



IK Industrievereinigung
Kunststoffverpackungen e.V.

Position of IK Industrievereinigung Kunststoffverpackungen on the
proposal by the European Commission for a
EU Packaging and Packaging Waste Regulation
from 30.11.2022

We comment on the European Commission's proposal for an EU Regulation on packaging and packaging waste (COM(2022)677). The proposal pursues the goal of promoting the transformation to a *Circular Economy* through harmonised EU-wide sustainability and labelling requirements for packaging as well as minimum requirements for extended producer responsibility, packaging waste collection and recovery. As part of the *Green Deal*, the legislative proposal is intended to contribute to the overarching goal of climate neutrality for Europe by 2050.

The regulation offers an opportunity for the sustainable transformation of the packaging industry. Plastic packaging manufacturers have invested in the recyclability of their products and stand ready with innovative solutions that combine high material efficiency with high recyclability and the use of recycled materials. In order not to jeopardise the sustainable transformation, the regulation should be adopted before the European Parliament elections in 2024. With our recommendations below, we want to contribute to the success of the regulation, especially in economic and ecological terms. The aim of our comments is to create a fair and dynamic market environment that promotes the rational use and an energy-efficient circular economy of packaging materials and prevents ecological misdirection, especially to the detriment of climate protection. At the same time, our comments are aimed at the most effective implementation of the regulation by economic actors, enforcement authorities and member states, which is a prerequisite for the law to be applied consistently and to have the intended effects on the environment and market transformation.

Summary:

A. We welcome the following points in the EU Commission's proposal for an EU Packaging Regulation:

1. **A regulation protects the internal market and facilitates the transformation:** The replacement of the previous Directive 94/62/EC by a Regulation with direct effect facilitates the enforcement of harmonised packaging rules in the EU internal market and protects the free exchange of - mostly packaged - goods from inconsistent national packaging bans, labelling and design requirements. In recent years, national packaging regulations have led to a patchwork of different regulations within the EU. Harmonised packaging regulations are also necessary because only they enable the necessary economies of scale for the economic transformation towards a single EU-wide *Circular Economy*. The proposed regulation is rightly based on the legal basis of Article 114 TFEU, as was the previous directive, because this is the only way to prevent divergent national regulations, e.g. on packaging design, labelling or producer responsibility (Chapters II, III and IV of the proposal).
2. **Reduction of packaging consumption:** We welcome the target to gradually reduce the per capita consumption of packaging waste by 15% by 2040 compared to 2018 (Article 38). The requirement that the weight and volume of packaging should be kept as low as possible, taking into account its functionality (Article 9), and that the permissible empty spaces in grouped,

transport and e-commerce packaging should be limited (Article 21), in accordance with the motto "pack as much as necessary, as little as possible", will contribute to this aim. Due to their low weight and high functionality, plastic packaging have great potential for material-saving and reduction of packaging waste. Through technical innovation, the weight of plastic packaging on the German market could on average be reduced by a quarter since the 1990s, saving a total of over 1 million tonnes of packaging waste per year. Due to its low weight and stability, plastic packaging is also well suited as reusable packaging.

3. **Design-for-recycling of packaging is the prerequisite for quality recycling:** Design-for-recycling is a prerequisite for an economical, energy-efficient and quality-oriented packaging recycling and thus for increasing the uptake of recycled materials in packaging and products of the same material. Therefore, it is right to make minimum requirements for recyclability a market prerequisite and to additionally promote the highest possible degree of recyclability financially (Article 6). In order to minimise the quantity and quality losses in recycling and to achieve the most cost- and energy-efficient recycling possible, we propose to increase the recyclability requirements by raising the minimum recoverable content of a packaging from 70 to 80% by weight (see below C. I.2.) and clarifying that only primary raw materials of the same material type should be substituted (see C. I.3.).
4. **Better separate collection and deposit systems are needed for high recycling rates:** The obligation of member states for the separate collection of all packaging waste contained in Article 43, also in the public space, forms an important prerequisite for achieving the ambitious recycling targets (Article 46), the requirements for the recyclability of packaging ("*at scale*" criterion, Article 6) and the requirements for the use of recyclates (Article 7). The implementation of this obligation by the member states must therefore be pursued with the highest priority. The introduction of a mandatory deposit for single-use beverage containers (Article 44) is also correct. The mandatory deposit introduced in Germany in 2003 has proven its worth: it effectively reduces littering and enables a highly efficient material cycle with recovery rates of over 97% of the PET used in beverage bottles.
5. **Clear labelling of the intended disposal route:** In this context, we also welcome the obligation of a corresponding labelling of packaging and the waste containers intended for them (Articles 11 to 12) in order to significantly reduce misdirected waste by consumers.

B. The following proposals give us considerable cause for concern and should be urgently improved:

1. **Mandatory recycled content quotas: Chemical processes must recover additional waste fractions that cannot be mechanically recycled** (Article 7): Minimum recycled content quotas for plastic packaging are intended to ensure security of demand for recyclates independent of the virgin material price and thus investment security for recycling. This in itself is welcomed, but the associated considerable risks for the availability of mechanically recycled plastics and the security of supply chains must be taken more into account in order to create planning security for all economic operators and to avoid ecological misdirection. In order to avoid the risk that the availability of mechanically produced recyclates on the market is affected by more energy-intensive chemical recycling processes, it is necessary to ensure that chemical processes recover additional waste fractions that cannot be mechanically recycled in such a way that the recyclates can substitute primary raw materials of the same material. We therefore call for **exemptions for contact-sensitive packaging** and the re-examination of the preconditions 5 years after the entry into force of the regulation (see below C. II.). For all other plastic packaging, we call for an **effective safety net** that protects against marketing bans due to lack of availability of suitable plastic recyclates and thereby secures important supply chains, for example for food. We also consider the **flexibilization of the use of recyclates** through mass balances and credit-based methods to be a suitable instrument for balancing out the very different prerequisites of various packaging formats for the use of recyclates without reducing the intended demand impulse for

recyclates on the market in total. Exemptions from the obligation to use recyclates should not be provided for compostable plastics, but for bio-based plastics.

2. **Discrimination against plastics leads to environmental misdirection** (Articles 22 and 26): The proposed regulation contains measures that discriminate against packaging made of plastic compared to packaging made of other materials without justification. For example, reuse quotas are only envisaged for certain types of *plastic* packaging. If this packaging is made of other materials no reuse quotas are to apply. Also, according to the proposal, only certain single-use *plastic* secondary packaging is to be banned at retail, but not packaging made of other materials, without any justification being given. Instead of the intended reduction of single-use packaging, the loopholes merely cause misdirection towards non-regulated single-use packaging made of other materials. In order to avoid such misdirection, reuse targets and bans on single-use packaging should generally be set for certain products or segments, regardless of the material and format of the packaging (see C. IV. and V. below). In addition, targets should relate to the use and nature of the filling good and not to the type of packaging. Finally, the size of an EU Member State should not be made the decisive factor for reuse targets.
3. **Modulate EPR fees for packaging only on the basis of its recyclability** (Article 6(4) and (11) and Article 7(5)): The proposal remains unclear on which basis licence fees for plastic packaging under Extended Producer Responsibility schemes should be modulated. In the course of last amendments to the proposal, the provision was added that for plastic packaging (also?) the *recycled content* should be decisive. We recommend, in accordance with the impact assessment, that only the *recyclability* of packaging be used for the modulation of licence fees (see C. I. below).
4. **Bind reuse requirements to environmental benefits (Article 26)**: Efficient reuse systems with short transport distances and a high number of reuse cycles can have environmental advantages over the circular economy of single-use packaging and offer sustainable growth opportunities for plastic packaging in many areas. However, the potential environmental advantage can quickly be reversed if, for example, the return rates and number of reuse cycles of the reusable packaging are too low, or the emptied reusable packaging has to be transported a long way and cleaned at great expense. This applies to some of the reuse targets contained in Article 26. In the case of some reuse targets, it is also unclear which reusable alternatives exist on the market and how these are to be evaluated ecologically and economically. Some of the packaging mentioned, such as IBCs and drums, are in principle reusable, but their suitability for reuse depends strongly on the risk of contamination as they can be in direct contact with dangerous goods. References to waste prevention alone are therefore insufficient to justify reusability requirements. The ecological advantageousness and economic feasibility must be examined as a whole, in particular including transport and cleaning logistics as well as return and circulation figures, and reuse systems must be specifically promoted in those market segments that can be expected to be highly advantageous (see C. V. below).
5. **Shifting essential requirements to delegated acts hampers democratic participation and business investments**: Essential sustainability requirements for packaging in Chapter II, in particular regarding design-for-recycling, are shifted to delegated acts, although they are crucial for the marketability of packaging from 2030 onwards. Moreover, some of these legal acts do not have a time limit. The concrete consequences of the provisions for economic operators thus remain unclear. This makes commenting on the draft regulation and democratic participation more difficult. It also hampers urgently needed product developments and investments to adapt packaging to the regulations. All delegated acts should therefore be closely timed and give business the opportunity to have a say and adapt.
6. **Ensure enforceability**: A functioning, EU-wide harmonised enforcement of the regulation in the member states is the prerequisite for the desired protection of the environment and fair

