

## **JBCE's views regarding the call for feedback on the Packaging and Packaging Waste Regulation (PPWR).**

Being a cross-sector association with member companies operating in different industries and stages in the supply chain, JBCE welcomes the opportunity to contribute to the call for feedback on the proposal for a Packaging and Packaging Waste Regulation (PPWR).

### **1. Introduction**

JBCE supports the overall aim of reducing packaging waste as this contributes to a sustainable design that covers the entire packaging lifecycle and thus helps to achieve a circular economy. In addition, we would like to further detail our views and insight on the PPWR proposal.

### **2. Details**

#### **2-1. General aspects:**

- We welcome the idea of transforming the current applicable directive into a regulation. A consistent EU-wide framework, which does not require the transposition of the measures into national law, will be essential to improve the recycling efficiency and reduce packaging waste. Packaging plays an important role in protecting valuable goods. When certain packaging design is required in one Member State and forbidden in another, this counters the logic of the Single Market, which is one of the founding principles of the EU. Thus, the harmonization of requirements on Union level is welcomed.

- This regulation will affect not only EU stakeholders but also non-EU stakeholders regarding the packaging materials used when placing products on the market in the EU. There are still many unclear points in forming effective rules, and we believe that clear guidance, explanations through workshops, and dialogues with stakeholders outside the EU will be extremely important to enable them to fully understand the requirements set by this regulation and comply with them. The same clarity should apply to secondary legislations. The adoption of the numerous Delegated and Implementing Acts foreseen by the proposal should happen within certain clearly defined deadlines to ensure legal certainty for all operators.
- The regulation will apply 12 months after its entry into force, which seems to already be challenging considering the extent and complexity of its provisions. However, we noticed that an exemption for products that have already been packaged before the entry into force of the requirements (e.g., transitional periods and rules on exhaustion of stocks) is missing. Such transitional periods are of crucial importance to provide clarity to all operators and avoid any disruption in the production and distribution processes.

## **2-2. Comments on specific articles:**

### Art. 4 Free Movement:

- Member States are allowed to implement further labelling requirements related to Extended Producer Responsibility (EPR) or deposit and return systems (like the Triman logo in France or the sorting instructions in Italy). However, the same provision adds that Member States cannot impede the placing on their market of packaging that would not fit their national requirements. This measure is therefore contradictory and creates legal uncertainty.

### Art. 5 Requirements for substances in packaging:

- The consistency with already existing legislation should be ensured, in particular with Annex XVII of Regulation (EC) No 1907/2006 (REACH restriction), Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP), and Regulation (EC) No 1935/2004 on food contact materials, as these already provide for the possibility to restrict substances based on concerns related to human health or the environment. Packaging usually does not consist of a single packaging

material. It is common to use printing inks, adhesives, and composite materials for durability. It should be kept in mind that these are usually already regulated under other legislation such as REACH.

- The very wide definition of 'substance of concern (SoCs)' includes not only SVHCs on the Candidate List or substances in Annex XVII of REACH, but also skin and respiratory sensitizers, substances forming a chronic hazard to the aquatic environment, STOT SE and RE. At a later stage, endocrine disruptors, PBT, vPvB, PMT and vPvM substances will be added as well. This staggered, dynamic process makes it very difficult and burdensome for industry to keep on track with SoCs. Especially in global supply chains, knowledge of the presence of such substances cannot be expected, nor will it be easy to obtain such information that is often considered confidential. We therefore call on the Commission to support industry by publishing clear guidance and a list of 'substances of concern' to refer to, e.g., based on the existing harmonised classification of substances.
- Substances that are an obstacle to recycling, but do not meet the hazard criteria of 'substances of concern', should be listed separately taking into account the respective recycling technology. Mechanical recycling should not be considered the default recycling technology for identifying substances of concern.
- Packaging for consumers and packaging for industry serve different purposes and should therefore be clearly distinguished when defining packaging design, required performance standards and also substances of concern, as the exposure profile is different between consumer and professional industrial users. Packaging for B2B products is often different for each customer, according to the equipment and handling procedures in the customer's facility and is not uniformly designed. The requirements related to design of the packaging are not applicable. Therefore, only material requirement should be applied for B2B products.
- If the Commission is adopting Delegated Acts in accordance with Art. 5 (5) (a), active stakeholder participation in their development as well as public consultations are needed. Additionally, appropriate transition periods must be granted.
- Derogations for industrial packaging for hazardous substances or mixtures have to be considered, especially in cases where the packed substances/mixtures are/contain SoCs and mechanical recycling would not be an option.

