



## Position paper

April 2023

### EDA position on the EC proposal for a revised EU legislation on packaging and packaging waste

EDA welcomes the European Commission's 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. **We support the Commission's ambition to further harmonize the EU internal market for packaging and packaging waste and continue the transition to a more circular economy for packaging.** The future set-up of the regulatory environment for packaging and packaging waste is of crucial importance for the European dairy sector.

To advance the transition, an appropriate and justified regulatory framework is needed, which is **aligned with legislation on hygiene and food contact materials, green claims, and the framework for a sustainable food system.** It is also important that the proposal takes into account all three pillars of sustainability, without compromising food safety and quality.

Certain measures - such as those concerning the use of recycled materials, refill, deposit and return systems, packaging bans - could be more easily applied and transferred to packaging intended to contain products other than food. EDA also believes that any foods intended for special nutritional needs, like infant formula and foods for special medical purposes must be exempted from the proposal's provisions. Such foods for 'specialized nutrition' are directed to vulnerable consumer groups and responding to their specific needs and health conditions.

Below, we detail both the positive elements that we ask the European Parliament and Council of the EU to maintain throughout the legislative procedure, and the problematic aspects that we request to amend or delete. For example, the mandatory target for recycled plastic (article 7), the ban on certain single-use plastic packaging used in the HORECA sector (article 22, annex V), and the provisions on re-use (article 26). **The problematic aspects do not sufficiently take into account the crucial role packaging plays for safety, quality and preventing food waste.**

#### The role of food packaging

The first point we would like to highlight is the crucial role of packaging for the safety and quality of foods. From the production to the transportation to the consumer's home, packaging is important to protect dairy products from contamination and ensure transportation in all territories, handling and storage without any damage. This can only be achieved with adequate packaging that safeguards the products from external influences and remains as light and practicable as possible.

**The design of dairy packaging not only needs to ensure safety and quality as a non-negotiable baseline, but also plays an integral part in improving the shelf-life of the product, which contributes to reducing food waste.** The Regulation must consider the important role of packaging for safety and quality and in preventing food waste, which must be carefully assessed to avoid unintended consequences on consumer health and food safety (see EDA fact sheets on packaging: [link1](#), [link2](#)).

In addition, packaging conveys not only brand values but also information essential to the consumer including mandatory information such as nutritional information and safety information (durability, preservation, allergens and other warnings).



### Recyclable packaging (Article 6)

The regulation requires that all packaging placed on the European market, both single-use and reusable, shall be recyclable by 2030. This means that all packaging placed on the Union market will have to be collected separately effectively and efficiently; they will have to be recycled into secondary raw materials of sufficient quality to replace primary sources of materials; they will have to be designed for recycling (DfR) from 1 January 2030 and will have to be recycled on a large scale from 1 January 2035.

We support the harmonization towards DfR in 2030, including a harmonization of the DfR principles of modulated fees under EPR schemes.

However, the assessment of recyclability will be based on currently unknown design criteria for recycling (DfR) to be established in the coming years by the Commission through delegated acts for each category of packaging. We think that the delegated act is not a suitable instrument to guarantee sufficient flexibility to represent such a complex reality and the design criteria for recycling should rather be provided by competent technical bodies that with soft law tools (such as technical standards and sectoral guidelines) can better respond to market needs. In any case, the functionality of packaging must remain the key aspect for packaging design. **We ask for a fixed date for the adoption of secondary legislation to create legal certainty for manufactures, and for the involvement of industry experts from the packaging value chain in the drafting of all the secondary legislation on DfR.** We also call for operators to be granted a transitional period of five years to achieve the targets, starting from the adoption of delegated acts, before the entry into force of the measures.

**We ask for EU rules supporting Member States and industry in creating adequate collection and recycling infrastructure across Europe to enable the recyclability of packaging already designed for recycling.** In this regard, it is emphasized that the proposed Regulation does not introduce measures to support the construction of such infrastructures, and that the latter will not even be the subject of the revision of Directive 2008/98/EC on waste.