competition. However, the regulatory supervision of conformity with the sustainability and labelling requirements for packaging as well as of the obligations of economic operators is a task that is likely to present the enforcement authorities of all member states with excessive challenges due to the high degree of scope for interpretation and complexity as well as the sheer number of packaging and economic operators to be monitored. The risk of inconsistent enforcement within the EU, and especially vis-à-vis imports from outside the EU, is very high and should be minimised by creating rules that are as clear and easy to monitor as possible.

7. Complement impact assessment

The impact assessment on which the proposal is based (SWD(2022) 384 Parts 1 and 2) does not meet the requirements set by the Commission itself in the context of the Better Regulation initiative and should therefore in some parts be revised. The impact assessment was only accepted by the Commission's *Regulatory Scrutiny Board* at the second attempt and only with reservations because it contains "*significant shortcomings*" (see decision of 30.9.2022). In particular, there is no analysis of the prerequisites and risks of mandatory recycled content quotas (see C. II.1. below). Furthermore, some proposals in the draft have not even been evaluated in the impact assessment or even contradict the recommendations, such as the modulation of EPR licence fees according to the recycled content (see C. I.1. below) or reuse quotas only for plastic packaging (see V.1. below).

C. Explanatory Position

We elaborate on our criticisms of selected articles of Chapters II and III (sustainability requirements and labelling requirements) and Chapter IV (obligations of economic operators) below and recommend specific amendments.

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I. Recyclability of packaging (Article 6)

We welcome the proposal to make recyclability a market requirement for packaging in Europe and to concretise this via EU-wide harmonised, product group specific design-for-recycling criteria.

We also welcome the proposal to create a financial incentive for packaging that is as highly recyclable as possible by modulating the national EPR licence fees according to harmonised criteria. In our view, this is one of the most important levers to achieve the highest possible share of recoverable raw materials. However, clarification is needed in this regard:

1. **Modulation of EPR licence fees exclusively on the basis of recyclability:** According to Article 6(4) and (11) as well as Article 7(6), a differentiation of licence fees within the framework of Extended Producer Responsibility (EPR) is to be based on *recyclability classes*. Only in the case of plastic packaging should this (also?) be based on the *recyclate content*. The highest possible degree of recyclability is the most important prerequisite for the Circular Economy and should be made the sole, non-discriminatory criterion for the modulation of EPR licence fees for packaging. In view of the fact that the preconditions for the use of recyclates and the availability of recyclates on the market are not yet satisfactory for many plastics packaging, it is important to avoid false incentives towards composite materials that are less recyclable.

The Commission's impact assessment explicitly recommends a modulation of licence fees exclusively on the basis of the *recyclability* of packaging (see Part 1, p. 31 f., 49 - Measure 23; Part 2, p. 314, 468, 476). This is also made clear in recital 25 of the proposal. In contrast, a calculation based on the *recycled content* was rejected at an early stage in the preparation of the impact assessment (see Part 2, p. 598 f. - Measure 39) - and for good reasons: For instance, the requirements for the use of recyclates in food packaging are much stricter than for other types of packaging. The new Commission Regulation 2022/1616, for example, in principle only allows recycled PET plastics from the deposit bottle cycle to be used in food packaging; other plastics are not allowed. Also, the costs of using recyclates in packaging are often higher than the benefits of lower licence fees, so that the financial incentives come to nothing, as the Commission shows, with the example of France. The newly inserted recital 30, which claims that a calculation of the licence fee based on the recycled content is "the most appropriate means" to increase the recycled content, therefore contradicts the findings of the impact assessment.

The special rules for plastic packaging should therefore be deleted.

Recommended amendment:

- Article 6(4): ... 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.~~
- Article 6(11): 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).~~
- Recital 30: ~~(30) There should be an incentive for economic operators to increase the recycled content in the plastic part of packaging. The most appropriate means to achieve this is to ensure the modulation of extended producer responsibility fees based on the percentage of recycled content in packaging. The fee modulation should be based on common rules for the calculation and verification of the recycled content contained in such packaging.~~

In order to minimise the quantity and quality losses in recycling and to achieve the most cost-efficient and quality-oriented recycling possible, we propose to tighten the requirements for recyclability in two points:

2. Increase minimum recyclability performance grade from 70% to 80% and reduce classes to A-D:

According to Article 6(5) in conjunction with Annex II, from 2030 a packaging unit will no longer be considered recyclable if it corresponds to class E, i.e. is recyclable less than 70% by mass. Such packaging would then no longer be marketable. Conversely, this means that high material losses of up to 30% per packaging unit – which are design-related – are accepted in recycling. In our opinion, this provides too little incentive to reduce the proportion of non-recyclable plastics in composites and in components of other types of material (e.g. as in handles or viewing windows of cardboard boxes) or to invest in the recovery of these plastics. It thus makes it more difficult to meet the plastics-specific recycling quotas (Article 46) as well as the minimum recycled content quotas (Article 7). We therefore recommend increasing the minimum share of recoverable materials to 80% in order to limit design-related material losses in recycling to a maximum of 20%. In our opinion, this limit can be achieved without discrimination by all packaging formats without restricting the functionality of the packaging.

However, this implies that no excessive *minimum requirements* are imposed on the secondary raw material under Article 6(2)(d), such as the requirement that recyclates from the mechanical recycling of this packaging must be suitable for food contact applications again (see also point 3 below).

Recommended amendment:

- Article 6(5): "From 1 January 2030, packaging shall not be considered recyclable if it corresponds to performance grade ~~ED~~ under the design for recycling criteria established in the delegated act adopted pursuant to paragraph 4 for the packaging category, to which the packaging belongs..."
- Annex II, Table 2, rows 4 und 5:

Recycling Performance Grade	Assessment of recyclability per unit, in weight
Grade D	Higher of equal to 70% Lower than 80%
Grade E	Lower than 70%

3. Clarification that only primary raw materials of the same material type are to be substituted:

According to Article 6(2)(d), packaging must be capable of being recycled in such a way that the resulting secondary raw materials are of sufficient quality to replace "the *primary raw materials*". It remains unclear whether the primary raw materials must be of the same material type (e.g. plastic) or whether other materials are also meant. We recommend a clarification to the effect that it must be primary raw materials of the same material type. This is to exclude the possibility that recyclability is limited to the production of secondary raw materials that cannot be treated in processes typical for the material (e.g. in the case of plastic recyclates they cannot be extruded and processed into thin-walled moulded parts) and therefore cannot be used in applications typical for the material. Such secondary raw materials usually replace other types of materials such as wood, concrete or mineral raw materials, for example in road construction, park benches or other applications, but not primary raw materials of the same material type. Typical material applications are not limited to the packaging sector, but in the case of plastic also include, for example, processing into injection moulded elements in the construction and automotive sectors

and other plastic applications that meet market requirements. However, quality requirements going beyond this for the secondary raw material, in particular the requirement that recyclates from the mechanical recycling of this packaging must be suitable for food contact again, should not be made the *minimum* requirement for recyclability under paragraph 2 (b).