#### Art. 6 Recyclable packaging:

- We welcome the introduction of an EU-wide and clear definition of 'recyclable packaging'

and the proposal to assess packaging recyclability against Design for Recycling (DfR) criteria. However, we hope that the Delegated Act related to DfR will be issued timely and that economic operators will be involved in preparatory discussions in order to bring their views and expertise.

- Trade-offs between (mechanical) recyclability and the necessary performance of a packaging to appropriately protect the packed goods should be carefully considered. For certain consumer products like food and cosmetics, but also for sensitive industrial products, e.g., pharmaceuticals, photosensitive materials, and membrane filters, only high barrier multilayer packaging can provide the necessary protection and performance. The use of such packaging materials should be permitted although they cannot be recycled mechanically.
- The “recycled at scale” criterion is too vague, as there is no threshold indication of what a sufficient recycling scale is. In addition, this criterion does not only depend on manufacturers but also on the recycling industry. This needs to be taken into account when the requirements linked to this criterion are set.
- If the EU Commission were to submit a report under the Delegation as required by point 4, 9 months before the end of the five-year period after the entry into force of this Regulation (by four years and three months), and then adopt delegated acts, the promulgation of the delegated acts would be roughly the same time of the implementation of the 'recyclable packaging' requirement set out as 1 January 2030 in the point 2 and 3 of this Article. This will not allow producers to prepare for complying with the design for recycling criteria laid down by the delegated act. Producers need at least a three-year preparation period to make design changes and reflect them in the actual product. Therefore, the compliance date of the design for recycling criteria should be the later of “1 January 2030” and “three years after the promulgation of the delegated acts set out in point 4”. Or, obligating the EU Commission to complete the delegated acts by 31 December 2026 would be manageable for producers.

#### Art. 7 Minimum recycled content in plastic packaging:

- According to the OECD report<sup>1</sup>, recycled plastics are expected to grow rapidly. However, it is also expected to satisfy the demand for only 12% of all plastics by 2060. A stable supply of secondary raw materials will therefore be difficult to achieve and is currently

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<sup>1</sup> OECD/2022, Global Plastics Outlook: Policy Scenarios to 2060, <https://www.oecd-ilibrary.org/sites/aa1edf33-en/index.html?itemId=/content/publication/aa1edf33-en>

not guaranteed. In this regard, it will be difficult to achieve the uniform recycling target of 35% for general plastics by 2030. A thorough consultation involving all stakeholders in the value chain of recycled materials is therefore needed.

- The minimum recycled content in plastic packaging should also be established by taking into account the commercial availability of secondary raw materials with suitable mechanical properties. Plastic made from mechanically recycled secondary raw materials may retain impurities such as very small amounts of metals and concerns on lack of gas and humidity barrier, and hence is not always suitable to be used as recycled materials. These are for instance not only the case for semiconductor products where very-high purity is required but also the case for chemical reagents products and photographic products which are needed chemical sensitive, photosensitive, humidity sensitive. Otherwise, it may cause serious concerns such as severe yield loss in semiconductor manufacturing process, safety trouble of reactive chemicals during transportation and storage, and product damages due to exposure to light and humidity. We would like to propose to exempt primary packaging of semiconductor products, chemical reagents products, and photographic products (medical, industrial, and consumers) from the minimum recycled content target.
- Additionally, the use of recycled raw materials often impairs the quality of packaging and may lead to an increase in the volume of the packaging to sufficiently protect the packaged product.
- For these reasons it is necessary to make use of all commercially available recycling technologies including chemical and solvent-based recycling. On the other hands, due consideration should be given to the safety of consumers, particularly in relation to the use of recycled plastics in contact-sensitive applications.

