

Joint Statement from 68 Packaging Value Chain associations on the Proposal for a Directive on the Reduction of the impact of certain plastic products on the environment

August 2018

The undersigned organisations¹ represent a wide range of packaging materials, including plastics, and sectors at different stages of the packaging value chain in Europe. We wish to express our reservations about the unprecedented pace at which this proposal has been developed and intends to be adopted, which may impact the overall quality of the adopted Directive. We are also concerned that fundamental policy principles for Better Regulation, which ensure an efficient transition to a Circular Economy are not reflected in the Commission's proposal, as illustrated in the below recommendations. We acknowledge the problem of plastic pollution and are committed to finding solutions. To this end, our common overarching objectives as value chain partners are to ensure that:

- A coherent EU policy framework for packaging is maintained, and the Internal Market for packaged goods is safeguarded by avoiding various differing legal interpretations at EU and national level.
- The Directive addresses the root causes of marine litter holistically, incentivises meaningful innovation and interventions and allows sufficient development time from R&D to commercialisation.
- Policies and legislation contain clear definitions and are based on a complete, evidence-based impact assessment of the implications, to avoid possible unintended consequences.
- Policy measures are non-discriminatory and proportionate to the challenges addressed.

Therefore, we have the following recommendations, accompanied by specific suggestions for amendments (see Annex):

RECOMMENDATIONS

1. **Provide legal certainty and avoid the fragmentation of packaging policy and its impacts:** The Packaging and Packaging Waste Directive (PPWD) is the main piece of legislation governing packaging and packaging waste in Europe. By including some packaging items within its scope, the proposal on Single Use Plastics (SUP) introduces legal uncertainty for Member States and adds compliance complexity for businesses. The PPWD has Article 114 TFEU on Internal Market as its legal base to protect the free circulation of packaged goods in the EU while continuously improving the environmental performance of packaging. However, the SUP proposal has Article 192 TFEU on Environmental Protection as its legal base. Hence, **we urge EU**

¹ Co-signatories support the principles of this joint industry statement without prejudice to divergent national interpretations of EU law. This joint statement captures the main points our associations share and does not preclude the undersigned organisations from issuing individual positions that are more focused on their specific sectors.

policy-makers to clarify that the PPWD remains the overriding *lex specialis* for the packaging items covered within the scope of the SUP proposal.

2. **Safeguard the Internal Market for packaging, including single-use plastic packaging, and packaged products:** The Internal Market is a cornerstone of the EU's global competitiveness. While the proposal's objective is partially to contribute "to the efficient functioning of the internal market", the requirement for Member States to take "necessary measures" to reduce the consumption of certain single-use products (Article 4) risks creating a proliferation of potentially 27 different measures. This would also be the case for marking requirement measures (Article 7), which could diverge between Member States. These risks are exacerbated by proposing Article 192 TFEU (environmental protection) as legal base for the Single Use Plastics Directive. This potential for fragmentation is acknowledged in the Commission's explanatory memorandum as a possible "risk of market fragmentation when Member States take measures in an uncoordinated manner." **Therefore, we call on the European Parliament and Council to introduce an amendment to Article 4 on Consumption Reduction and Article 17 on Transposition to ensure that they are without prejudice to PPWD Article 16 on Notification and Article 18² on Freedom to place on the market.**
3. **Ensure a closed product list:** The possibility for Member States to add additional products to the lists in the annex during transposition creates legal uncertainty and risks leading to distortive consequences for the Internal Market in the implementation of the Directive at national level. **To support a harmonised approach at EU level, we call on the European Parliament and the Council to provide a closed, well-defined product list that cannot be interpreted differently or extended individually by Member States.**
4. **Clarify the scope of the Directive with clearer definitions:** Many of the definitions in Article 3 need to be further clarified, such as for "plastic" and "single-use", and some additional definitions should be introduced, such as for "beverage cups" "food containers", "beverages" and "packets and wrappers". If this requirement is not removed all together, "litter clean-up" should be defined as well. **We advocate for clearer definitions and will work constructively with the EU institutions to clarify these definitions in order to provide legal clarity and avoid different interpretations at EU and national level.**
5. **Avoid making litter clean-up and prevention the sole responsibility of producers:** As recognised in the revised WFD³, the root causes of litter are poor solid waste management practices and infrastructure, littering by citizens and lack of public awareness. Producers are doing their share to tackle these problems by financing EPR schemes to strengthen the re-use, prevention, recycling and other recovery of waste⁴, investing in litter awareness-raising campaigns⁵ to encourage responsible disposal and investing in eco-innovation in packaging design. However, producers do not have the levers to solve the litter problem alone. Other involved