The rules in Art. 6 are very complex. A differentiation between 30 packaging materials or categories is envisaged (Annex II, table 1). Within the categories, the requirements are in turn graded according to five performance classes (A-E Annex II, Table 2). The necessity of such a detailed subdivision must be critically reviewed in order to prevent a disproportionate impact on the packaging value chain in the preparation of the required declaration of conformity (Art. 6, No. 8 with Annex VII). Furthermore, the saving of the declarations of conformity should also be allowed to take place digitally.

**We also note that opaque white PET is not included in Table 1 - Annex II (Cat. 11 Plastic/PET rigid/ bottles and flakes). It is therefore imperative that opaque white PET bottles are included in that table.** Opaque white PET bottles are in fact widely used by several companies in Europe for the packaging of milk, and recycling on a large scale of those bottles already appears to be underway. Although it is foreseen that the Commission may amend the Table at a later date (para. 6.4), it is appropriate that opaque white PET bottles are included in Table 1 - Annex II of the Regulation as of now for the reasons stated above.

### Minimum recycled content (Article 7)

Article 7 requires that plastic packaging contains a minimum amount of recycled content recovered from post-consumer plastic waste by 2030 and 2040. The requirement applies “per unit” of plastic packaging.

We support the Commission’s overall ambition to further drive the establishment of a market for recycled plastic packaging in general and for food. However, we are highly concerned about the proposal’s mandatory targets for recycled plastic in packaging, including contact-sensitive material. **The target for contact sensitive packaging is unrealistic and does not recognize the difficulties of ensuring sufficient recycled plastic of the right quality to be put into contact with food.** Such products must comply with strict health and safety regulatory requirements –



which are fully justified. In addition, lengthy authorization procedures for new technologies and packaging materials by EFSA, the Commission and Member States (which can take several years) further limit the increased uptake of recycled materials in contact-sensitive plastic packaging.

Pending the adoption of rules on chemical recycling and given the limited availability of plastics that meet the technical and legal requirements for contact with food, the obligation to include secondary raw materials should only apply to single-use PET plastic bottles. **We therefore propose to amend article 7 so the targets for non-PET contact sensitive materials only enter into force, when recycling processes for these materials have been authorized and sufficiently installed.** We also call for operators to be granted a transitional period of five years to achieve the targets, starting from the adoption of implementing acts, before the entry into force of the measures. The use of renewable content should be an equal alternative to the minimum recycled plastic content. This way the overall environmental impacts will be lower than using only recycled fossil-based plastic materials.

Regarding chemical recycling, chemical recycling has much higher environmental impacts and energy consumption than mechanical recycling. In a logic of sustainability (environmental and economic) chemical recycling should only be a complementary solution, intended for the share of packaging that cannot be managed with mechanical recycling processes. If chemical recycling is taken into consideration for the achievement of the targets under article 7, the corresponding technologies should be clearly defined, and their conditions laid down. However, this should only be done according to the principle that chemical recycling is used in addition to mechanical recycling.

We also find it problematic that the recycled content target applies “per unit” of packaging. Plastic packaging is distinguished by the great variety of types, sectors of application, technical and performance requirements and, finally, regulatory obligations. **Calculating the target as an average of all plastic packaging placed on the market, including with the use of mass balance principles, is the only way to allow recycled content for this type of packaging.** It will also give manufacturers the flexibility to allocate recycled content based on available supply and technical feasibility and give them a realistic chance of achieving the target. **Therefore, article 7 should be amended so that the targets are set “per manufacturer” placing packaging on the Union market and not “per unit”.** In our opinion, an automatic mechanism must be established in the text that would make the requirements in this article applicable only when all the conditions are in place and setting an adequate transition time.

The Commission wants to incentivize the uptake of recycled content by modulating extended producer responsibility (EPR) fees based on the percentage of recycled content used in plastic packaging. **We note the EPR fees that plastic packaging producers will be required to pay are already defined by the Commission with respect to their recyclability, so they should not also be modulated according to recycled content.** This would be discriminatory towards food contact packaging that has to use plastic materials that still lack recycling technologies.