The term "high-quality recycling" introduced in the German Packaging Act is interpreted in following way in the minimum standard for determining the recyclability of packaging: The definition of "recyclability" here refers to *"the fundamental and gradual suitability of a packaging to substitute virgin material in applications typical of the material after undergoing recovery processes available on an industrial scale"* ("[Minimum standard](#) for determining the recyclability of packaging subject to system participation pursuant to Section 21 (3) of the Packaging Act", page 8).

Recommended amendment:

- Article 6(2)(d): "it can be recycled so that the resulting secondary raw materials are of sufficient quality to substitute the primary raw materials of **the packaging in applications typical for that material;**".

4. **Establish design-for-recycling criteria in a practical way and set a harmonised methodology for classification:** The proposal empowers the Commission in Article 6(4) to adopt delegated acts to establish respective design-for-recycling criteria and recyclability classes for the thirty (!) packaging categories listed in Table 1 of Annex II, which serve as a basis for assessing compliance with the recyclability requirements and the modulation of EPR licence fees. Article 6(7) and (8) contain further requirements in this respect, but these should be supplemented in our view.

We recommend for the design-for-recycling criteria in the text of the regulation to allow for the possibility to specify these criteria by reference to harmonised standards instead of delegated acts, as the industry is already developing mandated CEN standards on the recyclability of plastic packaging on behalf of the European Commission. The design-for-recycling criteria should aim at the recovery of materials for the substitution of material-equivalent primary raw materials via the most energy-efficient, cost-effective processes that are state of the art (see also comments above under 3.). Accordingly, they should also take into account criteria that determine the quality of the recyclates, such as the choice of adhesives, coatings and printing inks, as well as the best possible residual drainability, since product residues contribute to waste generation and represent contaminants in the recycling process. It is essential that the design-for-recycling criteria are scientifically based, ideally on testing using common test standards, and non-discriminatory. Furthermore, the design-for-recycling criteria should be reviewed and updated every 2 years in order to take into account new developments in the field of recycling technologies (state-of-the-art) and to update the recyclability requirements as well as to allow for innovation.

For the classification (A to E) of recyclability, there is a need for a harmonised method for the assessment of the recyclable mass fractions per packaging unit in order to allow a non-discriminatory and legally secure allocation of the packaging, regardless of the material, to a recyclability class and the associated legal consequences. The method should aim at measuring the recoverable (not the contained) recyclable content of a packaging. This should prevent the contained materials from being modified in a way that impedes recycling success (e.g. insoluble fibres, polymers with altered density).

Derogating from the second sentence of Article 6(8), which prescribes an integrated assessment of the recyclability of a packaging unit including all integrated components, separate assessment of integrated components should be permissible in cases where the packaging components can be separated from each other simply through mechanical stress during transportation or sorting; and can thus be assigned to different recycling paths in sorting without any further separation process, as can be assumed, e.g., for slip or snap-on lids (see Minimum Standard, p. 4).

Recommended amendment:

- Article 6(4): ... Design-for-recycling criteria shall consider state of the art collection, sorting and energy-efficient, cost-effective recycling processes **as well as characteristics that are important for the quality of the recycle** and shall cover all packaging components. **These criteria shall be based on scientific grounds and testing using harmonised standards, and shall be non-discriminatory. They shall be reviewed at least every 2 years and updated if necessary. Alternatively, the Commission is empowered to use harmonised CEN standards on recyclability developed on its behalf. The assessment of the recyclable percentage per unit, as listed in table 2 of Annex II, shall be uniform and non-discriminatory for all packaging materials and formats and shall be based on the material that can be recovered by recycling.** The Commission is empowered to adopt delegated acts in accordance with Article 58 to amend Table 1 of Annex in order to adapt it to scientific and technical development in material and product design, collection, sorting and recycling infrastructure.
- Article 6(8), third sentence: Where a unit of packaging includes separate components, the assessment of compliance with the design for recycling requirements and with the at scale recyclability requirements shall be done separately for each separate component. **The assessment shall also be done separately for integrated components that separate from each other through mechanical stress during transportation or sorting.**

5. **Provide legal clarity on compliance at an early stage:** According to Article 6(3), compliance with the delegated acts under paragraph 4 (design-for-recycling criteria) and paragraph 6 ("at scale" criterion) is decisive for the assessment of packaging as recyclable. This has far-reaching consequences for the marketability of a packaging from the year 2030 or 2035 as well as the classification of the packaging within the framework of the graduation of licence fees. In contrast to the clear legal consequences, there are no sufficiently binding and time-bound obligations on the Commission to prepare these delegated acts. The drafting of legal acts according to paragraph 4, which include the design-for-recycling criteria, is non-binding according to the proposal ("*The Commission is empowered to adopt delegated acts ...*") and unlimited in time. In paragraph 6, the Commission is not empowered to adopt delegated acts at all. Based on experience with such open-ended and non-binding requirements, we recommend that the Commission be obliged to present the basis for classifying packaging as recyclable in a binding manner and with sufficient lead time. It is expected that harmonised CEN standards for the recyclability of plastic packaging will be available by mid-2025.

Recommended amendment:

- Article 6(4): "The Commission is empowered to ~~shall~~, **by 1 July 2025**, adopt delegated acts ...".
6. **Link the definition of "recycled at scale" to available infrastructure on an industrial scale:** From 2035 onwards, the criterion "recycled at scale" according to Article 6(2)(e) becomes a market requirement. The definition of "recycled at scale" according to Article 3(32), which is based on a coverage of at least 75% of the EU population, is not practicable due to the complexity and excessive reporting obligations of the Member States according to Article 6(6) (market volumes, separate collection and recycling rates, each differentiated by more than 20 packaging types). Defining a minimum rate for the separate collection of a packaging type as a market requirement also contradicts the requirement for member states to ensure that *all* packaging is collected separately nationwide (Article 43). Furthermore, the "75% of the EU population" criterion is not meaningfully applicable to industrial packaging, as industrial packaging is not accumulated in private households but in industrial and commercial enterprises and the extent of its recycling cannot therefore be measured on the basis of a proportion of the population. The *Regulatory Scrutiny Board* of the Commission has even recommended to consider abandoning the quantitative "at scale"-criterion due to the lack of practicability (Opinion of 30.9.2022, p. 3). We

recommend that the definition of "at scale" be based on the availability of recycling facilities on an industrial scale instead of on a certain percentage of the population, following the example of the German minimum standard.

Recommended amendment:

- Article 3(32): 'recycled at scale' means collected, sorted and recycled through installed state-of-the-art infrastructure and processes **at an industrial scale**, covering at least 75% of the Union population, including packaging waste exported from the Union that meets the requirements of Article 47(5);
- Article 6(6): The Commission shall, ~~for each packaging type listed in Table 1 of Annex II,~~ **by 1 January 2028, adopt delegated acts in order to** establish the methodology to assess, **for each packaging type listed in Table 1 of Annex II,** if packaging is recyclable at scale. That methodology shall be based at least on the following elements:
 - ~~(a)~~ amounts of packaging placed on the market in the Union as a whole and in each Member State;
 - ~~(b)~~ amounts of separately collected packaging waste, per packaging material listed in Table 1 of Annex II, in the Union as a whole and in each Member State;
 - ~~(c)~~ recycling rates of packaging waste per packaging type listed in Table 1 of Annex II, in the Union as a whole and in each Member State or, when such data on recycling rates for packaging waste per packaging type cannot be made available, assumptions made based on average loss rates as referred to in Article 47(3);
 - ~~(d)~~ **and** installed infrastructure capacities for sorting and recycling in the Union as a whole for each packaging type listed in Table 1 of Annex II. **Specific criteria for industrial packaging will be established.**

7. Consideration of the special conditions of industrial packaging:

The special conditions of industrial packaging must also be taken into account when defining the design-for-recycling criteria. For example, the machine-based, NIR-supported material recognition that is used in sorting centres for household-related packaging does not play a role for industrial packaging waste treatment. Also, some types of material, such as EPS, are recycled to a much higher degree from commercial packaging collection than via household packaging collection. Finally, in certain sectors there are regional collection and recycling structures organised by industry for certain types of industrial packaging, for example packaging for the ripening of cheese and meat products made of PA/PE multilayers.