² Article 18 of Directive 94/62/EC on Freedom to place on the market: "Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive."

³ Recital 35 of the revised Waste Framework Directive

⁴ As per Article 8 of the Waste Framework Directive (WFD)

⁵ Gestes Propres, Tidyman (a Keep Britain Tidy initiative), An Taisce in Ireland, Indevuibak and BeWaPP in Belgium, LIBERO and Paisaje Limpio in Spain, and the global *litter less* campaign under the Eco-Schools programme run by a consortium of public and private partners including UNEP and UNESCO.

stakeholders, including private or public waste operators and local authorities⁶, need to take action to improve waste management systems and infrastructure, including sewage systems, to carry out educational programmes and to enforce anti-littering laws and EU wastewater legislation. Citizens have a behavioural role as well. **We call on the European Parliament and Council to remove the extension of EPR financial obligations to litter clean-up costs as the sole responsibility of producers (Article 8), especially given the critical role of other actors in addressing the root causes of littering.**

6. **Introduce harmonised boundary conditions to ensure proportionate and non-discriminatory measures:** Before introducing bans on products (Article 5), Member States should be required to assess the appropriateness of a ban versus other measures, such as voluntary agreements and public-private partnerships to ensure proportionality. They should verify the presence of fit-for-purpose, safe, affordable and readily available at industry scale alternatives and conduct a thorough impact assessment of the social, economic and environmental impacts of a ban – including how the efficient functioning of the Internal Market would be impacted. Only fully assessed measures can ensure the highest efficiency and effectiveness to tackle problems that urgently need to be solved. Accordingly, any notification of member state draft measures under Article 16 of the PPWD in respect of single use plastics products must be accompanied by an impact assessment. **We call on the European Parliament and Council to introduce certain harmonised boundary conditions to ensure that market restrictions under Article 5 of the proposal, and measures listed under Article 4 on Consumption Reduction are proportionate and non-discriminatory.**
7. **Ensure a holistic, life-cycle approach:** It is essential to ensure that substituting plastic packaging with other packaging materials results in a net environmental improvement, by taking into account the full life-cycle of the individual product and packaging along the supply chain, including all end-of-life aspects. It is also important to ensure the functionality of packaging and the critical role it plays in delivering high standards of food hygiene, food safety, public health and consumer protection⁷. Industry needs sufficient flexibility to design packaging system (primary, secondary and tertiary) to best meet the functional requirements for the product concerned and its related supply chain, based on a case-by case approach. Otherwise, legislation may affect the functionality of packaging and its role in preventing waste, the pack's compliance with EU rules on food contact materials, and the ability of companies to innovate and make supply chains more sustainable from a life-cycle perspective. **We call on the European Parliament and Council to ensure that the EU's high standards of consumer protection, notably but not limited to those enshrined in Union law, are not compromised, and that the same level of protection is applied in all Member States.**
8. **Address packaging design requirements only in the PPWD:** We are concerned about the proposed packaging design requirements in Article 6 and market restrictions that impact packaging in Article 5. The undersigned organisations whose products and/or materials and/or systems are targeted in the proposal will work constructively with the Parliament and Council to improve Articles 5 and 6. **To ensure legal clarity, the Essential Requirements in the PPWD should remain the only legal provision containing eco-design requirements for packaging.**

