

Comments of the bvse e.V. on the European Commission's proposal for a Regulation on packaging and packaging waste COM (2022) 677 final

We hereby comment on the European Commission's proposal for a Regulation on packaging and packaging waste, COM (2022) 677 final. The proposed revision of EU legislation has three main objectives:

- Preventing packaging waste by restricting unnecessary packaging and promoting reusable and refillable packaging solutions.
- Promote a high-quality and closed-loop recycling system by making all packaging on the EU market economically recyclable by 2030.
- Reducing the demand for primary raw materials and creating a well-functioning market for secondary raw materials through mandatory recycled content targets .

The defined goals of the Commission are in principle suitable for establishing a uniform packaging policy within Europe, which at the same time also supports the achievement of climate neutrality in Europe linked to the European Green Deal.

In our view, the promotion of closed cycles and the strengthening of markets for secondary raw materials are essential for decoupling economic growth from the consumption of primary raw materials and also for a well-functioning recycling economy.

Too much detailing of regulation:

Regulation COM (2022) 677 applies to all packaging and packaging waste generated, regardless of its origin. The Commission is presenting an extremely detailed proposal for a regulation on packaging and packaging waste with a very, very high level of regulation. This proposal is not a continuation of the existing Packaging Directive, but completely redefines this area. A lean, superordinate legal regulation, which is filled in by the Member States, would be more expedient here.

Uniform regulations throughout Europe:

Since there are in use very different systems for packaging collection and recycling of packaging waste across Europe, the Commission is trying to achieve a harmonization of the packaging sector with a directly applicable regulation that has now been presented. In view of the heterogeneity that already exists in implementation of the existing Packaging Directive in the European Member States, it is unlikely that this ambitious project of the Commission will succeed in total.

Article 4(4) provides the possibility of supplementing the present COM (2022) 677 in the Member States according to national sustainability or information requirements. From the point of view of the bvse e.V., this option is not advantageous, as the present proposal already over-regulates the area of packaging and packaging waste. And this would lead to an additional patchwork of requirements, which at the same time would be an obstacle in the internal markets.

Article 4(5) gives the Member States the possibility to extend the labelling in the areas of EPR as well as of deposit and of return systems of the present regulation. The bvse e.V. does not consider this to be expedient of the present regulation.

Numerous new terms and terminology - bureaucracy:

The EU-Com uses new terminology and numerous terms, which are defined in detail. Article 3 defines in total 69 terms and concepts. In addition, further terms refer to existing legal regulations. And this alone will necessitate the judicial clarification of numerous terms and concepts.

Furthermore, the number of persons involved for regulation's implementation is significantly expanded. In particular, numerous register obligations and reporting requirements should be mentioned here as negative. The bureaucracy necessary for implementation in the Member States is considerably expanded by the present regulation. Or to put it another way: in the new regulation, the level of detail in the definitions is surprising. Moreover, it is astonishing how many stakeholders are needed for the implementation of the submitted proposal, see Article 3(8) to Article 3(18).

The comprehensive differentiations of plastic carrier bags into 4 categories is a set back, see Article 3(45) to Article 3(48). A distinction into plastic carrier bags smaller than 50 µm and smaller than 15 µm should be sufficient here, see SUPD - Directive (EU) 2019/904, which defines lightweight plastic carrier bags in the sense of Article 3(1c) of Directive 94/62/EC.

The obligations for packaging manufacturers defined in Article 11 are far too detailed and too extensive. The overall requirements for the labelling and marking of packaging defined in Article 11, which are accompanied by extensive reporting obligations, will mean that breaches of the legal requirements are inevitable. And this is an impetus for numerous bureaucratic requirements that will make recycling considerably more difficult.

Mechanical recycling:

In the present draft COM (2022) 677 there are no indications or restrictions on the type of recycling. And thus, according to the understanding of the bvse e.V., only mechanical recycling is addressed here. If other recycling processes are addressed in the present draft, this should be included directly in the ordinance and not regulated via delegated acts. Furthermore, in the case of feedstock recycling, which includes chemical recycling processes, their position in the waste hierarchy should be clarified if level 4, "other recovery", is not meant, see Article 4 of Directive 2008/98/EC (Waste Framework Directive). We recommend to consider a definition of chemical recycling in 2008/98/EC and, if necessary, to refer to it directly in the Regulation on Packaging and Packaging Waste.