Therefore, separate design-for-recycling criteria need to be developed for industrial and consumer packaging respectively. In addition to the development of separate criteria for the assessment of the "at scale" criterion (see last amendment proposal above at point 6.), commercial and industrial packaging should be added to Table 1 Annex II of the proposal.

Recommended amendment to Annex II Table 1 (new):

- **26a / Plastic / Rigid plastics used for industrial packaging / IBCs, drums**
- **27a / Plastic / Flexible plastics used for industrial packaging / FIBCs, Bags**

II. Minimum recycled content quotas for plastic packaging (Article 7)

Through mandatory minimum recycled content quotas (exclusively) for the plastic part in packaging, the Commission wants to create a secured demand for plastic recyclates that is independent of the virgin material price and thus more investment security for plastic recyclers. This is welcomed. However, the concrete proposal entails considerable risks for mechanical plastics recycling and the security of the packaging value chains because suitable waste as a feedstock for the recycling processes is a bottleneck. We therefore recommend the following measures, also in order to avoid ecological misguided decisions and to create planning security for the economic operators.

- 1. No minimum recycled content quota for contact-sensitive packaging (except PET) to prevent “cannibalisation” of recyclates from mechanical recycling:** For food and other contact-sensitive packaging (e.g. also for animal feed, cosmetics, hazardous goods, pharmaceuticals and medical devices, see recital 26), which make up about half of plastic packaging, the conditions for mandatory recycled content quotas are not met due to the high safety requirements. For them, suitable recyclate qualities (except PET) will probably only be available in the future via thermochemical processes (e.g. pyrolysis) (see e.g. Impact Assessment Part 1, p. 33 f.). These processes are comparatively energy-intensive and technologically still under development. At present, these processes generally still place **high demands on the quality of the waste input**, so that there is a great danger that these chemical processes will use waste that can be mechanically recycled to marketable qualities and thus not contribute to the recycling of *additional* waste streams, such as residual waste (so-called “cannibalisation” of mechanical recycling). This would merely divert material flows to markets with higher quality requirements at a high energy cost, but *no additional* recyclates would be made available on the market. On the one hand, this reduces the availability of mechanically produced recyclates for non-contact-sensitive packaging, the production of which must also be strongly increased to meet their minimum recycled content requirements, and for other applications in which virgin plastics are substituted. On the other hand, it results in higher overall energy consumption and associated costs and CO₂ emissions, without reducing the consumption of fossil-based virgin plastics in the overall market. From the point of view of climate protection and the transformation to a circular economy, it is important that the highest possible proportion of virgin plastics is replaced by recycled materials produced with the lowest possible carbon footprint. It is irrelevant whether this is packaging with high safety requirements (such as for food) or other applications. For other types of materials, too, primary raw materials are preferably used in sensitive applications and secondary raw materials in less sensitive applications. Such cascading use of materials is meaningful both from an economical and an ecological point of view.

Unfortunately, the impact assessment has considerable weaknesses with regard to the minimum recycled content quotas (see Part 1, p. 33 f.; Part 2, p. 552 ff.): For example, there is no analysis of which plastic packaging already contains recyclates and which factors have inhibited the use of recyclates so far. Furthermore, the technical and legal potential for the use of recyclates in the various types of packaging has not been investigated, although the German Environment Agency (UBA) and IK/GVM had presented detailed studies on this. Nor was it investigated whether sufficient amounts of recycled plastics will be available on economic terms to be able to meet the quotas. Instead, by referring to the 55% recycling target by 2030, the impact assessment tries to give the impression that sufficient recycled plastics would be available if only the Member States met this target (see Part 2, p. 555). At the same time, however, the impact assessment also shows how far away most Member States are from this target (see Part 1, p. 8). There is therefore no robust scientific basis for the proposed quotas.

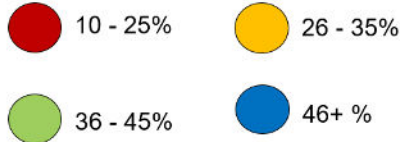
Recycling of plastic packaging in the EU

in 2020 (as of January 2023, source: [Eurostat](#))



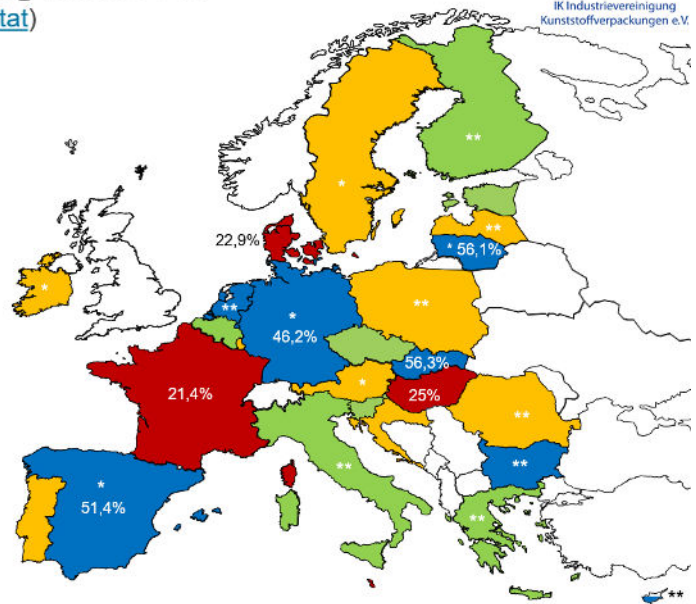
IK Industrievereinigung
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Recycling rate of plastic packaging:



Ø 2020 = 38%
 Targets for EU Member States:
 by 2025: **50%***, by 2030: **55%***

* according to new calculation method: input into the last recycling process (i.e. deduction of production losses).
 ** in 2019 (most recent data), partly estimated.



The only thing that is clear from the impact assessment is that the quotas for contact-sensitive packaging can only be achieved with the help of chemical recycling processes. Unfortunately, the impact assessment lacks an analysis of the preconditions and the consequences of a massive expansion of chemical recycling processes, especially with regard to existing mechanical recycling processes, climate protection and costs for consumers.

It is true that the Commission's proposal in Article 7(9) foresees considering the need for derogations from the established recycled content quota by 1 January 2028. However, derogations are only foreseen if there are not enough "suitable recycling technologies" available, either because they are not authorised for use in contact with food (according to the new Commission Regulation 2022/1616), or there are not sufficient capacities available (see below II. 2.). The recovery of *additional* quantities of waste that cannot be mechanically recycled is left out. In this respect, the mechanism in paragraph 9 is not suitable for ensuring that additional quantities of recyclate are obtained via chemical recycling. In order to effectively counter the danger of misdirection of mechanical recycling to more energy-intensive chemical processes, we recommend exemptions for contact-sensitive packaging until thermo-chemical recycling processes have matured to the point where they can recycle non-mechanically recyclable waste streams. This requirement should be re-examined in five years.

Recommended amendment:

- Article 7(1): ... (a) 30 % for contact sensitive packaging made from polyethylene terephthalate (PET) as the major component;
~~(b) 10 % for contact sensitive packaging made from plastic materials other than PET, except single use plastic beverage bottles;~~
~~(c)~~ 30 % for single use plastic beverage bottles;
~~(d)~~ 35 % for packaging other than those referred to in points (a), ~~and (b) and (c)~~, **except for contact sensitive packaging made from plastic materials other than PET.**
- Article 7(11): By [OP: Please insert the date = ~~8~~**5** years after the date of entry into force of this Regulation], the Commission shall review the situation regarding the use of recycled packaging materials in packaging **other than those referred to in paragraph 1 of this article and** other than plastics and, on this basis, assess the appropriateness of

establishing measures, or setting targets, for increasing the use of recycled content in such other packaging, and where necessary present a legislative proposal.

