packaging. In addition, the measures aim at increasing the use of recycled content in packaging, especially in plastic packaging where the uptake of recycled content is very low, as well as higher recycling rates for all packaging and high quality of the resulting secondary raw materials while reducing other forms of recovery and final disposal.</p>	<p>(12) In line with the waste hierarchy set out in Article 4(2) of Directive 2008/98/EC, and in line with life-cycle thinking to deliver the best overall environmental outcome, the measures provided for under this Regulation aim at reducing the amount of packaging placed on the market in terms of its volume and weight, and preventing the generation of packaging waste, especially through packaging minimisation, avoiding packaging where it is not needed, and increased re-use of packaging <i>when it can be demonstrated that re-usable packaging achieves an increase in net environmental benefits compared to single-use packaging.</i> In addition, the measures aim at increasing the use of recycled content in packaging, especially in plastic packaging where the uptake of recycled content is very low, as well as higher recycling rates for all packaging and high quality of the resulting secondary raw materials while reducing other forms of recovery and final disposal. <i>To increase the availability and quality of recyclates, the focus should be on the raw material's ability to retain its inherent properties, after recycling, and its ability to replace primary raw materials in future applications.</i></p>
<p>Justification</p> <p><i>The European Parliament's resolution of 10 February 2021 on the New Circular Economy Action Plan (2020/2077(INI) "stresses the need to increase the availability and quality of recyclates, focusing on the ability of a material to retain its inherent properties after recycling, and its ability to replace primary raw materials in future applications".</i></p>	

- Recital 22

Text proposed by the Commission	Amendment
<p>(22) In order to establish harmonised rules on packaging design to ensure its recyclability, the power to adopt delegated acts should be delegated to the Commission to set out detailed criteria for packaging design for recycling per packaging materials and categories, as well as for the assessment of the packaging recyclability at scale including for categories of packaging not listed in this Regulation. In order to give economic operators and Member States sufficient time to collect and report the necessary data to establish the “at scale” recycling methodology, the manufacturers should ensure that packaging is recycled at scale as of 2035. That should ensure that packaging complies with the design for recycling criteria, and is also recycled in practice on the basis of the state of the art processes for separate collection, sorting and recycling.</p>	<p>(22) In order to establish harmonised rules on packaging design to ensure its recyclability, the power to adopt delegated acts should be delegated to the Commission to set out detailed criteria for packaging design for recycling per packaging materials and categories, as well as for the assessment of the packaging recyclability at scale including for categories of packaging not listed in this Regulation. In order to give economic operators and Member States sufficient time to collect and report the necessary data to establish the “at scale” recycling methodology, the manufacturers should ensure that packaging is recycled at scale as of 2030. That should ensure that packaging complies with the design for recycling criteria, and is also recycled in practice on the basis of the state of the art processes for separate collection, sorting and recycling <i>as laid down in the new Circular Economy Action Plan (COM/2020/98)</i>.</p>
<p style="text-align: center;">Justification</p> <p><i>In line with the European Green Deal and its Circular Economy Action Plan and the European Commission’s ambition to require that all packaging placed on the EU market shall be reusable or recyclable in an economically viable way by 2030.</i></p>	

- Recital 23

Text proposed by the Commission	Amendment
<p>(23) In order to stimulate innovation in packaging, it is appropriate to allow that packaging, which presents innovative features resulting in significant improvement in the core function of packaging and has demonstrable environmental benefits, is given limited additional time of five years to comply with the recyclability requirements. The innovative features should be explained in the technical documentation accompanying the packaging.</p>	<p>(23) In order to stimulate innovation in packaging, it is appropriate to allow that packaging, which presents innovative features resulting in significant improvement in the core function of packaging and has demonstrable environmental benefits, is given limited additional time of two years to comply with the recyclability requirements. The innovative features should be explained in the technical documentation accompanying the packaging.</p>
<p style="text-align: center;">Justification</p> <p><i>Two years would be adequate time for innovative packaging to demonstrate that they can meet the recyclability criteria set in Article 6. Ideally, when a packaging is put on the market, the existing collection and sorting infrastructure should already be able to deal with it and ensure that it can be recycled at the end of its life.</i></p>	

