Safeguarding the Internal Market Legal Basis of the Packaging and Packaging Waste Regulation to obtain best possible outcomes

The undersigned industry associations express their strong support for the European Union’s ambitions for a circular economy. The EU Commission proposal to transform Directive 94/62/EC on Packaging and Packaging Waste (PPWD) into a Regulation and the choice to maintain an internal market legal basis (Article 114 TFEU) is a step to achieve that.

While this is a welcome step forward, we are writing to express our concern about the potential erosion or split of the Regulation’s legal basis as part of the co-decision process.

Circular economy solutions require the scale for investment and their roll-out, so that the transition is cost-effective and fast to serve the society best. A robust EU single market is key to achieving the free movement of packaging materials and packaged goods. Packaging is an essential part of a product supply chain, from the production to the consumption stage, and the packaging value chain plays a central role in contributing to a resource-efficient and circular economy. For instance, by optimising resource use, minimising product and food waste and by protecting products all along the value chain.

Additionally, ensuring that packaging waste is duly collected and makes its way into recycling allows valuable raw materials to come back in the value chain and be used across the Single Market. A strengthened market for secondary materials and a strong and resilient EU single market represent fundamental enablers of circularity, which will create greater economies of scale and underpin the investment needed to realise a circular and climate-neutral economy in Europe. Its continued functioning remains crucial to Europe’s global competitiveness and green transition.

The introduction of the internal market legal basis in the 1994 PPWD was intended to address differences among the various national rules on the management of packaging and packaging waste and consequent internal market barriers, while providing a high level of environmental protection. In recent years however, the packaging value chain has witnessed an increase of unilateral and divergent national packaging requirements (e.g., packaging bans, reuse and recycled content targets, labelling requirements). These have led to internal market barriers, environmental trade-offs, losses in economies of scale, and diversion of investments and R&D. More recently, several EU Member States have also adopted national legislation on packaging and packaging waste, pre-empting the adoption of EU-wide sectoral legislation irrespective of Article 6 (3) of Directive (EU) 2015/1535 on Technical Regulations Information Systems (TRIS).

Finally, several of the provisions included in the PPWR proposal already allow Member States to maintain or introduce additional national sustainability and information requirements. Should those

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1 The need for an Article 114 TFEU legal basis was highlighted by the Commission within the 1992 proposal for the current Directive, when there was an explicit acknowledgement of the necessity to address the divergent Member state measures that were hindering the free movement of packaged goods and distorting the internal market. The appropriate legal basis was therefore identified as Article 100 (now Article 114 TFEU).

2 As an example, the impact assessment accompanying the EU Commission proposal for a Packaging and Packaging Waste Regulation identifies inconsistent and confusing labelling as a barrier to packaging circularity and provides a number of case studies regarding environmental trade-offs and compliance costs deriving from diverging marking requirements. See here.

3 Article 6 (3) of the TRIS Regulation prescribes that “With the exclusion of draft rules relating to services, Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.”
or other provisions be based on an environmental legal basis, the potential for harmonisation would be weakened by a patchwork of national packaging legislations, to the detriment of consumers, environmental protection and the competitiveness of European industry.

We strongly believe that the introduction of Article 192 TFEU (environmental protection) as a legal basis for some or all the Articles of the PPWR will further exacerbate the current situation, create legal uncertainty about the residual responsibilities of Member States and adversely impact the free movement of packaged goods within the EU and consequently the EU’s transition to a circular and climate-neutral economy\(^4\).

With broad stakeholder support across Europe, we urge co-legislators to preserve in its entirety the internal market legal basis, which is best suited to serve the environmental and economic objectives of the proposed Regulation\(^5\).

**Signatories**

360 foodservice

ACE - The Alliance for Beverages Cartons & the Environment

AESGP - Association of the European Self-Care Industry

Afera - The European Adhesive Tape Association

AGMPM - Association of Greek Manufacturers of Packaging & Materials

AGVU - Arbeitsgemeinschaft Verpackung + Umwelt e.V.

AIJN - European Fruit Juice Association

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\(^4\) The potential introduction of Article 192 TFEU as a basis for e.g. Article 5 of the PPWD (Reuse) is likely to lead to Member States taking divergent measures. In the past, both the Commission and the CJEU have confirmed that disruption results from such measures through the creation of barriers that undermine the correct functioning of the Internal Market. See: [Case C-463/01](https://eur-lex.europa.eu), [Case C-309/02](https://eur-lex.europa.eu), [C-246/99](https://eur-lex.europa.eu).