The draft Regulation specifies that the lack of availability of recycled plastics or their excessive prices may require an adjustment of the targets by the Commission. **We point out that, even assuming that in the future more recycled plastics will be authorized for contact with food, the necessary supply should be in line with market demand and allow reaching the targets set in legislation.** Companies which need to plan their purchases of packaging materials could find themselves with high uncertainty with respect to market needs. In the event of a lack of availability or excessive prices of recyclates, the conditions under which the Commission can order deviations from the envisaged recyclate quotas should be specifically defined (Art. 7 No. 10). For the possibility of the Commission setting recycling quotas for further materials (Art. 7 No. 11), the text should also specify conditions, such as the determination of an insufficient market function for the respective materials.

### Labelling (Articles 11 and 12)

The proposal for a Regulation requires packaging to be marked with a label containing information on its material composition to facilitate consumer sorting.



We support the overall ambition of EU harmonised rules on labelling, as national mandatory rules undermine the principle of the free movement of goods. A single market for goods needs harmonised packaging rules.

**Therefore, it is absolutely essential for the free movement of goods in the EU that the labelling of the material fraction on the packaging only consist of a pictogram and no text.** A requirement to include national text would in itself be a restriction on the free movement of goods and could also increase the consumption of packaging, if the packaging shall contain e.g., up to 5-10 different pictograms, if the product is market in several Member States. In case the packaging design does not make use of color printing, the use of pictograms in monochrome (black and white) should also be allowed in order not to increase the use of colors on the packaging.

**To ensure consumer understanding of the new pictograms it is important that the regulation also requires that waste receptacles should be affixed with the same labels to ensure correct sorting (article 12).** In this context, to allow consumers to understand the meaning of the pictograms, the national text could be affixed to the waste containers. To comply with these information obligations, the possibility of using digital tools could also be envisaged.

#### **Restrictions on certain single-use packaging formats (Article 22 and Annex V)**

The regulation sets a list of prohibitions on single-use packaging formats used in the HORECA-sector, including single-use plastic packaging used for coffee creamer and condiments.

In our view the ban on certain single-use packaging for coffee creamer and condiments is arbitrary and not justified in the Commission's Impact Assessment. They have many legitimate uses, for example, in the transport sector (rail, bus and air) where it would be extremely difficult to substitute a single-use container with alternative packaging.

**Prohibiting certain single-use packaging in the HORECA-sector can only be considered, if there are reusable alternatives with a demonstrably better environmental performance than single-use packaging commercially available on the market, a principle which was also applied in the Single-Use Plastic Directive (2019/904).** The use of micro-packaging also leads to less food waste, in contrast with carbon reduction and general sustainability objectives.

It is also important that the article defines "condiments" so that this rather broad concept does not leave manufacturers in legal uncertainty. Especially in the case of food of animal origin such as dairy products, we must remind their perishability and very particular microbiological and hygienic-sanitary sensitivity.

We are also concerned that the Commission may expand the scope of bans through secondary legislation, creating risks of delays, uncertainty and administrative (reporting) burdens.

**We therefore recommend deleting the packaging prohibitions in the proposal and Annex V.**

A concrete example from a dairy company concerning coffee creamer for HORECA:

- 7 lines for the production of small packages (5 x PS thermoforming lines, 2 lines for aluminum caps)
- Annual volume approx. 1.7 - 2.0 billion units per year
- 50 employees work in this sector and would lose their jobs with the ban.

This company intends to change the materials of its micro-packaging by 2025 to offer the best possible conditions for recycling and increasing the recycling rate.

### Re-use and refill targets (Article 26, 6)

According to the Regulation, the manufacturer and the final distributor making available on the market within the territory of a Member State in sales packaging non-alcoholic beverages in the form of non-alcoholic beverages containing milk fat shall ensure that: from 1 January 2030, 10 % of those products are made available in reusable packaging within a system for re-use or by enabling refill; increasing to 25 % in 2040.