⁶As per Article 8a(1a) of the revised Waste Framework Directive

⁷ See the position papers of the undersigned organisations for specific examples

9. **Fully assess the implications of proposed measures:** There are several uncertainties about the impact of some of the proposed measures, which are not addressed in the Commission's impact assessment. Examples include the scope and cost of litter clean-up for producers across Europe; the efficiency of requiring specific producers to pay for litter clean-up versus other possible measures, and the effect that a 90% separate collection target for bottles would have on the environment and the functioning of EPR schemes if implemented through deposits and separate collection targets for EPR schemes. **We urge the European Parliament and Council to thoroughly assess the impact of all the proposed measures and ensure they are supported by an evidence-based and complete impact assessment.**

Brussels, August 2018

The undersigned organisations are as follows (in alphabetical order):

Signatories without an asterisk have co-signed the above principles and the amendments in the below Annex. Signatories with an asterisk have co-signed the above principles.



ACE - The Alliance for Beverage Cartons and the Environment



Afvalfonds Verpakkingen, The Netherlands



AGVU - Arbeitsgemeinschaft Verpackung und Umwelt e.V., Germany



AIM - European Brands Association



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



AmCham EU - American Chamber of Commerce to the European Union



ANIA - Association Nationale des Industries Alimentaires, France



APIAM - Associação Portuguesa dos Industriais de Águas Minerais Naturais e de Nascente, Portugal



ARAM - Association for Packaging and the Environment, Romania



BVE - Bundesvereinigung der Deutschen Ernährungsindustrie e.V, Germany



BSDA- Bulgarian Soft Drink Association, Bulgaria



CEPI - Confederation of European Paper Industries



České průmyslové sdružení
pro obaly a životní prostředí

CICPEN - Industrial Coalition on Packaging and the
Environment, Czech Republic



CITEO- Packaging Recovery Association, France



CNE - Conseil National de l'Emballage, France



Coop de France Métiers du Lait, France



COPACEL, France



Cosmetics Europe - The Personal Care Association



DSD - Der Grüne Punkt Dual System for Packaging
Recycling, Germany



Eco-Rom Ambalaje, Packaging Compliance Scheme,
Romania



EDANA - The voice of European nonwovens industry



EFBW - European Federation of Bottled Waters



Eko-kom - Packaging Compliance Scheme, Czech
Republic



Ekopak, Bosnia and Herzegovina



ELIPSO - Les entreprises de l'emballage plastique et
souple, France



Emballasjeforeningen- The Norwegian Packaging
Association, Norway



EPRO - European Association of Plastics Recycling &
Recovery Organisations



EuPC - European Plastics Converters



European Aluminium



European Aluminium Foil Association



European Bioplastics



European Dairy Association



European Vending & Coffee Service Association



EUROPEN - The European Organization for Packaging and the Environment



EXPRA - Extended Producer Responsibility Alliance



FEA - European Aerosol Federation



FEBEA - Fédération des Entreprises de la Beauté, France



FIAB- Spanish Food & Drink Federation, Spain



Flexible Packaging Europe



FNIL- Fédération Nationale des Industries Laitières, France



FoodDrinkEurope - The organisation of Europe's food & drink industry



Fost Plus, Belgium



GIFLEX - Italian association of flexible packaging producers, Italy



Green Dot Cyprus, Cyprus



HE.R.R. Co, Hellenic Recovery Recycling Corporation,
Greece



Hungarian Mineral Water, Fruit Juice and Softdrink
Association, Hungary



IK Industrievereinigung Kunststoffverpackungen e.V.,
Germany



Industrieverband Körperpflege- und Waschmittel e. V.,
Germany



ILEC - Institut de liaisons et d'études des industries de
consommation, France



INCPEN - The Industry Council For Research On
Packaging And The Environment, UK



INTERGRAF - European Federation for Print and Digital
Communication



KLF- The Norwegian Cosmetics Association, Norway



Kosmetik- och Hygienföretagen, Sweden



Miljöpack – The Trade & Industry Group, Sweden



Pack2Go Europe - Europe's Convenience Food
Packaging Association*



Pakkaus - Packaging Association, Finland



PlasticsEurope - Association of Plastics Manufacturers



Polski Związek Przemysłu Kosmetycznego, Poland



Potravinářská komora České republiky- Federation of the
Food and Drink Industries of the Czech Republic, Czech
Republic