\(^5\) Article 1 of the PPWD (Objectives) states the dual objective of the Directive: "This Directive aims to harmonize national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community."
AIM - European Brands Association

A.I.S.E. - International Association for Soaps, Detergents and Maintenance Products

AmCham EU – American Chamber of Commerce to the European Union

ANFIMA - Italian National Association of Metal Packaging

AnimalhealthEurope

APEAL - Association of European Producers of Steel for Packaging

APPLiA - Home Appliance Europe

ARAM - Romanian Association for Packaging and the Environment

Assografici - Associazione Nazionale Italiana Industrie Grafiche Cartotecniche e Trasformatrici

ATLA - Association de la Transformation Laitière Française

AVEC - Association de l'Aviculture, de l'Industrie et du Commerce de Volailles dans les Pays de l'Union européenne
Drinks Ireland

DVI - German Packaging Institute

EAFA - European Aluminium Foil Association

EBPC - European Balloon and Party Council

ECMA - European Carton Makers Association

ECMA - European Cigar Manufacturers Association

ECOEMBES - Ecoembalajes España

EDA - European Dairy Association

EDANA - International association serving the nonwovens and related industries

EDRA - European DIY Retail Association

EFIC - European Furniture Industries Confederation

EFPIA - European Federation of Pharmaceutical Industries and Associations

EGMF - European Garden Machinery Industry Federation
EKO-PAK

ELIPSO - Les entreprises de l'emballage plastique et souple

EPLF - European Producers of Laminate Flooring Association

EPPA - European Paper Packaging Alliance

EPTA - European Power Tool Association

ESA - European Snacks Association

etma – european tube manufacturers association

EuACA - European Artists’ colours industry association

EUBP - European Bioplastics

EuMBC - European Masterbatchers and Compounders

EUMEPS - European Manufacturers of Expanded Polystyrene

EuPC - European Plastics Converters

EuPIA - European Printing Ink Association
EURATEX - The European Apparel and Textile Confederation

EuroCommerce

EuromContact

EUROFER - The European Steel Association

Europatat - European Potato Trade Association

European Aluminium

EUROPEAN – The European Organisation for Packaging and the Environment

EUROSAC - European Federation of Multiwall Paper Sack Manufacturers

EVA - European Vending & Coffee Service Association

FDE - FoodDrinkEurope

FEA - European Aerosol Federation

Federación Española de Espirituosos
Fédération Française des Spiritueux

FEDIAF - European Petfood Association

FEFCO - The European Federation of Corrugated Board Manufacturers

FEICA - Association of the European Adhesive & Sealant Industry

FEPA - Federation of European Producers of Abrasives

FESI - Federation of the European Sporting goods Industry

FEVE - European Container Glass Federation

FINAT - The association for the European label industry

FPE - Flexible Packaging Europe

Freshfel Europe

FTA EUROPE

GIFLEX - Gruppo Imballaggio Flessibile
IK - Industrievereinigung Kunststoffverpackungen

INCPEN - The Industry Council for Packaging & the Environment

INTERGRAF - European federation for print & digital communication

La Boîte Boisson

Latas de Bebidas

LE - LightingEurope

Magyar Szeszipari Szövetség és Terméktanács

MedTech Europe - The European trade association for the medical technology industry

Miljöpack - Packaging Association, Sweden

MMFA - Multilayer Modular Flooring Association

MPE - Metal Packaging Europe

MVN - Metalen Verpakkingen Nederland
NATRUE - The International Natural and Organic Cosmetic Association

NMWE - Natural Mineral Waters Europe

PAKKAUS - The Finnish Packaging Association

PCEP - Polyolefin Circular Economy Platform

PET Europe - Producers’ Association

Petcore Europe

Plastics Europe

Policy Hub - Circularity for Apparel & Footwear

Pro Carton - Association of European Cartonboard and Carton Manufacturers

RUCODEM - Romanian Union of Cosmetics and Detergents Manufacturers
Scotch Whisky Association

SCS - Styrenics Circular Solutions

Serving Europe - Branded Food and Beverage Service Chains Association

SPE - Smart Packaging Europe

spiritsEUROPE

spiritsNL

SPV - Sociedade Ponto Verde

SSDL - Sveriges Slip- & Diamantverktygs- leverantörers Förening

Sveriges Producenter Av Alkoholdrycker

SZZV - Slovak Association for Branded Products
TE - Tobacco Europe

TIE - Toy Industries of Europe

UECBV - European Livestock and Meat Trades Union

UNESDA - Soft Drinks Europe

Unionplast - The Italian Association of Plastics Converters

VdL - Verband der deutschen Lack- und Druckfarbenindustrie e. V

VDPB - Association of German Brushware Producers

VDS - Verband Deutscher Schleifmittelwerke e.V.

VMV - Verband Metallverpackungen

ZVEI e.V. - Electro and Digital Industry Association

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