2. **Establish an effective safety net to protect against marketing bans due to a lack of recyclates without fault:** For German packaging production alone, the market requires an *additional* 700,000 tonnes of plastic recyclates of suitable quality per year. Providing these recyclates is a major challenge for the entire value chain. Fulfilling the recycled content quota is not solely within the control of the obligated actors and creates considerable economic planning uncertainty, which can lead to evasive behaviour, e.g. to composites and other materials, which can conflict with the ecological goals of packaging reduction, recyclability and climate protection.

Article 7(10) empowers (but does not oblige) the Commission to amend the requirements by delegated act in the event of a *lack of availability* of or *excessive prices* for specific recyclates. However, this implies that the shortage may have adverse effects on human or animal health, the security of food supply or the environment. The **threat to supply chains other than food supply** does not matter in the proposal, nor does the **threat to the existence of the affected businesses** and the consequences of the resulting market shift to packaging made of other materials on the achievement of the PPWR's goals (e.g. reduction of packaging waste). It also remains unclear which conditions must be met for an amendment and how long the process of application, examination and adoption of the delegated act would take.

An effective "safety net" should both adequately mitigate the business risks of manufacturers and distributors of plastic packaging from a shortage of recycled material without one's fault and prevent them from switching to other, ecologically more disadvantageous materials. The conditions for the exemptions should be clarified by delegated act *before the shortage situation occurs*, so that the exemptions can take effect quickly in an emergency and planning security is created for the affected companies in the supply chain.

Unless new "suitable recycling technologies" for the production of food-contact-compliant recyclates are approved by the end of 2027 (beyond mechanical recycling of post-consumer PET, see Commission Regulation 2022/1616) or they are not available in sufficient capacities, the Commission should not only be empowered but *obliged* to adopt derogations from the quota requirements with sufficient advance notice (Article 7(9)). In addition, the plastic-specific recycling rates of packaging should also be included in the assessment to ensure that sufficient quantities of recyclate are available on the market overall.

Recommended amendment:

- Article 7(9): By 1 January 2028, the Commission shall assess the need for derogations from the minimum percentage laid down in paragraph 1, points b and d, for specific **types of** plastic packaging **according to Annex II table 1**, or for the revision of the derogation established under paragraph 3 for specific plastic packaging.

Based on this assessment, the Commission ~~is empowered to~~ **shall** adopt **by 1 January 2028** delegated acts in accordance with Article 58 to amend this Regulation in order to:

- (a) provide for derogations from the scope, timing or level of minimum percentage laid down in paragraph 1, points b and d, for specific plastic packaging, and, as appropriate,
- (b) revise the derogations established in paragraph 3,

where suitable recycling technologies to recycle plastic packaging are not available because they are not authorised under the relevant Union rules or are not sufficiently installed in practice **or where the recycling rates are not sufficient. Paragraph 1 points b and d of this Article shall only apply in case that the Commission assessment shows no need for derogations from the minimum percentage.**

- Article 7(10): **By way of derogation from paragraphs 1 and 2, where justified by the lack of availability or excessive prices of specific recycled plastics that may have adverse effects on human or animal health, security of food supply or the environment, making compliance with the minimum percentages of recycled content set out in paragraphs 1 and 2 excessively difficult, the Commission shall be empowered to adopt a delegated act in accordance with Article 58 to amend paragraphs 1 and 2 by adjusting the minimum percentages accordingly packaging may be placed on the market.** In evaluating the justification of such adjustment, the Commission shall assess requests from natural or legal persons to be accompanied by relevant information and data on the market situation for this post-consumer plastic waste and best available evidence regarding the related risks to human or animal health, to the security of food supply or to the environment." **Where use is made of this derogation, packaging shall be accompanied by technical documentation, referred to in Annex VII, demonstrating data on the minimum quality requirements for recyclates used in this packaging and the market situation for this recycled material from post-consumer waste. The Commission is empowered to adopt a delegated act establishing the conditions, duration and required evidence for such derogation and the format for the technical documentation referred to in Annex VII.**

3. **Enable more flexible use of recyclates through mass balance and credit-based methods:** In the area of both contact-sensitive and non-contact-sensitive plastic packaging, there are packaging types for which no suitable recyclates are currently available. In order to reduce the economic and ecological risks and to level the very different conditions for the use of recyclates, the use of recyclates should not necessarily apply *per unit of packaging*, but should be designed more flexibly. For this purpose, the possibility of a balance should be created by allowing the additional use of recyclates in other products of the same type of plastic, which can be demonstrated through *mass balance* and *credit-based methods*.

As the Commission itself pointed out in the impact assessment, there is no analytical method to reliably measure the proportion of recycled plastics in an individual package (see Part 2, p. 547). The achievement of the quotas can therefore only be proven on the basis of auditing methods along the companies in the supply chain (*chain-of-custody approach*). A method that is indispensable in particular for the recognition of recyclates from chemical recycling is **mass balancing**, in which the proportion of secondary raw materials in the raw material mix of a plant is accounted for and "credited" to the products produced via allocation procedures. This approach should not only apply to chemical recycling processes (see Impact Assessment Part 2, p. 558 f.), but to proof compliance with all quotas at company level. This would allow manufacturers and distributors to use the total mass of a type of plastic packaging they put on the market in a calendar year as an alternative benchmark for calculating the average recycled content (as regulated, for example, in Germany in Section 30a(2) of the Packaging Act to implement Article 6(5) of the Single-Use Plastic Products Directives (SUPD)). This alternative calculation method is necessary because the supply of suitable recyclates is scarce and could become much scarcer in the future - given the planned quotas. In addition, the demand for certain types of packaging fluctuates seasonally, as does the availability of certain recyclates. Due to the scarcity of recyclates and the high prices, it should be possible for companies to react flexibly to price peaks for recyclates. We therefore recommend that the Commission be required to adopt implementing regulations for the calculation of the recycled content quotas (under Article 7(7)) that include mass balancing as an option of the chain-of-custody approach.

Not all manufacturers and distributors have the possibility to meet the quota requirements in the average of their packaging because, for example, they only place foodstuffs on the market. Also, for some market segments in the area of non-contact-sensitive packaging, which have to use at least 35% post-consumer recyclates from 2030, no suitable recyclates are currently available. This applies, for example, to packaging for hygiene products and transparent, white or light-

coloured film packaging. In addition, the use of recyclates can be more difficult due to the risk of cross-contamination if the same production line is used for the manufacture of contact-sensitive and non-contact-sensitive packaging. These companies with particularly unfavourable conditions for the use of recyclate therefore need further possibilities for compensation. The Commission should therefore create the possibility of demonstrating compliance with the quota requirements by means of a **credit-based method**, whereby a company acquires credits from another company that has used recyclates of the corresponding quantity and polymer type - over and above the statutory minimum quotas - in its products.



Examples of non-contact-sensitive plastic packaging for which no suitable PCR recyclates are available on the market.

The demand security for recyclates intended by the EU Commission would not be reduced by either of these measures - the quantities and types of material demanded would remain the same on average over the year as a whole. The security for investments in the recycling of all packaging polymers would thus continue to be guaranteed.

Recommended amendment:

- Article 7(1): From 1 January 2030, the plastic part in packaging shall contain the following minimum percentage of recycled content recovered from post-consumer plastic waste, ~~per unit of packaging~~: ...
- Article 7(2): From 1 January 2040, the plastic part in packaging shall contain the following minimum percentage of recycled content recovered from post-consumer plastic waste, ~~per unit of packaging~~: ...
- Article 7(7): By 31 December 2026, the Commission ~~is empowered to~~ **shall** adopt implementing acts establishing the methodology for the calculation and verification of the percentage of recycled content recovered from post-consumer plastic waste, ~~per unit of plastic packaging~~ **including a mass balance approach**, and the format for the technical documentation referred to in Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(3). **The requirements set in paragraphs 1 and 2 may also be fulfilled by the use of recyclates of the equivalent amount and polymer type in other products.**

4. **Exemptions not for compostable but for bio-based plastics:** There is no basis for the Commission's proposed exemption for all *compostable* plastic packaging from the minimum recyclate content requirements (Article 7(4)) and we advise against it: The impact assessment (Part 2, p. 560 f.) recommends in this respect only an exemption for the products listed in Article 8(1) and (2) which are to be compostable on a mandatory basis in the future, e.g. tea and coffee bags. An exemption of all compostable packaging from the quota requirements is - rightly - not recommended in the impact assessment. This is because such an exemption could have an unintended steering effect towards compostable packaging in applications where this is not

beneficial and through which recycling yields or even the quality of could be compromised. For example, high-quality PET recycling of beverage bottles could be contaminated by an increase in compostable PLA-based beverage bottles.