#### Art. 8 Compostable packaging:

- JBCE would like to point out that the PPWR proposal disregards the potential use of bio-based plastic, which contributes to a more circular economy. Since almost all plastic used in packaging today is made from plastic of a non-renewable resource, we are aware of the importance of recycling plastics in a technical cycle and increasing the use of recycled content instead of on non-renewable plastics. However, we would like to highlight that, in order to sufficiently enable a more circular economy, it is equally important to boost the biological cycle, and hence, we believe that the potential use of bio-based plastic, which can be recovered in a biological cycle, although it may be difficult to recycled, should not be disregarded at this point.

#### Art. 9 Packaging minimisation:

- Although we support the idea of reducing unnecessary packaging space, precision equipment (such as electronics, medical, analytical devices and/or equipment) has to be supported by materials which can sufficiently absorb shocks during the shipping process. It may therefore be necessary to use a specific thickness of the packaging. As packaging is designed or selected according to the use and purpose of the product, it is not appropriate to uniformly restrict it by regulations. The criteria for evaluation packaging minimisation should be set in close cooperation with all stakeholders along the value chain. It is important not to underestimate the main functionality of packaging, which is to protect the product and thus prevents waste generation itself.

#### Art. 10 Reusable packaging:

- It is unclear as to who is responsible for an incident or damage resulting from reused transport packaging which was used by multiple transport operators. It is at least necessary to clarify requirements to guarantee recyclability of the transport packaging to be reused. However, transport operators may not be able to guarantee it as it depends on the transport history.
- Evidence which is used as the basis for determining target percentages should be specified. This comment applies throughout the draft Commission proposal.

#### Art. 11 Labelling of packaging:

- We welcome the strengthened harmonisation of this regulation as this will help, among others, to put an end to the proliferation of national marking obligations that have created diverging legal requirements within the Union market. We, therefore, believe that Member States should not be allowed to introduce further labelling requirements for the purpose of identifying EPR schemes, as prescribed in Art. 4(5) and Art. 11(8), and that Art. 11(7) should explicitly prevent the introduction of requirements on packaging sustainability labels. Some European countries and regions require specific labelling according to their own packaging regulations (e.g., France and Italy). Designing different labels to ensure compliance with various national and regional regulations requires larger amounts of packaging material. In order to reduce regulatory confusion, unnecessary waste and the need for customised packaging, the PPWR should ensure that regional labelling requirements are limited. Otherwise, the EU risks losing competitiveness.

- We would like to point out that the development process of packaging generally includes the following steps: designing the label design, producing the block copy, arranging the packaging materials, printing, processing, and packaging in warehouse. Industry has managed the updating of labelling and packaging by careful inventory management. This is very important not only for cost, but also for avoiding unnecessary packaging waste.
- We encourage the Commission to provide for a harmonisation and integration of regional labelling requirements with the QR codes required under the PPWR proposal. It should furthermore be considered that the introduction of QR codes is also discussed in the context of Ecodesign Regulation and Battery Regulation. These QR codes should be harmonized and coordinated so that there will be no confusion among several QR codes on a product. We, therefore, encourage EU Regulators to take a bolder approach towards labelling solutions (including digital solutions) that would respond to the need of informing consumers while reducing, or even eliminating, the impact on packaging. Technology has made dramatic improvements and it would be a missed opportunity to focus on-pack labelling, relegating digital solutions only for material composition markings.