- Article 3 – Definition

Text proposed by the Commission	Amendment
(32) ‘recycled at scale’ means collected, sorted and recycled through installed state-of-the-art infrastructure and processes, covering at least 75 % of the Union population, including packaging waste exported from the Union that meets the requirements of Article 47(5);	(32) ‘recycled at scale’ means collected, sorted and recycled through installed state-of-the-art infrastructure and processes, covering at least 90% of the Union population and two thirds of the Member States , including packaging waste exported from the Union that meets the requirements of Article 47(5);
<p style="text-align: center;">Justification</p> <p><i>Packaging should have the ability to be effectively and efficiently separated from the waste stream, collected, sorted and recycled at scale in Member States representing at least 90% of the EU population and in at least 18 Member States. 8 Member States would already represent 75% of the Union population.</i></p>	

Text proposed by the Commission	Amendment
	<p>Article 3 point (32 a new) (New) ‘High-quality recycling’ means any processes by which materials are sufficiently and effectively collected, sorted, and recycled, and are able to withstand several recycling loops without any change to their inherent material properties and with minimum material losses, thereby guaranteeing high yields. The generated secondary raw materials are of sufficient quality to substitute the primary raw materials in similar quality applications.</p>
<p style="text-align: center;">Justification</p> <p><i>Both the Waste Framework Directive and the Packaging & Packaging Waste Directive refer to “high-quality recycling” but do not, however, define this concept.</i></p> <p><i>The definition of high-quality recycling must be based on the following aspects: 1) the material to be recycled must be able to withstand multiple recycling loops without any change to its intrinsic material properties and with minimum material losses during the recycling process, thereby guaranteeing high yields; 2) the existence of an efficient, well-designed infrastructure enabling the proper separate collection, sorting and recycling to collect a significant share of the tonnage put on the market and to deliver recyclates meeting the quality equal to the original virgin material. This will ensure that packaging is not only recyclable but also effectively recycled at scale and can find sufficient end markets to substitute the use of primary raw materials and reduce the pressure on natural resources increase.</i></p>	

- Article 6 - Recyclable packaging

Text proposed by the Commission	Amendment
<p>2. Packaging shall be considered recyclable where it complies with the following:</p> <p>(a) it is designed for recycling;</p> <p>(b) it is effectively and efficiently separately collected in accordance with Article 43(1) and (2);</p>	<p>2. Packaging shall be considered recyclable where it complies with the following:</p> <p>(a) it is designed for recycling;</p> <p>(b) it is effectively and efficiently separately collected in accordance with Article 43(1) and (2);</p>

<p>(c) it is sorted into defined waste streams without affecting the recyclability of other waste streams;</p> <p>(d) it can be recycled so that the resulting secondary raw materials are of sufficient quality to substitute the primary raw materials;</p> <p>(e) it can be recycled at scale.</p> <p>Point (a) shall apply from 1 January 2030 and point (e) shall apply from 1 January 2035.</p>	<p>(c) it is sorted into defined waste streams without affecting the recyclability of other waste streams;</p> <p>(d) it can be recycled so that the resulting secondary raw materials are of sufficient quality to substitute the primary raw materials;</p> <p>(e) it can be recycled at scale.</p> <p>Point (a) to point (e) shall apply from 1 January 2030.</p>
<p>Justification</p> <p><i>In line with the European Green Deal and its Circular Economy Action Plan and the European Commission’s ambition to require that all packaging placed on the EU market shall be reusable or recyclable in an economically viable way by 2030.</i></p>	

