

FEDIL'S POSITION PAPER ON PACKAGING AND PACKAGING WASTE REGULATION



Prise de position de la FEDIL – The Voice of Luxembourg's Industry

I. INTRODUCTION

Founded in 1918, FEDIL – The Voice of Luxembourg's Industry (hereinafter "FEDIL"), is a multi-sector business federation, giving a voice to nearly 700 industrial members, service providers and construction companies and fostering economic activity in Luxembourg. Today, FEDIL represents 95% of Luxembourg's industrial production, 75% of Luxembourg's private research activity, 25% of national employment and 35% of national GDP.

FEDIL is a founding member of the European employers' association BusinessEurope and has a representative office in Brussels to ensure that its member companies' voice is heard in European policymaking¹. To this end, FEDIL is registered in the EU Transparency Register (number 286194516022-33).

Through this document, FEDIL outlines its comments on the European Commission's revision of the Packaging and Packaging Waste Directive (PPWD – Directive 94/62/EC), namely on the Proposal for a Packaging and Packaging Waste Regulation (hereafter "PPWR")².

The PPWR establishes rules applicable to the entire life cycle of all packaging as regards environmental sustainability and labelling. Said rules have a significant impact on the placing on the market, production, collection, treatment and recycling of packaging waste. FEDIL fully supports a more circular economy, including regarding packaging in the EU market, and welcomes the PPWR which has the potential to achieve the objectives of the Green Deal and the Circular Economy Action Plan. However, FEDIL raises a series of specific comments on certain provisions of the proposal.

II. FEDIL'S COMMENTS ON THE PPWR PROPOSAL

1. Lack of a proper impact assessment

As a first general comment, FEDIL is aligned with the concern of most of industry stakeholders concerning the absence of a proper impact assessment³ taking into account environmental, consumer behaviour and economic considerations and impacts.⁴ Especially targets, requirements and obligations stemming from the PPWR should be based on scientific evidence, life-cycle assessments methodology for assessing environmental

¹ This position paper has been drafted in line with BusinessEurope's position paper on Packaging and Packaging Waste Regulation of [insert date and link] and should be read as complementary to it.

² Proposal for a Regulation on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (COM/2022/677 final) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0677>.

³ See, more generally, BusinessEurope comments on Better Regulation and Impact Assessment here: <https://www.besinesseurope.eu/policies/better-regulation> and with specific reference to the PPWR proposal Cross-industry coalition calls for a better impact assessment of the proposal for a Packaging and Packaging Waste Regulation signed on 14 March 2023 by a number of European trade associations, here: <https://feve.org/wp-content/uploads/2023/05/Industry-coalition-calls-for-better-impact-assessment-on-reuse-refill-targets-in-the-PPWR-1.pdf>.

⁴ To note that the Regulatory Scrutiny Board gave a negative opinion on 13 May 2022 and a positive opinion with reservations on 30 September 2022.

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impacts associated with all the stages of the life cycle of all packaging, as well as substantive inputs from industry and sector-specific stakeholders to prove that they are the most accurate legislative options available.

2. Fragmentation of the EU Internal Market

The transition from a directive to a regulation is a positive step forward for this legislation to provide **greater harmonisation in the EU's internal market**. A fragmented EU Internal Market with divergent national rules lead to costs and administrative burden for companies, especially for Small and Medium Enterprises (SMEs).

A regulation which ensures that the 27 Member States have the same rules improves the level playing field and increases legal certainty and predictability, promoting competitiveness of our companies and helps the develop of a circular economy.

For this reason, several provisions in the proposal that allow Member States to maintain or introduce additional national sustainability, labelling and information requirements should be removed.⁵ These provisions should be removed.⁶

Also, to ensure that compliance with the PPWR is harmonised, it is essential that target requirements for recycle, reuse and return as well as the **level of sanctions** do not differ from one Member State to the other, to that competition and level playing field are maintained.⁷ Target and sanctions setting at Member State level will also be detrimental to the well-functioning of the internal market as it will increase hurdles for both big and small businesses to expand to other EU markets.

Finally, it is also important to recall that harmonisation should also cover the way Member States, even at local/regional level, sort and collect packaging waste from consumers. This is essential to have a real European waste prevention.