In addition, compostable plastics can in principle - just like conventional plastics - be synthesised from fossil raw materials and thus release climate-impacting CO₂ emissions during composting. They are therefore not circular *per se*, but only if they are produced from *biomass* instead of fossil raw materials. Composting is even ecologically less favourable than energy recovery as it leads to the same end products (mainly to CO₂ and water) but does not recover the energy content of the plastic. It is true that no recyclates are currently available on the market for compostable types of plastic. However, this is also the case for a large proportion of other plastic packaging. Like these, compostable plastic packaging would also depend on the thermo-chemical recycling process. Since these processes break down the plastic waste into basic chemicals, it is possible - just as on the basis of fossil raw materials - to re-synthesise them into any type of plastic, including compostable ones.

Compostable or biodegradable plastics are thus clearly distinguishable from *biobased* plastics. Since the latter are not produced from fossil raw materials, no climate-impacting CO₂ is released during their decomposition (whether in incineration or in composting). An exemption from the minimum recycled content quota therefore only makes sense for biobased plastics. Biobased plastics have considerable environmental advantages over fossil-based plastics (see detailed impact assessment Part 2, p. 584 ff. - *Measure w*) and should therefore be promoted. In view of the scarcity of high-quality recyclates, especially for contact-sensitive packaging, we recommend that biobased plastics also be taken into account when meeting the recycle quotas.

Recommended amendment:

- Article 7(4): Paragraphs 1 and 2 shall not apply to ~~compostable~~ **biobased** plastic packaging. **Compliance with the requirements in paragraphs 1 and 2 can be achieved by incorporating biobased plastics.**

III. Compostable packaging (Article 8)

We welcome the Commission's intention to address the cross-contamination of bio-waste by non-compostable plastics and of recyclable plastic waste by biodegradable plastics. Compostable packaging should therefore be used primarily in certain applications where co-disposal with biowaste by the consumer is reasonable and likely (see recitals 35 and 36). This is particularly the case with adhesive labels on fruit and vegetables. In future, these may only be placed on the market if they are compostable.

1. **Specify requirements for compostability under industrially controlled conditions:** The requirement laid down in Article 8(1) for the packaging designated in paragraphs 1 and 2, namely "compostable in industrially controlled conditions in bio-waste treatment facilities", constitutes a prerequisite for placing this packaging on the EU internal market, but is not sufficiently specified for harmonised and legally secure enforcement. We therefore recommend a specification, for example by authorising a delegated act or by referring to the mandated standardisation.

It should be noted that the current standards for biodegradable or compostable plastics (such as EN 13432 and EN 17033 in particular) are not state-of-the-art and are not sufficient to ensure the degradation of plastics in industrial treatment plants. The European Commission has recognised this and announced the revision of these standards in Communication COM(2022) 682 of 30.11.2022 on the policy framework for bio-based, biodegradable and compostable plastics. We consider this to be urgently necessary.

According to the Commission's proposal in Article 8(3), "*packaging other than that referred to in paragraphs 1 and 2, including packaging made of biodegradable plastic polymers, shall allow*

material recycling without affecting the recyclability of other waste streams". The proposal would apply to all packaging not mentioned in paragraphs 1 and 2 - i.e. also non-compostable - which is not what is meant. We therefore recommend limiting the sentence to *compostable* packaging.

Recommended change:

- Article 8(3): By [OP: Please insert the date = 24 months from the date of entry into force of this Regulation], **compostable** packaging other than that referred to in paragraphs 1 and 2, including packaging made of biodegradable plastic polymers, shall allow material recycling without affecting the recyclability of other waste streams. **By 1 January 2027, the Commission shall adopt a delegated act in order to establish conditions for the biowaste collection schemes and waste treatment infrastructure and the verification of compliance.**
2. **No exemption from the use of recyclates:** We do not consider an exemption of *compostable* plastic packaging from the minimum recycled content quotas (Article 7(4)) to be justified and advise against it. Instead, the exemption should apply to *biobased* plastic packaging (see II. 4. above).

IV. Packaging minimisation and prohibition of “excessive” packaging (Articles 9 and 21)

We welcome the requirement in Article 9 that the weight and volume of packaging must be kept as low as possible, taking into account its functionality, as well as the limit of 40% maximum empty space for grouped packaging, transport packaging and e-commerce packaging prescribed in Article 21. This corresponds to the rational principle of packing goods as much as necessary but as little as possible. The optimal packaging is primarily based on the requirements of product protection and other packaging functions. The proposal explicitly dispenses with the criterion of "*acceptance for the consumer*", which has so far been recognised as a performance criterion within the framework of the *Essential Requirements for Packaging* (see Annex II of the EU Directive on Packaging and Packaging Waste 94/62).

1. **Addition to the performance criteria:** We recommend adding further criteria to the list of performance criteria for packaging in Annex IV, Part 1: It should already be made clear in the heading that the packaging design may also take into account the *filling process* (see Annex IV, Part 1, No. 2). Also, the *intended handling and use* of the product should also be mentioned as a criterion in the packaging design. This applies, for example, to dosing closures, spouts or application aids for the product integrated into the packaging. Intended handling also includes *minimum wall thicknesses* which ensure sufficient stability and rigidity of bottles and other packaging during use.

Recommended amendments:

- Annex IV, Part 1 "Performance criteria": 2 Packaging manufacturing **and filling** processes: The packaging design shall be compatible with the packaging manufacturing and filling processes.
- **(New) 9. Proper handling and use of the product: The packaging design shall ensure the proper handling, application and use of the product.**



Examples of packaging components that serve the intended handling and use of the product.

2. **Reduce bureaucratic burdens for SMEs:** The complexity of the requirements set out in Annex IV Part II for testing and determining the minimum packaging volume and weight represents a major bureaucratic burden, especially for small and medium-sized enterprises, which are not always in a position to carry out this testing using scientific methods and to provide "*details of the calculation of the minimum necessary weight and volume for the packaging*" (Annex IV Part II point b), but instead rely on experience and "standard solutions". Small and medium-sized enterprises should therefore be exempted from the proof requirement in paragraph 4. Alternatively, a highly simplified verification procedure, e.g. checklist-based, could be developed.

Recommended amendments:

- Article 9(4): ... **This obligation does not apply to micro, small and medium sized economic operators, irrespective of their legal form, that are not part of a large group, as those terms are defined in Article 3(1), (2), (3), and (7) of Directive 2013/34/EU.**

V. Obligations for reuse (Article 26)

The proposed legal provisions on packaging reuse include specific sustainability requirements (Article 10) and labelling requirements (Article 11) for reusable packaging, mandatory reuse and refill quotas (Article 26) and related obligations for economic operators (Articles 23-25 and 27-28). In addition, Article 45 contains more far-reaching provisions for Member States, including an opening clause for national re-use quotas for products not regulated throughout the EU. Failure of economic operators to comply with Articles 23-26 is to be subject to fines by Member States under Article 62. We recommend the following amendments:

1. **No discrimination against specific packaging materials and formats (Article 26(7) to (10) and (12) to (13)):**

The proposed Article 26 contains requirements that discriminate against plastic packaging compared to packaging made of other materials without justification. For example, for certain types of packaging, reuse quotas are only provided for if they are *plastic* packaging: This concerns *plastic crates* and *plastic boxes* (see Article 26(7)). If this packaging is made of other materials, however, no reuse quotas are to apply, according to the proposal. Furthermore, it is proposed that a reuse obligation shall apply to boxes as grouped packaging, but not if they are made of cardboard (see paragraph 10). These proposals contradict recital 68 and the impact assessment (see Part 2, p. 391), which explicitly recommend a *material-neutral* regulation. The impact assessment also specifically recommends a material-neutral regulation for boxes used as grouped packaging (see Part 1, p. 25; Part 2, p. 395).