PROsPA- Producer Responsibility Organisations
Packaging Alliance



REPAK - Packaging Recovery Organisation, Ireland



SEPEN- Association for Packaging and Environmental Protection, Serbia



SLICPEN - Industrial Coalition on Packaging and the Environment, Slovakia



STANPA- Asociacion Nacional de Perfumería y Cosmética, Spain



Teknokemian Yhdistys, Finland



The Danish Association of Cosmetics and Detergents, Denmark



UNESDA - Union of European Soft Drinks Associations



Valpak - Environmental Compliance, Recycling and Sustainability Solutions, UK

ANNEX - SUGGESTED AMENDMENTS⁸

1. Provide legal certainty and avoid the fragmentation of packaging policy and its impacts

The following amendments seek to clarify the legal status of single-use plastic products that are considered packaging in this proposed Directive vis-à-vis the Packaging and Packaging Waste Directive.

Commission Proposal	Suggested Amendment
Preamble	Preamble
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof and Article 114 in so far as packaging as defined under Article 3(1) of Directive 94/62/EC is concerned,

Commission Proposal	Suggested Amendment
Recital 10	Recital 10
The single-use plastic products should be addressed by one or several measures, depending on various factors, such as the availability of suitable and more sustainable alternatives, the feasibility to change consumption patterns, and the extent to which they are already covered by existing Union legislation.	The single-use plastic products should be addressed by one or several measures, depending on various factors, such as the availability of suitable and more sustainable alternatives, the feasibility to change consumption patterns, and the extent to which they are already covered by existing Union legislation. <i>This Directive is without prejudice to the provisions established in Directive 94/62/EC regarding single-use plastic products that are considered packaging items as defined by Article 3(1) therein.</i>

2. Safeguard the Internal Market for packaging, including single-use plastic packaging, and packaged products

The following amendments will ensure that Articles 16 (Notification) and 18 (Freedom to place on the market) of the Packaging and Packaging Waste Directive (94/62/EC) are not compromised.

Commission Proposal	Suggested Amendment
	Recital 26 (new)

⁸ This does not preclude the co-signatories from making additional suggestions for amendments to these and other articles to address sector-specific concerns.

	<p>Whereas Member States should, in accordance with Directive 2015/1535, notify the Commission of drafts of any measures they intend to adopt related to packaging before adopting them, so that it can be established whether they may create barriers to trade and distort competition in the Union.</p>
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Commission Proposal	Suggested Amendment
Article 17 Paragraph 2	Article 17 Paragraph 2
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive. <i>In accordance with Directive 2015/1535, when such measures pertain to items considered ‘packaging’ as defined in Directive 94/62/EC, Member States shall notify the drafts of these measures to the Commission before adoption to permit the latter to examine them in light of the functioning of the Internal Market following the procedure under the above Directive.</i>

Commission Proposal	Suggested Amendment
Article 4 Consumption Reduction Paragraph 1, first indent	Article 4 Consumption Reduction Paragraph 1, first indent
Member States shall take the necessary measures to achieve a significant reduction in the consumption of the single-use plastic products listed in Part A of the Annex on their territory by ... [six years after the end-date for transposition of this Directive].	<i>Without prejudice to Article 18 of Directive 94/62/EC,</i> Member States shall take the necessary measures to achieve a significant reduction in the consumption of the single-use plastic products listed in Part A of the Annex on their territory by ... [six years after the end-date for transposition of this Directive].

3. Ensure a closed product list

These amendments would ensure that the lists in the annex focus on the 10 most found single-use plastic products and cannot be extended to additional products when implemented at national level, as doing so would create barriers to trade and distort competition in the Union.