All types of waste – post consumer (pc) and post industrial (pi) - should be chargeable:

In the present draft, we do not see any restriction that refers to the type of waste to be recovered. And thus, all wastes, that is pc-wastes as well as pi-wastes, are to be taken into account for the quotas. Both pc waste and pi waste are to be included in all quota calculations, i.e. recycling quota as well as minimum recycling content.

By-products:

In this context, we also refer to the term by-products, here Article 5, according to Directive 2008/98/EC. Consequently, by-products are also part of waste recovery and are thus to be included in all quota calculations.

Compostable packaging:

The EU-Com prioritises compostable packaging with Regulation COM (2022) 677. Compostable packaging is prioritised over all other light packaging insofar as, for example, the obligations for recycling quotas according to Article 46 and for recycle input quotas according to Article 7 do not

apply to these biomaterials. And in the opinion of the bvse e.V., this will mean a clear shift away from light packaging materials towards compostable packaging. This will be disadvantageous for disposal and recycling because of the unavoidable mixing of compostable packaging with paper and cardboard or mineral oil-based plastics. Moreover, reference should also be made here to the discussions on "food and fuel".

The use of biodegradable plastics should definitely be limited to the applications mentioned in the proposed regulation. Under no circumstances should the regulation lead to even more packaging labelled as compostable. False incentives must not be created to promote this packaging as an environmentally friendly alternative to existing lightweight packaging.

In the implementation of Article 8, attention must be paid to the full degradability of "biodegradable plastic". The Commission should therefore refer to the EN 13432 standard and work towards ensuring that it is formulated in such a way as to guarantee the complete degradability of bioplastics.

Article 8(1) specifies, among other things, the biodegradability of plastic bags with a wall thickness of less than 50 µm. These requirements for the biodegradability of plastic bags are disadvantageous for the recycling of plastic films, which include plastic bags, because in recycling practice it is not possible to distinguish between mineral oil-based plastics and bioplastics, which means that mixtures of both material flows are unavoidable. And this has the consequence that mineral oil-based plastics are contaminated with bioplastics. Or to put it another way, biodegradable adhesive labels hinder the recycling of plastic bags despite the requirements of Article 8(2) to Article 8(5).

Material stream specifics:

The re-usable targets for all lightweight packaging proposed in this regulation cannot be implemented in practice. In the case of re-usable requirements, a distinction has to be made according to the respective material flows. The recyclability of plastics, paper, cardboard, glass, aluminium or tinplate differs considerably. Hence, all re-usable targets for paper and cardboard are ecologically disadvantageous. Therefore, it is precisely here that it must be examined whether the extensive re-use requirements for the above-mentioned material flows can be maintained overall.

The added value of paper and cardboard is that the fibre content found in wood pulp, cellulose and recovered paper pulp is used in an ecologically beneficial way in already existing recycling systems. Especially with paper and cardboard, all requirements for reusable solutions are dispensable and disadvantageous. In any case, paper and cardboard should be exempted from all reusable targets.

Recyclable packaging:

In Article 6(2)(b) together with Article 43(1) and Article 43(2) the effective requirements for separate collection of lightweight packaging are missing. It should be defined here that the collection of packaging waste must be separate from other waste, empty of residues, clean, free of contamination, in suitable containers.

The term "empty of residues" should be defined more precisely. For this purpose, it is proposed that not more than 4 % of the weight of the original filling weight remain in the emptied packaging. The containers must be suitable for protecting the packaging waste from dirt during collection and storage. The containers shall be designed as transfer containers in accordance with the provisions of ADR/RID.

Article 6(2)(d) defines that the material generated from recycling has to be of sufficient quality to replace primary materials. We advocate the use of recyclates not only in food areas but also for non-food packaging. Non-food packaging helps to achieve the goal of avoiding carbon emissions in a sustainable way.

There are more than enough possibilities for the use of recyclates in non-food packaging: for example, non-food packaging from the personal care and home care, applications in the construction industry, vehicle construction or for electrical, household, DIY products, furniture and logistics applications can absorb large quantities of recyclates in an ecologically beneficial way and replace virgin material.

It cannot be a question of necessarily using recyclates for food contact packaging, but it must be a question of producing as much usable recyclate as possible from the existing plastic waste, with which plastics in primary form can be supplemented or replaced.

If non-food packaging applications are not sufficient to absorb recyclates, alternatives such as components for building construction and civil engineering can be used in an ecologically beneficial way. Particularly in the construction sector, plastic components made from recyclates (pipes, cables, insulation material, panels, pallets, lawn grids) are increasingly being used.