Similarly, paragraphs 12 to 13 discriminate against certain materials and formats of transport packaging, although here too the impact assessment explicitly recommends a material-neutral regulation (see Part 2, p. 376). For example, the designation of "*intermediate bulk containers*" (IBCs) in paragraphs 12 and 13 concerns only plastic packaging (rigid and flexible). In contrast, so-called *octabins* or boxes made of cardboard would be excluded, as would flexible packaging made of jute or cotton fabric, which partly fulfil the same function as flexible intermediate bulk containers (FIBCs) made of plastics. In addition, cardboard boxes are again explicitly excluded from the boxes, and crates are only affected if they are made of plastic. No justification is given for such differentiation. Instead of the intended use of reusable packaging, the loopholes merely encourage the use of non-regulated single-use packaging, such as cardboard.

Environmental organisations such as WWF and the German NGO NABU expressly warn of the environmental consequences of the rapidly growing consumption of single-use cardboard and paper packaging, especially for the protection of forests and biodiversity (<https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/Wald/WWF-Study-Everything-from-wood.pdf>; <https://www.nabu.de/umwelt-und-ressourcen/ressourcenschonung/einzelhandel-und-umwelt/32297.html>). In order to avoid switching to other packaging materials or formats that are not subject to reusable targets, reuse targets should always refer to the proportion of *goods* placed on the market, offered for sale or transported in reusable packaging (as in Article 26(1) to (6)), not to a proportion of the *packaging* of a particular format used (as in paragraphs 7 to 10). Where this is not possible, at least the types of packaging available on the market that fulfil comparable functions should be listed in a material-neutral way. The impact assessment also recommends, for example for transport packaging in the context of paragraph 7, to link the reuse quota to the filling goods ("*Goods sold using...*", Part 1, p. 25, Part 2, p. 394). Reasons for the unequal treatment of different packaging formats are not given.

a) Must be reusable e.g. when transporting goods within a member state:



Plastic boxes



Crates made of plastic

b) Without reusability requirement:



Corrugated cardboard boxes



Crates made of wood



Flexible Intermediate Bulk Container (FIBC)



Octabin made of corrugated cardboard, flexible packaging made of jute or cotton fabric



Examples of discrimination of plastic packaging materials and formats against other materials in Article 26

Special requirements apply to industrial packaging such as pails, intermediate bulk containers, drums and canisters, which are usually not transport packaging but industrial sales packaging, e.g. for chemical products and dangerous goods. They should therefore be deleted from paragraphs 7 and 12.

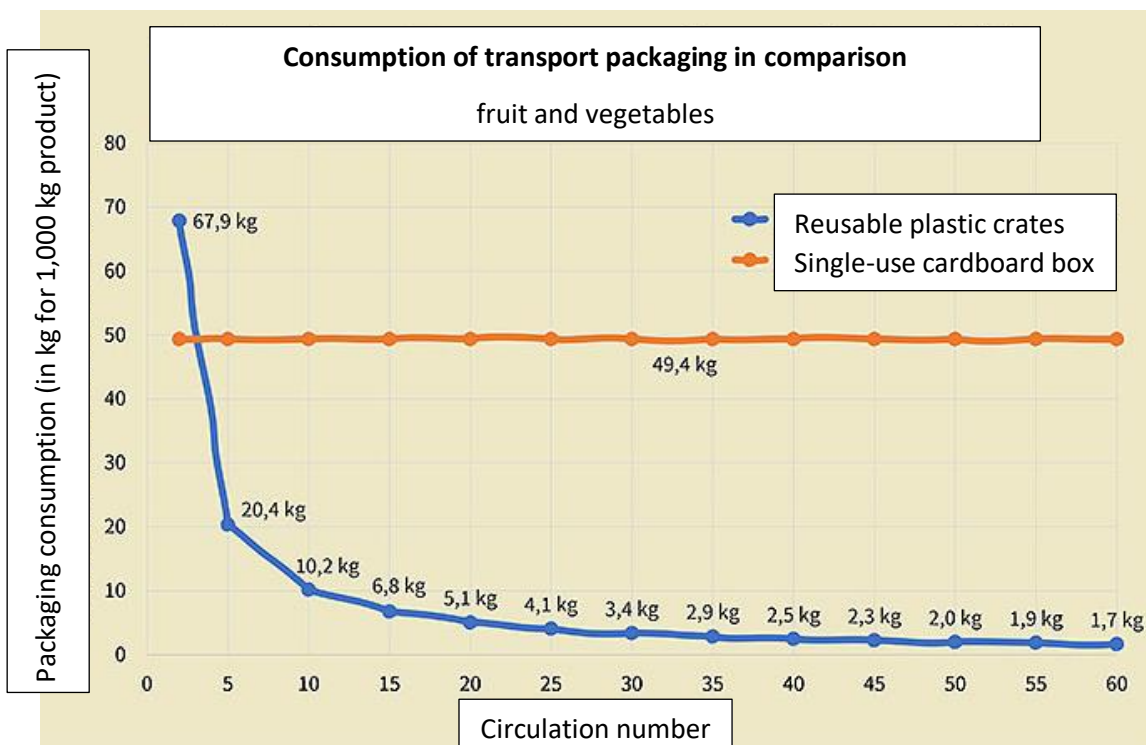
Recommended amendments:

- Article 26(7): Economic operators using transport packaging in the form of pallets, ~~plastic crates, foldable plastic boxes, pails and drums~~ for the conveyance or packaging of products in conditions other than provided for under paragraphs 12 and 13 shall ensure that:
 - (a) from 1 January 2030, 30 % of ~~such packaging used is~~ **those products are made available in reusable transport** packaging within a system for re-use;
 - (b) from 1 January 2040, 90 % of ~~such packaging used is~~ **those products are made available in reusable transport** packaging within a system for re-use.
- Article 26(8): Economic operators using transport packaging for the transport and delivery of non-food items made available on the market for the first time via e-commerce shall ensure that:
 - (a) from 1 January 2030, 10 % of ~~such packaging used is~~ **those products are made available in reusable transport** packaging within a system for re-use;
 - (b) from 1 January 2040, 50 % of ~~such packaging used is~~ **those products are made available in reusable transport** packaging within a system for re-use;
- Article 26(9): Economic operators using transport packaging in the form of pallet wrappings and straps for stabilization and protection of products put on pallets during transport shall ensure that:
 - (a) from 1 January 2030, 10 % of ~~such packaging used is~~ **those products are made available in reusable transport** packaging within a system for re-use;
 - (b) from 1 January 2040, 30 % of ~~such packaging used for transport is~~ **those products are made available in reusable transport** packaging within a system for re-use;
- Article 26(10): Economic operators using grouped packaging in the form of boxes, ~~excluding cardboard,~~ used outside of sales packaging to group a certain number of products to create a stock-keeping unit shall ensure that:
 - (a) from 1 January 2030, 10 % of ~~such packaging used is~~ **those products are made available in reusable grouped** packaging within a system for re-use;
 - (b) from 1 January 2040, 25 % of ~~such packaging they used is~~ **those products are made available in reusable grouped** packaging within a system for re-use.
- Article 26(12): Transport packaging used by an economic operator shall be reusable where it is used for transporting products: [...] This obligation applies to pallets, boxes, ~~excluding cardboard,~~ trays, plastic crates, intermediate bulk containers, drums and ~~canisters~~ of all sizes and materials, including flexible formats.