3. Level playing field among sectors

It is necessary that the PPWR does not operate arbitrary distinctions between sectors, thereby putting certain ones at a competitive disadvantage.

Therefore, different treatment, for example for reuse target levels or Deposit Return System requirements, should be avoided unless objective science-based environmental, technical, or socio-economic reasons justify it.

⁵ See for example Articles 4(4), 4(5), 38 of the proposed regulation.

⁶ To note that the legal basis for this proposal is Article 114 of the Treaty on the Functioning of the European Union to allow the EU to harmonise rules and administrative measures across Member State.

⁷ See for example Article and 45(2)(c) for targets and Article 62 for sanctions.

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4. Definitions and scope

To enhance legal certainty and workability of the PPWR's implementation, certain aspects of the definitions and the scope⁸ needs improvements.

As to the **scope**, it should be kept in mind that **industrial/commercial packaging** are different from consumers packaging, which requires a significantly bigger infrastructure that industrial/commercial packaging, given the reduced scale.

Second, **packaging for products already on stock** when the Regulation comes into force should be explicitly excluded from the scope.

Third, **tyre label stickers** should be clearly outside of the scope of the PPWR, given that they do not fulfil a packaging function, but rather to provide information requested by the applicable legislation.⁹

As to the **definitions**, not only do they need clarifications, but they also should be developed on science-based criteria together with industry stakeholders and coordinated by professional experts such as, for example, the European Committee for Standardization.¹⁰

First, the **categories or sub-categories of packaging**¹¹ should be more clearly defined as to avoid leaving room for arbitrary interpretation. The same should also apply to the responsibility of operators along the entire supply chain and life cycle of a package or packaging material.

Second, the PPWR proposal provides an overall **definition of plastic**¹². However, this should be supplemented with an additional paragraph defining what constitutes plastic packaging, for example a packaging that consists mainly of plastic, but excluding a packaging that is simply covered by a thin plastic film on it.

Third, the definition of "**innovative packaging**"¹³ should be amended to include a reference to compostable, biodegradable and bio-based material.

Fourth, the definition of "recycled at scale" is vague and unclear and needs to be clarified, given its relations with other important rules of the PPWR proposal.¹⁴

⁸ Articles 2 and 3.

⁹ Reference is made to Regulation (EC) 122/2009 updated by Regulation (EU) 2020/740.

To note that Annex I of the proposed PPWR includes some examples such as stickers directly applied to pieces of fruit and vegetables that could trigger confusion as to whether the tyre label sticker, which is directly applied to the tyre, might be in the scope of the PPWR.

¹⁰ CEN is a recognised standardisation body within the EU which has published well-established standards on packaging and on recycling. Importantly, the Commission mandated the CEN to draw up standards and reports related to Directive 94/62/EC on packaging and packaging waste.

¹¹ Grouped packaging in Article 3(4), transport packaging in Article 3(4) and e-commerce packaging in Article 3(5).

¹² Article 3.43.

¹³ Article 3 (37).

¹⁴ Article 3(32) to be read together with, amongst others, Article 6.

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Fifth, in line with EU Regulation 2019/1020 Article 3 (11), the definition of “**economic operator**”¹⁵ should explicitly exclude freight transport companies from the scope of this regulation.

5. Use of delegated acts

The PPWR proposal makes an **excessive reliance on delegated act** to supplement or amend certain elements of the regulation. Not only might this appear as a non-transparent and non-thorough legislative process, but it might also give rise to numerous uncertainties and ambiguities as to the concrete impact of the PPWR on businesses and economic operators.

For this reason, essential and critical elements of the PPWR should be included in the text of the regulation to allow stakeholders to understand the direction of the legislative procedure, to prepare and to guarantee for a level playing field.

Similar considerations should be done for the “**common specifications**” which, according to the proposal, may be developed by the Commission.¹⁶ Harmonised standards should be developed as a result of a dialogue with economic operators and standardisation organisations, which are the actor best placed to give a meaningful input and achieve the desired outcomes. As suggested above, expert professionals such as the CEN could be a good actor to develop them together with industry and sector-specific stakeholders.