Text proposed by the Commission	Amendment
	<p>2 a new. Packaging shall be considered highly recyclable where it complies with the point (a) to (e) above and, additionally, can be recycled multiple times so that the resulting secondary raw material retains its intrinsic properties and is of sufficient quality to substitute the primary raw materials in similar quality applications. Points (a) to (e) shall apply from 1 January 2030</p>
<p>Justification</p> <p><i>Some packaging materials are “permanent materials” which means that their inherent properties do not change, regardless of the number of times they go through a recycling process. It means that once they are produced for the first time and properly collected, sorted and processed at the end of its life, they become the raw material for new production loops. Such materials are, and will remain, at the heart of any proven and well-functioning Circular Economy and should be differentiated from the others and be considered as highly recyclable.</i></p>	

Text proposed by the Commission	Amendment
<p>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).</p>	<p>3. From 1 January 2030, recyclable packaging shall, comply with the design for recycling criteria as laid down in the delegated acts adopted pursuant to paragraph 4 and 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).</p>

Justification

In line with the European Green Deal and its Circular Economy Action Plan and the European Commission's ambition to require that all packaging placed on the EU market shall be reusable or recyclable in an economically viable way by 2030.

Text proposed by the Commission	Amendment
	3a new. In the absence of the delegated acts referred to in paragraphs 4 and 6 of this Article, a presumption of compliance with the points a) and e) of paragraph 2 shall apply to all packaging placed on the Union market such delegated acts enter into force.
<p style="text-align: center;">Justification</p> <p><i>A delay by the European Commission in the adoption of the delegated acts establishing Design for Recycling guidelines and the methodology to assess the collection, sorting, and recycling of packaging 'at scale' should not be a reason for non-compliance with points a) and e) of Article 6.</i></p>	

Text proposed by the Commission	Amendment
<p>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 and recycling processes and shall cover all packaging components.</p>	<p>4. By 1 January 2028, 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 and recycling processes and shall cover all packaging components.</p>
<p style="text-align: center;">Justification</p> <p><i>To respect the timeline imposed in this Regulation, the Commission must/has to adopt the delegated act by a specific date to ensure legal certainty and predictability and give economic operators sufficient time to adapt (at least two years before the application of the requirements). It is necessary to prioritise the adoption of delegated acts linked to provisions that are defined for a specific date.</i></p>	

Text proposed by the Commission	Amendment
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:	6. By 1 January 2028 , the Commission shall establish the methodology to assess if packaging is recyclable at scale for each packaging type listed in Table 1 of Annex II . That methodology shall be based at least on the following elements:
Justification <i>To respect the timeline imposed in this Regulation, the Commission must adopt the delegated act by a specific date to ensure legal certainty and predictability and give economic operators sufficient time to adapt (at least two years before the application of the requirements).</i>	

Text proposed by the Commission	Amendment
7(e) the manner in which to assess the recyclability at scale for each packaging category listed in Table 1 of Annex II in order to establish, as of 2035 , updated recyclability performance grades.	7(e) the manner in which to assess the recyclability at scale for each packaging category listed in Table 1 of Annex II in order to establish, as of 2030 , updated recyclability performance grades.
Justification In line with the European Green Deal and its Circular Economy Action Plan and the European Commission’s ambition to require that all packaging placed on the EU market shall be reusable or recyclable in an economically viable way by 2030.	

Text proposed by the Commission	Amendment
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. 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. After the period referred to in the first sub-paragraph, such packaging shall be accompanied by the technical documentation referred to in paragraph 8.	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 2 years after the end of the calendar year when it has been placed on the market. 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. After the period referred to in the first sub-paragraph, such packaging shall be accompanied by the technical documentation referred to in paragraph 8.
Justification <i>Two years would be adequate time for innovative packaging to demonstrate that they can meet the recyclability criteria set in Article 6. Ideally, when a packaging is put on the market, the existing collection and sorting infrastructure should already be able to deal with it and ensure that it can be recycled at the end of its life.</i>	