We understand that the provision may be aligned with the specificities of milk (noting that ‘milk’ cannot be defined as a ‘beverage’) and dairy. **Regardless, we find that re-use and refill targets should only be required when it makes environmental sense and without compromising consumer health and safety. Therefore, any measures to promote reusable packaging must be accomplished by a methodology for the environmental assessment, such as Life Cycle Assessment analysis (LCA).** Cleaning reusable packaging requires water, energy, detergents and sanitizers, and transporting empty packaging produces emissions, which is particularly significant for companies that span large distances. **Unless scientific data can prove the environmental advantages and disadvantages of re-use systems, we recommend that the re-use targets for “non-alcoholic beverages containing milk fat” are deleted.**

There is also the question of whether it is possible to ensure safety and hygiene standards. **We must stress that there can be no compromise on food safety and on the constant availability of food products for consumers, especially when it comes to the products of the widest consumption such as dairy products, and basic foods such as milk.** In addition to the initial investments required to establish re-use systems and shift towards certain reusable packaging types, it is key to underline that for dairy this would be delicate from a hygienic perspective, as milk products are microbiologically sensitive and organic residues like fat and proteins may be difficult to remove. Disinfection can be realized by a broad range of substances with different properties regarding killing effectiveness, stability in aqueous solutions, biodegradability and material corrosivity. Cleaning of fat and proteins’ residues require aqueous solutions assembled case-by-case. Their solubility can be influenced by pH, temperature, dissolved salts (water hardness) and added compounds, detergents and sanitisers. Moreover, washing involves the use of heat at temperatures that inevitably generate the deformation of most plastic packaging, making it not usable due to the deformation.

In this context, every decision on packaging re-use regarding dairy products must be subordinated to the acquisition of scientific data, which in our knowledge are not available today, on the impact of re-use on hygiene and food safety, on shelf-life, on the accessibility and availability of our products for all consumers and in all markets, and on the risk of increasing food waste in contradiction with the EU Green Deal’s objectives.

**Regarding refill, we wish to reiterate the risk to food safety,** which is indirectly recognized by Recital 66: “Where economic operators offer the possibility to purchase products through refill [...]. In this context, where the consumers use their own containers, the economic operators should therefore inform about the conditions for safe refill and use of those containers.” In practice, adequate information does not automatically lead to correct hygiene behavior from consumers, and economic operators have limited options to verify that consumers behavior comply with the information given, to avoid food safety risks.

Article 26(16) assign to the Commission the power to adopt delegated acts establishing re-use and refill targets for other products, laying down further exemptions for other economic operators or exempting specific packaging formats covered by the re-use or refill targets in case of severe hygiene, food safety or environmental issues preventing the achievement of these targets. This could lead to uncertainty for food business operators.

### Re-usable transport packaging (article 26, 7-13)

The regulation imposes several requirements for using reusable transport packaging. For example, article 26, points 12 and 13, requires that, at the entry into force of the regulation, all transport packaging used for transport



between sites owned by the same economic operator must be reusable packaging (cardboard excepted) and that transport between economic operators within a Member State must be in reusable packaging (cardboard excepted). Article 26, point 9, requires that 10 % of pallet wrapping must be reusable by 2030, rising to 30 % in 2040.

The proposed reusable targets for transport packaging appear to be too high. Their realization would require extensive and abrupt changes in existing business operations. **We recommend that the reusable targets in the draft regulation are critically reviewed, in close collaboration with the sectors involved, for feasibility and financial implications.** As an absolute minimum, a provision should be introduced in article 26 providing that single-use packaging can be used, if it can be demonstrated this solution is more environmentally sustainable compared to a system for re-use.