It should be specified here that recyclates can also be used in products for building construction and civil engineering. Not least against the background of the EPR and the GPP, it is urgently necessary that products are also generated and recognised from recycling that replace products made from wood, concrete or steel. These products are, for example, grass grids, boards, groynes, piles, pipes, fence bases, buckets or pallets.

The use of recyclates in the food sector as well as in the non-food sector is insofar important in order to fulfil all of the demanding recycling quotas formulated in this regulation. Hence, the recycling of packaging has to focus both - the application in the food sector as well as in the non-food sector.

Article 6(2)(e) defines the requirement for recycling at scale. The term "recycling at scale" is defined in Article 3(32). In the view of the bvse e.V., this is intended to ensure that the existing diversity in plastics recycling is maintained. Although the existing diversity might result in great diversity. But this has proven to be advantageous in order to compensate for fluctuations in the markets by tailor-made recyclates. Recyclates have to be produced to customer specifications, which makes it necessary to adapt them to a wide variety of product requirements. Customised solutions for plastics recycling are necessary to meet the extensive legal requirements as well as those in the rapidly changing markets.

Minimum recycled content in plastic packaging:

Article 7(1) refers to each individual packaging when calculating the recycled content; please note, that this cannot be put into practice. The requirement for minimum recycled content in every single package leads not only to excessive control but also to material shifts of immense proportions. All of this cannot be put into practice in a sustainable manner.

And this also contradicts the requirements of the calculation of minimum recycled content in PET bottles, see the European Single-Use Plastics Directive, Directive (EU) 2019/904, which calculates the recyclate content as the "average of all PET bottles placed on the markets of the Member States concerned". Manufacturers should therefore be free to calculate the recycled content as an average of the total quantity of products.

Article 7(1) defines extensive minimum recycled content for the year 2030. According to Article 7(1)(b), here for the important area of plastic packaging for contact-sensitive filling goods, such as food in particular, these demands for binding quotas cannot, in our opinion, be met in the medium term. As is known, only recycled PET plastics from separately collected beverage bottles are currently approved for use in food packaging. All other plastics, especially the large group of polyolefins, may not be used in food packaging. Unfortunately, the new Commission Regulation No. 2022/1616 raises the hurdles for the use of recyclates in food contact materials instead of lowering them: for example, recyclates behind functional barriers are no longer exempt, but have to go through an elaborate and lengthy approval procedure that can take up to 7 years.

We recommend to exempt contact-sensitive plastic packaging from the quotas and to review in 2035 whether the conditions for the use of recyclates have changed by then. This recommendation includes other contact-sensitive packaging besides food packaging, such as for pet food, cosmetics, personal care, pharmaceuticals and chemicals. And thus, in Article 7(1), the letter (b) is to be deleted; in Article 7(1)(d), the reference to letter (b) is then also omitted.

Article 7(2) defines the minimum recycled content for the year 2040. As a consequence of the comments on Article 7(1), the quota for 2040, which in Article 7(2)(a) is set to 50 %, is here considered hardly achievable. Here it is proposed to set a quota of 20 %.

Article 7(4) Exemptions for compostable plastics: There is no basis for the Commission's proposed exemption for all compostable plastic packaging from the minimum recycle content requirements in 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 Article 8(2) which are to be compostable on a mandatory basis in the future, i.e. tea and coffee bags and capsules. An exemption of all compostable packaging from the quota requirements is 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 which could compromise high quality recycling.

Article 7(10): The bvse e.V. considers the proposed revision for the minimum recycled content under Article 7(10) to be problematic. Article 7(10) significantly restricts the requirements of Article 7(1) or Article 7(2) in the case of lack of availability or in the case of excessive recycle prices. Recyclers who ensure that the ambitious targets set out in the present draft COM (2022) 677 are achieved by investing in techniques, technologies, plants and infrastructure must not be hindered in their efforts by exit clauses that can also apply in the event of short-term distortions in the markets.

In particular, the possibilities for natural or legal persons to influence the EU-Com via studies, expert opinions or market surveys that pc waste poses risks to health or to the safety of the food supply should not be anchored in Article 7. Notifications to the EU-Com are always possible but a legal regulation in COM (2022) 677 can be used as a threatening gesture towards third parties, i.e. the recyclers.

The fallback position in Article 7(10) opens up the possibility for market participants to deliberately undermine all requirements of the new regulation. And thus Article 7(10) should be deleted from the Regulation without replacement.