2. **No regulation of industrial sales packaging and no regulation by size of Member State:** The Commission proposes that certain transport packaging must be 100% reusable when used between companies *within a Member State* (Article 26(13)). This proposal is overambitious and finds no basis in the impact assessment. In the impact assessment, the Commission claims that the designated packaging types are "*unnecessary*" packaging and merely cites as evidence that "*some of the more proactive brands and retailers in the EU have already removed [them]*" (see

Part 2, p. 376). It is stated that the choice of packaging types and quotas had been discussed and agreed with the stakeholders concerned ("*chosen in cooperation*", see Part 1, p. 24), which in our view is incorrect. The impact assessment does not contain any further justification for the ban on single-use transport packaging and the selection of packaging types made. Nor is there any examination of the already existing reusable alternatives, nor of the economic and ecological consequences of such a ban, e.g. taking into account the transport distance. The proposal in paragraph 13 also contradicts the internal market principle, according to which national borders of Member States should not be a factor for regulations. It also penalises companies in Member States with a larger size and favours companies in smaller Member States. The proposal is therefore disproportionate and should be amended.

The German environmental NGO NABU has shown on the basis of a current [study](#) (in German) on transport packaging that accumulates in wholesale and retail trade that there is great potential for ecologically sound reduction of single-use packaging waste through reusable packaging. The measure in paragraph 13 should therefore be limited to this case. Special requirements apply to industrial packaging like intermediate bulk containers and drums, which are usually not transport packaging but industrial sales packaging, e.g. for chemicals and hazardous goods. They should therefore be deleted from paragraph 13.



Reduction of packaging consumption in the wholesale and retail trade: After only three cycles, there is a significant material saving through reusable crates for fruit and vegetables compared to single-use cardboard boxes. (Source: NABU, based on GVM 2022, translation by IK).

Recommended changes:

- Article 26(13): **As from 2028**, Economic operators delivering products to **the wholesale and retail trade** ~~another economic operator within the same Member State~~ shall use

only reusable transport packaging for the purpose of the transportation of such products.

This obligation applies to pallets, boxes, ~~excluding cardboard, plastic crates, intermediate bulk containers and drums~~, of all sizes and materials, including flexible formats.

3. **Tie reuse quotas to environmental benefits, hygiene and safety, and economic feasibility:** Reusable systems with lightweight packaging, short transport distances and a high number of reuse cycles can have environmental advantages over recycling single-use packaging and offer sustainable growth opportunities for plastic packaging in many areas, such as take-away catering and transport packaging. However, the potential environmental benefit can be reversed if, for example, the return rates and reuse cycles of the reusable packaging are low or the empty reusable packaging has to be transported a long way between the point of generation and the cleaning and refilling and has to be cleaned at great expense. Numerous life cycle assessments prove that the ecological advantageousness of reusable packaging cannot be assumed *per se*. "Very economical and lightweight (plastic) packaging can be more ecologically advantageous than reusable solutions, depending on the area of application," states the Institute for Ecological Economy Research and the Institute for Energy and Environmental Research Heidelberg, for example (www.ioew.de/fileadmin/user_upload/BILDER_und_Downloaddateien/Publikationen/2022/Verpackungen_oekologisch_optimieren_Ein_Leitfaden_fuer_Unternehmen_Innoredux_2022.pdf, p. 14, in German). In particular, the high logistics costs for the return transport of empty, rigid packaging over long distances in Europe can stand in the way of ecologically sensible reuse. This is also pointed out in the impact assessment (see Part 2, p. 391).

For some of the reusable requirements in Article 26, especially with regard to the transport packaging mentioned, it is unclear which reusable alternatives exist on the market and how these are to be evaluated ecologically and economically. For example, **pallet wrappings and straps** (see paragraph 9), which are typically made of plastic, are assigned a reuse quota even though they are predominantly recycled and no reusable alternatives have been investigated. The environmental and economic consequences of such a *de facto* ban are not analysed. The lack of such an analysis raises serious doubts about the proportionality of the proposal.

Safety and hygiene aspects must also be taken into account during reuse: IBCs, drums, pails and canisters are usually used as *sales packaging* in direct contact with the filling goods. Often these are hazardous goods. Although they are generally reusable, their actual reuse may be restricted for safety reasons due to contamination caused by the contents. Hygiene regulations also restrict the reuse of *transport packaging* without direct contact with the product, such as pallets, in some product segments.

References to the avoidance of packaging waste alone are therefore insufficient to justify reusability requirements. The ecological benefits and economic feasibility must be examined in their entirety, especially taking into account the costs of empty transport and cleaning as well as realistic return and circulation figures. Reusable systems should be specifically promoted in those segments that are expected to be highly advantageous.

Therefore, the Commission should be obliged to prove the ecological advantageousness and economic feasibility of the quotas. We also recommend that optimised recyclable single-use packaging that is ecologically better or at least equivalent to reusable packaging can be counted towards the quotas.

Recommended change:

- Article 26(14): Economic operators shall be exempted from the obligation to meet the targets in paragraphs 2 to 10 **if required by hygiene or safety** or if, during ...
- Article 26(15): ... **The obligations in paragraphs 1 to 13 may also be fulfilled by the economic operator if the goods concerned are made available in packaging better or equivalent to reusable packaging in ecological terms.**
- Article 26(16)(d) (new): **evidence that the obligations in paragraphs 1 - 13 are environmentally beneficial, safe and economically viable, taking into account transport and cleaning logistics and realistic return and reuse rates.**

VI. Product bans (Article 22)

Specific packaging formats listed in Annex V of the Regulation are to be banned in accordance with Article 22 after 12 months from the entry into force of the Regulation or from 2030.

1. **No discrimination against specific packaging materials:** According to Annex V, certain single-use *plastic* grouped packaging should be banned at retail, but not those made of other materials, without any justification being given. This regulation is discriminatory against plastics and should therefore be changed.

a) Banned



b) Permitted



Grouped packaging made of plastic, which is to be banned, and corresponding packaging made of other materials, which is to continue to be permitted. There is no justification for this.

Recommended changes:

- Annex V, row 1:

	Packaging format	Restricted use	Illustrative example
1	Single-use plastic grouped packaging	Plastic packaging used at retail level to group goods sold in cans, tins, pots, tubs, and packets designed as convenience packaging to enable or encourage end users to purchase more than one product. This excludes grouped packaging necessary to facilitate handling in distribution.	Collation films, shrink wrap

2. **Justify bans ecologically and examine proportionality:** The justification of the product bans in the impact assessment is very weak (see V. 3. above) and therefore feeds doubts about their proportionality. The Commission merely states that the packaging is "*unnecessary*". As examples of such "*unnecessary*" packaging, the Commission cites "*plastic trays in a cardboard packaging*" and "*a cardboard sleeve on a robust tube, e.g. toothpaste*" (see Part 2, p. 376), although the proposal itself does not concern these types of packaging at all. Otherwise, it merely points out that "*some of the more proactive brands and retailers in the EU have already removed [this packaging]*" (see *ibid.*). Further justification for the choice of packaging types is missing. We therefore recommend that the Commission sets out the suitability, necessity and appropriateness of the measures before the bans enter into force.

Recommended changes:

- Article 22(3) (new): **By 1 January 2027, the Commission shall demonstrate that the proposed market restrictions in Annex V have an overall positive environmental impact, taking into account the availability of alternative packaging solutions and the creation of food waste, and assess the economic viability and proportionality of those restrictions compared to other, less restrictive measures. Until then, economic operators shall be free to deviate from the requirements in paragraph 1.**

3. **No bans on the basis of delegated acts:** Article 22(4) empowers the Commission to adopt delegated acts to amend Annex V (ban of packaging formats) in accordance with technical and scientific progress and with the aim of reducing packaging waste. Product bans are a *ultima ratio* of the legislator and should therefore always be legitimised by a proper legislative procedure. We therefore recommend the deletion of paragraph 4.

Recommended changes:

- Article 22(4): ~~The Commission shall be empowered to adopt delegated acts in accordance with Article 58 to amend Annex V in order to adapt it to technical and scientific progress with the objective to reducing packaging waste. When adopting those delegated acts, the Commission shall consider the potential of the restrictions on the use of specific packaging formats to reduce the packaging waste generated while ensuring an overall positive environmental impact, and shall take into account the availability of alternative packaging solutions that meet requirements set out in legislation applicable to contact sensitive packaging, as well as their capability to prevent microbiological contamination of the packaged product.~~