### Deposit and return systems (Article 44 and 45)

By 1 January 2029, Member States shall take the necessary measures to ensure that Deposit Return Systems (DRS) are set up for: a) single use plastic beverage bottles b) single use metal beverage containers. **Milk and milk products listed in Part XVI of Annex I to Regulation 1308/2013 are exempted from the requirements for very good reasons (not least hygiene); this exemption is vital for our sector and must be kept.**

The proposal should clarify that milk, dairy and milk-based products are excluded. We consider that the list in Annex I Part XVI of the Regulation (EU) No 1308/2013 is not complete, and some common dairy products are not mentioned there. To avoid unintended consequences (not least for hygiene, as pointed out in the Impact Assessment, part II), different interpretations and ultimately a lack of harmonization, **we ask for a broad definition of dairy products that include all beverages and food where milk is an essential component.** For example, the article could refer, in addition to the reference to Annex I Part XVI, also to Annex VII parts III (Milk and milk products) and IV (Milk for human consumption covered by CN code 0401), and Appendix II, points A and C, of Reg. 1308/2013.

In many cases packaging used for milk and dairy products does not physically fit into existing DRS machines and DRS material steams, which could reduce material value and increase collection point maintenance costs, and there is a risk of an inappropriate accumulation of dairy packaging in households and retailers, which could lead to hygiene and odour challenges, as also pointed out in the Impact Assessment, part II. This would also lead to strong distortions of competition within the internal market. The aim of this regulation to create a harmonization of the internal market would thus be undermined. In order to ensure that the EU internal market does not become fragmented, Member States should not be allowed to introduce DRS for milk and dairy products (Article 44, (6)).

**It should be explicit that the exemption for milk and dairy products also covers article 26 on re-use and refill targets and article 45 on re-use.**

### Negative list of packaging characteristics

**We welcome that the 'negative list for recycling characteristics' in Annex II, part D, has been deleted from the draft Commission's proposal for a Regulation.** This list would have brought all innovation and investment of the packaging industry to an abrupt halt despite the impressive progress made over the past years.

Indeed, that list that also included under 'paper/cardboard' packaging of 'two-sided' plastic barrier/coating/laminates', hence milk carton packages, which are one of the most commonly used packages for consumption milk in our Union (more than 70 % of all drinking milk in our Union is marketed in carton packages). The inclusion in the leaked draft of such list would be problematic, as milk and dairy are for very good reasons acknowledged as specific products (organic material, highly perishable goods, hygiene/food safety requirements



and, last but not least, its vital importance for healthy diets). The potential prohibition of carton packages for drinking milk would have a disastrous impact on this dairy category, on the consumption patterns and hence on the health and nutrition status of Europeans.

### Participation of stakeholders

When it comes to the policymaking process, it is essential that the final text provides for clear forms of involvement of technical experts from industry and different Member States in the development of the secondary legislation. Stakeholders must have the opportunity to participate in the elaboration of policy, because industry feedback and knowledge are always crucial in facilitating the delegated acts. **Therefore, we consider it appropriate to create, at European level, a Technical Committee based on a mandate from the Commission and composed of representatives of national authorities and the entire value chain (packaging industry, packaging fillers, waste management operators and recyclers).** This committee would be responsible for defining and regularly updating the implementing acts, including recyclability measurement criteria and design for recycling (DfR) guidelines for material and type of packaging.

### Waste hierarchy and LCA

**The analysis of the environmental impact of the product must cover the entire life cycle, so the impact generated by the packaging has to be linked to the advantage of being able to reduce food waste.**

With reference to recital 92, the waste hierarchy (eco-design, by-products, re-use, recycling, energy recovery) represents programmatic principles that guide the policy maker in the field of circular economy. For the purpose of adopting decisions, it must always be complemented by a Life Cycle Assessment (LCA) analysis. If this analysis shows that there are no net environmental benefits, but rather negative externalities, then applying the hierarchy rigidly will damage both the environment and the economy. This is fully in line with Art. 4.2 of the Waste Framework Directive 2008/98/EC, which expressly provides that Member States may deviate from the waste hierarchy where this is justified by LCA methodology on the overall environmental impacts. Rather, **waste reduction targets should be set and achieved through re-use or recycling depending on an LCA per material and product, to maintain complementarity between the two forms of packaging waste prevention.** In this sense, developing the necessary collection and recycling infrastructure across Europe is of paramount importance.