Reuse and refilling targets:

Article 26 shows very well that the ambitious goals of the new European Regulation COM (2022) 677, for reuse and refilling, cannot be implemented in the same way for all lightweight packaging material flows. Unfortunately, unfulfillable requirements for material flows, such as reusability requirements for paper and cardboard, aluminium and tinfoil, are specified here.

The reusability of packaging made of paper and cardboard, aluminium and tinplate is very much limited. And precisely this must not lead to unilateral targets being set for plastic reusable packaging only. Or to put it another way, Article 26 as a whole should be revised, or better still, deleted completely.

The requirements for the use of reusable transport packaging are in part neither ecologically favourable nor necessary. This applies in particular to the wrapping of load carriers made of plastic film, especially the so-called shrink hood. These wrappings effectively protect the packaged goods from weathering.

The management of plastic packaging and the resulting waste is characterised by an efficient recycling system - closed-loop system. Waste generated from transport packaging mainly occurs in the commercial sector and is collected almost completely and sorted by type, so that it can be comprehensively and purposefully recycled. The wrappings of load carriers, made of plastic film are designed to be recyclable in the sense of the "Design for Recycling" requirements according to Article 6 of the proposed regulation. Therefore, legal requirements are not necessary here.

Deposit and return systems:

The bvse e.V. supports the Commission's proposal to introduce deposit systems for the collection of one-way plastic beverage bottles and one-way metal beverage containers, see Article 44. Deposit systems are well suited for the collection of beverage packaging.

However, deposit systems should only be used for the collection of non-refillable beverage bottles. Extending the use of deposit systems for the household collection of solid packaging containers (plastics, tinplate, aluminium), so-called rigids, would have the consequence that the existing systems for the separate collection of lightweight packaging could become obsolete. Only the existing lightweight packaging collection systems guarantee that material that is not suitable for reverse vending machine are collected, sorted and recycled.

Recycling targets and promotion of recycling:

Article 46 regulates the measures to be taken by Member States to achieve the recycling targets.

Unfortunately, Article 46(2) provides for the possibility to derogate from the rules on recycling quotas defined in Article 46(2). Article 46(2) specifies the conditions to postpone the requirement of Article 46(1) for up to 5 years. However, this will further promote a Europe of different speeds. Moreover, this option harbours the possibility of shifting material flows to those countries that use the leeway from legal regulations in an ecologically disadvantageous way.

In Article 46(4), the EU-Com provides for a review of the targets achieved 8 years after the Regulation enters into force. This period seems to the bvse e.V. to be clearly too long and should be set at 4 years.

In Article 46(7), the Commission reserves the right to set so-called "average loss rates" for recycling by means of delegated acts. For the establishment of recycling structures, it is indispensable to know the average loss rates for the individual processes in advance.

Environmentally oriented public procurement:

A functioning GPP can be established only if recycling is used for both, the substitution of virgin material and for the production of various products, here in building construction and civil engineering.

For an effective GPP in accordance with Article 57, binding and reliable criteria for the obligatory use of recycled products in public sector purchases should therefore be specified in the present regulation - but these should not be shifted to a delegated act, as Article 57(3) stipulates. The public sector, as the largest purchaser of procurement, has a key role to play in achieving the recycling targets.

Delegated acts:

Ultimately, the present regulation cannot be assessed conclusively, as the EU-Com makes numerous references to the delegated acts to be defined. The delegated acts are not yet available for inspection and can therefore not be assessed. This procedure is also problematic from a legal point of view, as the EU-Com thereby receives a free pass for the design of the present regulation. This is a procedure that escapes parliamentary control and the involvement of the stakeholders. And thus a regulation that refers in essential parts to delegated acts that are not yet even available for inspection is insufficiently legitimised. And thus all references to legal acts yet to be specified, which are the responsibility of the EU-Com, become obsolete.

Article 5(4) marks the beginning of the constant reference to delegated acts in the present regulation, which the bvse e.V. considers to be not legally compliant and too bureaucratic. In Article 6(4) to Article 6(5), reference is made to delegated acts; this is an approach that is legally problematic and, moreover, makes it impossible to assess content.

Corrigenda

On Article 9, Minimisation of Packaging

Article 9(3) states:

For the purpose of assessing the compliance with this paragraph, space filled by paper cuttings, air cushions, bubble wraps, sponge fillers, foam fillers, wood wool, polystyrene, styrofoam chips or other filling materials (...)

Instead of "... wool, polystyrene, styrofoam ...", please insert "... wool, **extended polystyrene**, styrofoam ...". Please note that EPS stands for extended polystyrene. EPS is now referred to as "airpop" instead of styrofoam.

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