6. Recycling

As a preliminary remarks, it is important to recall that packaging waste prevention and recycling start from consumer waste, which has a greater scale than industrial/commercial waste.

Then, PPWR requires that, as of 1 January 2030, packaging will have to comply with the **design for recycling criteria** which will be established in delegated acts to be adopted by the Commission. It is essential that these criteria are developed in close cooperation with industry stakeholders, including with experts from the packaging value chain, backed by scientific evidence and designed to foster innovation.¹⁷ It is also important that the delegated acts laying down these criteria are published 60 months (5 years) before 2030, for two reasons: (i) it is essential that the definition of criteria is based on scientific assessments and coordinated by professionals such as, for example, the CEN, and (ii) companies will need a proportionate amount of time to redesign packaging and to comply

¹⁵ Article 3(8).

¹⁶ Article 32(2).

¹⁷ For example, the “Joint steel position paper on Packaging and Packaging Waste Regulation” of April 2023 (available [HERE](#)) gives the following recommendations for the criteria for recyclable packaging:

a) Stricter qualitative criteria to label packaging as ‘recyclable’.

b) The introduction of packaging recyclability performance classes or ‘grades’ for each packaging unit put on the market is timely and necessary. Non-recyclable packaging should be gradually phased out. Best performers should be rewarded via ecomodulation of EPR fees and by a higher recyclability performance grade.

c) Packaging should be ‘recycled at scale’ by 2030 covering at least 90% of the Union’s population and applied in 2/3rd of the Member States.

See also APEAL, the Association of European Producers of Steel for Packaging, position on the draft Packaging and Packaging Waste Regulation [HERE](#).

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with the new requirements and the extremely high targets. In addition, in case of delay in publishing delegated acts, the timelines of the PPWR should also be moved.

Furthermore, recycling mainly depends on the **available infrastructures**, as the mere design is not sufficient if it is not supported by a system capable of activating investments in infrastructure and new recycling technologies throughout Europe, thus allowing Member States to meet their recycling targets. The PPWR should therefore include measures to build adequate sorting, collection and recycling infrastructure for packaging waste all across Europe to enable its recycling in practice. These measures should be established at European level and not at the national level to avoid regulatory fragmentation.

Similar considerations should be made for **Deposit Return Systems**. In particular, **Luxembourg** does not have a proper system in place, unlike for example its neighbours Germany and Belgium, on which it has to rely in some cases. Therefore, Luxembourg should equip itself of such system in collaboration with its key neighbours, even better at Benelux level and / or at Greater Region's level. Having such system in place as Luxembourg alone would be practically difficult and not necessarily favourable to cross-border businesses, it is therefore important to have it in collaboration with other key actors. This would also create new business opportunities for Luxembourg.

In addition, **chemical recycling** should be an alternative route to address recycling waste that cannot be mechanically recycled for technical or economic reasons.¹⁸ Chemical recycling should be properly accounted for as “recycled content”. This could also be a great business opportunity for Luxembourg to have this integrated in recycling infrastructure.

Lastly, **compliance with all recycled content targets** should be met on average of all plastic packaging sold in the EU by an economic operator, i.e., **at company level and not per unit of packaging**. This approach would allow to integrate more recycled content in products with great potential and less in products where technical or safety constraints makes it unfeasible. This would allow more flexibility while providing the same or greater environmental benefits.

7. Reusing and refilling

In principle, **reuse and recycling are complementary solutions** to achieve circularity and should be treated as such in the PPWR. However, not always reuse is the technically optimal solution for all product categories.¹⁹

Therefore, the **choice between reusing and recycling** should be made with due consideration for product and consumer health and safety, in an economically viable and environmentally sustainable way, with science-based advantages over disposable recyclable packaging, in any case, the PPWR should follow the waste hierarchy established

¹⁸ See in this regards FEDIL paper of 1 October 2021 “Plastic Packaging recycling. Ambitious recycling objectives call for new approaches” [HERE](#).

¹⁹ For example, for certain products, reusable packaging can often require more material, which can be heavier and require a system for return handling. This in turn can mean further transport and increased water consumption for cleaning and could also mean significant cost increases for many companies, not least SMEs. Therefore, a proper Life Cycle Assessment needs to be made in to define the advantages and feasibility of reusing, especially for SMEs.