Text proposed by the Commission	Amendment
<p>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).</p>	<p>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.</p>
<p style="text-align: center;">Justification</p> <p><i>(1) As in the European Green Deal and its Circular Economy Action is stated that all packaging needs to be reusable or recyclable in an economically viable way by 2030, the Delegated Acts clarifying the methodology to assess the recyclability of packaging should be established prior to 2030. (2) The modulation of extended producer responsibility (EPR) fees should be based on the same criteria for all packaging materials and as recycled content targets are only set for plastic packaging, recycled content should not be considered as a criterion for EPR fees, thereby guaranteeing a level playing field for all packaging materials.</i></p>	

SEPARATE COLLECTION

- New Recitals

Text proposed by the Commission	Amendment
	<i>(100a new) Separate collection of waste is a prerequisite for high-quality recycling and Member States should continue improving and harmonizing existing separate collection systems at national level.</i>
Justification	
<i>The way packaging is collected directly impacts the quantity and quality of the collected materials that can be recycled. Separate collection and sorting are therefore the prerequisite to guaranteeing high-quality recycling processes.</i>	

Text proposed by the Commission	Amendment
	<i>(101a new) Consumers play a key role in waste collection and sorting and Member States should continue initiatives to further promote accessible and easy to understand guidance for the consumers to sort and dispose their waste.</i>
Justification	
<i>Consumers play a key role in waste collection and sorting and there is a need for better guidance on how to separate their waste and to put the different types of used packaging in the right place.</i>	

- **Article 43 – Return and collection systems**

Text proposed by the Commission	Amendment
1. Member States shall ensure that systems are set up to provide for the return and separate collection of all packaging waste from the end users in order to ensure that it is treated in accordance with Articles 4 and 13 of Directive 2008/98/EC, and to facilitate its preparation for re-use and high quality recycling.	1. Member States <i>shall set up separate collection of packaging waste in accordance with Articles 8a paragraph 4(a) and 10(2) of Directive 2008/98/EC</i> and shall ensure that systems are set up to provide for the return and separate collection of all packaging waste from the end users in order to ensure that it is treated in accordance with Articles 4 and 13 of Directive 2008/98/EC, and to facilitate its preparation for re-use and high quality recycling. <i>If Member States allow derogations as per Article 10 (3) of Directive 2008/98/EC, they shall ensure that such derogations do not impede the achievement of the requirements established in this Regulation.</i>
Justification	
<i>The way packaging is collected directly impacts the quantity and quality of the collected materials that can be recycled. Any derogation to separate collection should not impede the fulfilment of the requirements established in this Regulation.</i>	

Text proposed by the Commission	Amendment
4. Member States shall take measures to promote recycling of packaging waste which meets the quality standards for the use of recycled materials in the relevant sectors.	4. Member States shall take measures to promote high quality recycling of packaging waste which meets the quality standards for the use of recycled materials in the relevant sectors.
<p style="text-align: center;">Justification</p> <p><i>Not all forms of recycling being of equal benefit, high quality recycling should be promoted.</i></p>	

About the Permanent Materials Alliance

The Permanent Materials Coalition is composed of APEAL (the Association of European Producers of Steel for Packaging), European Aluminium, the European Container Glass Federation (FEVE) and Metal Packaging Europe.

The aluminium, glass and steel sectors are top performers in recycling packaging materials with respective rates of 73%, 79% and 85.5%¹. As permanent materials, aluminium, glass and steel can be recycled over and over again without losing their key intrinsic properties, thus maintaining circular material loops. A **'permanent material'** is a material whose inherent properties do not change, regardless of the number of times it goes through a recycling process. It means that once it is produced for the first time and properly collected, sorted and processed at the end of its life, it becomes the **raw material for new and endless production loops**. Such materials are, and will remain, at the heart of any proven and well-functioning Circular Economy.

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¹ Recycling rate for respective aluminium beverage cans, glass containers and all steel for packaging segments (2020 data).