#### Art. 13 Obligations of manufacturers:

- The current packaging management system that many stakeholders own and use on a daily basis will not apply for this PPWR proposal. Not only the classification, but also the term might not correspond to the regulation. Specific customization and training will be needed. Furthermore, the method of management for the secondary packaging and transportation packaging is unclear. The industrial stakeholders cannot adopt the regulation immediately. This will affect not only the sales of the products and packaging, but also the quality and inventory control.
- In addition, the regulatory compliance must be validated and technical documents be prepared. A declaration of conformity must be developed and stored for a required period. An appropriate arrangement of the system is needed to apply these requirements. It is strongly requested that a sufficient transition period will be granted in addition to clear guidelines for each application and requirement.

#### Art. 26 Re-use and refill targets:

- The proposed reuse and refill targets do not take into consideration that their appropriateness should be assessed on the basis of several criteria, such as the

preparation of the packaging for reuse, the required infrastructure and logistics and the benefits of current alternatives. The reuse and refill targets should, therefore, only be considered when it makes environmental and ecological sense.

Art. 33 Conformity assessment procedure:

- The proposed conformity assessment procedure is burdensome for industry, especially for SMEs and non-EU packaging manufacturers. This includes the creation of technical documentation according to Annex VII and the drawing up of the EU declaration of conformity according to Art. 34. Packaging producers have established a well-functioning process of ensuring compliance and additional rules are creating unnecessary bureaucratic burdens without any added value for the environment.

Art. 34 EU declaration of conformity:

- Packaging manufacturers are obliged to issue an EU Declaration of Conformity for packaging placed on the EU market. It is extremely difficult for non-EU packaging manufacturers, who often operate only on the domestic market, to comply with this legal obligation. We therefore call on the Commission to ensure that non-EU packaging manufacturers are in a position to comply by offering stakeholder dialogues, workshops and clear guidance. It may also be necessary to consider prolonged transition periods.
- Further clarification is also needed if it will be practically possible for materials from recycling processes located outside the EEA to count toward the minimum recycled content of packages or if it would be required to transport recycled packaging material overseas to package goods destined for the EU.

Art. 39 Register of producers:

- According to the proposal, packaging producers may delegate their EPR-related responsibilities to Producers responsibilities organisations. However, even if EPR requirements are now set at European level, the registration still needs to be done in each Member State. In order to live up to the principle of the EU Single Market, the Commission should therefore ensure an EU-wide registration scheme.

Art. 56 Register of Producers:

- The obligation of packaging producers (i.e., packaging manufacturers, importers, or distributors) to register in each Member State before they can place their product on the respective national market is particularly difficult to fulfil for non-EU market actors, as they



will not be able to trace sales of their packaging to EU customers. Additionally, some of the required details may be considered confidential.

### **3. Conclusion:**

JBCE welcomes and supports the overall aim of the European Commission to strive for more sustainable packaging and subsequently reducing its waste. In order to best achieve these goals, we would like to emphasise that certain aspects related to the responsibilities of the market actors need further clarification. Additionally, we recommend that all stakeholders along the value chain are actively consulted for the establishment of the various requirements under the upcoming secondary legislation. While we acknowledge and welcome the intention of the proposed regulation to further harmonise the obligations related to packaging, we would like to point out that some regulatory divergence still exists in the Member States (especially concerning the labelling requirements). Lastly, we believe that all commercially available recycling technologies (including chemical and solvent based recycling) as well as bio-based plastics as a way of reducing petroleum-based virgin plastics should be considered to best achieve the proposed sustainability targets.

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### **About JBCE**

Created in 1999, the Japan Business Council in Europe (JBCE) is a leading European organisation representing the interests of more than 95 multinational companies of Japanese parentage active in Europe.

Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceuticals, steel, textiles and glass products.

Building a new era of cooperation between the European Union (EU) and Japan is the core of our activities, which we perform under several committees focusing on Corporate Social Responsibility, Digital Innovation, Environment & Energy, Standards and Conformity and Trade.

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