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in the EU Waste Framework Directive,²⁰ according to which packaging reduction should always take precedence over packaging reusability as it saves more material. Therefore, packaging reduction or elimination should count towards meeting the reuse targets under Article 26.

Furthermore, **reuse targets** are very high and should be evaluated more closely, as mentioned in Comment 1 above.²¹ In particular, the target value of reaching 90% reusability by 2040 for the goods described in Article 26(7) is substantially more ambitious than the reusability targets prescribed in the rest of the same article, which range largely between 10% and 80%. To ensure the feasibility of the targets within the PPWR's timeframe, it would be more realistic to propose a more gradually increasing reusability target increase, e.g., 30% in 2030, 60% in 2040, and 90% in 2050.

Also, **calculating reuse targets** at the level of the sales unit can create perverse incentives for operators to shift to smaller packaging units to achieve the targets more easily, with the result of more packaging, and ultimately more waste, being put on the market.²²

In addition, it should be kept in mind that **implementation of a reuse system** requires significant upfront investments, and the burden would be relatively higher for companies present in markets where there is not yet an established framework and/or infrastructures. Therefore, the PPWR should also properly address the **need of reuse infrastructure** and the **challenges and costs** to establish it, especially for SMEs.

8. Excessive packaging

The PPWR requires economic operators who supply products to a final distributor or an end user in grouped packaging, transport packaging or e-commerce packaging, to ensure that the empty space ratio is minimised (maximum 40 %). This also includes filling materials.²³

It seems that the proposal adopts a “one-size-fits-all” approach by not taking into account that different products require different types of packaging to fulfil their function, ensure basic product safety or protect them during transport. This should be reflected in the regulation.

²⁰ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

²¹ Article 26 lays down a number of targets on re-use and refill for different sectors and packaging formats:

- 30% of cold and hot beverages by 2030 and 95% by 2040
- 20% of takeaway ready-prepared food by 2030 and 75% by 2040
- 20% of alcoholic beverages (excluding wine and spirits) by 2030 and 75% by 2040
- 20% of non-alcoholic beverages by 2030 and 75% by 2040
- 90% of large household appliance deliveries by 2030.

²² See Article 27.

For example, the **use of beer kegs**, which are containers with an average capacity ranging between 6L up to 50L reused over several cycles for up to 50 years, risk being discouraged if their reuse and rotations were to be treated as equivalent to the one of a 25 cl bottle. Thus, an equivalent unit measurement should be established to allow for keg volumes to be converted into smaller packaging units and ensure a fair comparison between packaging units of different sizes. This is already the case in reuse systems set up by Member States, such as Spain.

²³ Article 21.

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The legislation should also make explicit that no legal responsibility is established through the proposed regulation - or any of the relevant implementing acts - for freight transport companies to monitor or report the adherence of any transported goods and their respective packaging to the requirements of this legislation, as such a duty would impart an undue financial and administrative burden to freight transporters.

Furthermore, with specific regards to the strict requirement from 2023 for a maximum of 40% of empty space or volume in a package, this requirement should be set at company level, rather than per individual package or per individual shipment. This would allow economic operators more favourable conditions for change.

9. Restrictions on the use of certain packaging formats

The PPWR bans the placing on the market of certain single-use packaging types for serving of food and drink from 2030, and to ban single-use packaging for small accessories one year following the entry into force of the Regulation.²⁴

First, this ban appears too strict and over-reaching and the list of banned packaging is discriminatory and unjustified, as it does not consider either the properties of the materials or whether they are recycled. In many cases, disposable items can be environmentally favourable compared to reusable packaging. Increased use of reusable packaging can lead to, among other things, increased transport, and increased water consumption. Packaging that is 100% recycled and recyclable, such as plastic grouped packaging, should not be restricted, as they have a low carbon footprint, and deliver essential safety functions.²⁵

Second, the timeline foreseen is unrealistic and non-proportionate. Switching to alternatives to single-use plastic grouped packaging requires an appropriate transition period to order the required equipment, carry out customer trials, stability tests, ensuring the convenience for retailers, etc. A too short transition period may also lead to shortages in the market for the alternative solutions or materials. Therefore, the entry into force of such a ban should be aligned with the other provisions under the proposed Regulation, that is by 2030 at least.