Commission Proposal	Suggested Amendment
Recital 7	Recital 7
To focus efforts where they are most needed, this Directive should only cover the most found single-use plastics products, which are estimated to represent around 86% of the single-use plastics found, in counts, on beaches in the Union.	To focus efforts where they are most needed, this Directive should only cover the 10 most found single-use plastics products, which are estimated to represent around 86% of the single-use plastics found, in counts, on beaches in the Union.

Commission Proposal	Suggested Amendment
Article 2 Scope	Article 2 Scope
This Directive shall apply to the single-use plastic products listed in the Annex and to fishing gear containing plastic.	This Directive shall only apply to the single-use plastic products listed in the Annex of this Directive and to fishing gear containing plastic. The same lists in the Annex of this Directive shall apply in all Member States and shall only be modified by revision of this Directive.

4. Avoid making litter clean-up and prevention the sole responsibility of producers

Given the critical role of other actors involved in waste management in overcoming the problems of poor solid waste management practices and infrastructure, littering by citizens and lack of public awareness, producers cannot be solely responsible for litter clean-up.

Commission Proposal	Suggested Amendment
Recital 15	Recital 15
With regard to single-use plastic products for which there are no readily available suitable and more sustainable alternatives, Member States should, in line with the polluter pays principle, also introduce extended producer responsibility schemes to cover the costs of waste management and clean-up of litter as well as the costs of awareness-raising measures to prevent and reduce such litter.	With regard to single-use plastic products for which there are no readily available suitable and more sustainable alternatives, Member States should, in line with the polluter pays principle, also introduce extended producer responsibility schemes to cover the costs of waste management and clean-up of litter as well as the costs of awareness-raising measures to prevent and reduce such litter.

Commission Proposal	Suggested Amendment
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Recital 19	Recital 19
(19) Directive 2008/98/EC lays down general minimum requirements for extended producer responsibility schemes. Those requirements should apply to extended producer responsibility schemes established by this Directive. <i>This Directive, however, establishes additional extended producer responsibility requirements, for example, the requirement on producers of certain single-use plastic products to cover the costs of clean-up of litter.</i>	(19) Directive 2008/98/EC lays down general minimum requirements for extended producer responsibility schemes. Those requirements should apply to extended producer responsibility schemes established by this Directive. <i>This Directive, however, establishes additional extended producer responsibility requirements, for example, the requirement on producers of certain single-use plastic products to cover the costs of clean-up of litter.</i>

Commission Proposal	Suggested Amendment
Article 8 Extended producer responsibility Paragraph 2	Article 8 Extended producer responsibility Paragraph 2
With regard to the schemes established pursuant to paragraph 1, Member States shall ensure that the producers of the single-use plastic products listed in Part E of the Annex shall cover the costs of the collection of waste consisting of those single-use plastic products and its subsequent transport and treatment, <i>including the costs to clean up litter</i> and the costs of the awareness raising measures referred to in Article 10 regarding those products. For single-use plastic products that are packaging, the requirements laid down in this paragraph supplement the requirements regarding extended producer responsibility schemes laid down in Directive 94/62/EEC and Directive 2008/98/EC.	With regard to the schemes established pursuant to paragraph 1, Member States shall ensure that the producers of the single-use plastic products listed in Part E of the Annex shall cover the costs of the collection of waste consisting of those single-use plastic products and its subsequent transport and treatment, <i>including the costs to clean up litter</i> and the costs of the awareness raising measures referred to in Article 10 regarding those products. For single-use plastic products that are packaging, the requirements laid down in this paragraph <i>supplement</i> <i>are without prejudice to</i> the requirements regarding extended producer responsibility schemes laid down in Directive 94/62/EEC and Directive 2008/98/EC.

5. Introduce harmonised boundary conditions to ensure proportionate and non-discriminatory measures

These amendments would help to ensure that measures implemented at national level are proportionate and non-discriminatory by introducing harmonised boundary conditions.