10. Transport sector

First, the PPWR measures should only or primarily focus on those types of packaging where there is a real and objective need for increased circularity and recycling. It is therefore to be welcomed the fact that, for the **transport sector**, cardboard and corrugated board used for transport packaging is exempt from the requirement for reuse. Indeed, it is to be noted that for **transport packaging** there are currently well-functioning recycling cycles in place.

However, it must be recalled that **reuse alternatives** are not available for certain types of transport packaging, such as shrink and stretch film used in packaging for transport within

²⁴ Article 22 and Annex V.

²⁵ For example, the PPWR opposes a blanket ban on **plastic shrinks**. The ban on plastic grouped packaging should be based on Life Cycle Assessment considerations, and thus be limited to packaging made of virgin plastics.

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the food sector as well as steel pails, drums, canisters and kegs for steel packaging.²⁶ In this case, the obligation to make reusable all transport packaging is not realistic.²⁷ In this case, the relevant targets should apply to specifically enumerated types of transport packaging and, to allow time for a transition towards full transport packaging reusability. The targets here should be lowered to 80% if applicable from PPWR entry into force or mandate 100% reusability of transport packaging as of 2030.

Moreover, the PPWR further mandates²⁸ that any transport packaging used between economic operators and any of their partner or linked enterprises²⁹ is subject to this reusability threshold. This could be interpreted as to effectively include fulfilment service providers which are subsidiaries of a cargo airline, and which perform cargo self-handling or warehousing activities for this same cargo airline³⁰. As this would effectively distort the cargo ground handling market by subjecting self-handling operators to higher reusability thresholds than operators performing third-party ground handling services, the proposed regulation should explicitly exclude ground handling activities of any type from this provision. Cargo handling and warehousing are instead already sufficiently covered by the targets in paragraphs 7 and 9 of article 26 of the legislation.

Finally, while systems of re-usability³¹ present an important step in fulfilling the proposed legislation's ambitions, the feasibility of such a system is limited in particular as regards **intercontinental transport**, as already described in the assessment of options conducted by the Commission in 2021³². In the freight aviation sector for instance, which regularly engages in a multitude of on-loading and off-loading stops on any given route across the world, fulfilment service providers (e.g., warehousing, cargo handling/packaging) to cargo airlines face significant difficulties in receiving back used pallets and other transport material that could be redeemed in such a system of re-use. In many cases, packaging material received in exchange through imported goods may not fulfil the reusability criteria set out in this legislation for the foreseeable future, which makes them of limited further use for the fulfilment provider. This issue and possible solutions thereto should be further investigated as negotiations of the legislation proceed.

11. E-Commerce sector

E-commerce has become increasingly significant in the European Union, transforming the way businesses operate and consumers engage in online transactions. For this reason, the PPWR should include regulatory enablers and relevant incentives for companies selling through e-commerce to use packaging specifically designed for e-commerce (i.e., sales packaging that does not require an additional e-commerce box or envelope to be shipped) to prevent packaging waste.

²⁶ According to APEAL's position, Steel pails, drums, canisters and kegs as well as intermediate bulk containers are sales packaging and not transport packaging. Therefore, they should not be subject to the re-use targets set for transport packaging.

²⁷ Article 26 (12) and (13).

²⁸ Article 26 (12b)

²⁹ As defined by Commission Recommendation 2003/361, Annex, Article 3.

³⁰ "Self-handling" and "third party ground handling" as defined by Council Directive 96/67/EC, Article 2.

³¹ Article 23, 24, and 45.

³² [Assessment of options for reinforcing the Packaging and Packaging Waste Directive's essential requirements and other measures to reduce the generation of packaging waste](#): Appendices. December 2021, DG Environment.

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Moreover, as mentioned above with regards to excessive packaging, it is particularly important for the e-commerce sector too that **compliance with the 40% empty space ratio** for e-commerce packaging, should be met on average of all e-commerce shipments by an economic operator, i.e., at company level and not per unit of packaging.

Furthermore, for a realistic transition and implementation of this requirement, involved sectors should be consulted for setting a clear empty space ratio calculation methodology and the timeline for compliance should be set for 2030.