Commission Proposal	Suggested Amendment
Recital 11	Recital 11
For certain single-use plastic products,	For certain single-use plastic products,

<p>suitable and more sustainable alternatives are not yet readily available and the consumption of most such single-use plastic products is expected to increase. To reverse that trend and promote efforts towards more sustainable solutions Member States should be required to take the necessary measures to achieve a significant reduction in the consumption of those products, without compromising food hygiene or food safety, good hygiene practices, good manufacturing practices, consumer information, or traceability requirements set out in Union food legislation.</p>	<p>suitable and more sustainable alternatives are not yet readily available and the consumption of most such single-use plastic products is expected to increase. To reverse that trend and promote efforts towards more sustainable solutions Member States should be required to take the necessary measures, without prejudice to article 18 of Directive 94/62/EC, to achieve a significant reduction in the consumption of those products, without compromising food hygiene or food safety, good hygiene practices, good manufacturing practices, consumer information, or traceability requirements set out in Union food legislation. Prior to adopting such measures, Member States should be required to conduct an assessment of the social, economic and environment impacts to ensure the measures are proportionate and non-discriminatory.</p>
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Commission Proposal	Suggested Amendment
Article 4 Consumption Reduction Paragraph 1, second indent	Article 4 Consumption Reduction Paragraph 1, second indent
<p>Those measures may include national consumption reduction targets, measures ensuring that reusable alternatives to those products are made available at the point of sale to the final consumer, economic instruments such as ensuring that single-use plastic products are not provided free of charge at the point of sale to the final consumer. Those measures may vary depending on the environmental impact of the products referred to in the first subparagraph.</p>	<p>Those measures must be proportionate and non-discriminatory. They may include national consumption reduction targets, measures ensuring that reusable alternatives to those products are made available at the point of sale to the final consumer, economic instruments such as ensuring that single-use plastic products are not provided free of charge at the point of sale to the final consumer. Those measures may vary depending on the environmental impact of the products referred to in the first subparagraph.</p>

Commission Proposal	Suggested Amendment
Article 4 Consumption reduction Paragraph 1 a (new)	Article 4 Consumption reduction Paragraph 1 a (new)
	1a. Prior to adopting those measures, Member States shall conduct an

	<p>assessment of the social, economic and environmental impacts, including an evaluation of:</p> <ul style="list-style-type: none"> - the presence of a sufficient supply of fit-for-purpose alternatives; - the environmental impacts of alternative products; - where applicable, the impacts on food hygiene, food safety, food waste, good hygiene practices, good manufacturing practices, consumer information and traceability requirements in Union food legislation⁹; - the impacts on the Internal Market, international trade agreements, and consumer prices; - the impact on consumer health and safety, especially child safety; - the effectiveness of alternative measures, such as voluntary agreements.
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Commission Proposal	Suggested Amendment
<p>Article 5 Restrictions on placing on the market</p> <p>Paragraph 1</p>	<p>Article 5 Restrictions on placing on the market</p> <p>Paragraph 1</p>
<p>Member States shall prohibit the placing on market of the single-use plastic products listed in Part B of the Annex.</p>	<p>Member States shall prohibit the placing on market of the single-use plastic products listed in Part B of the Annex. Prior to implementing this measure, Member States shall conduct an assessment of the social, economic and environmental impacts, including an evaluation of the elements listed in Article 4.1a.</p>

6. Fully assess the implications of proposed measures

Since national packaging waste collection systems vary from one Member State to another, this amendment would help to ensure that each Member State assesses the potential national impact of the effect that a 90% separate collection target for bottles would have on the functioning of EPR schemes and their ability to fulfil the requirements under Article 7 in

⁹ Regulation (EC) 178/2002 laying down the general principles and requirements of food law (OJ L 31, 1.2.2002, p.1-24), Regulation (EC) No 852/2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p.1-54), Regulation (EC) No 1935/2004 on materials intended to come into contact and other relevant legislation related to food safety, hygiene and labelling (OJ L 338, 13.11.2004, p.4-17).

the revised PPWD on Return, collection and recovery systems if implemented through deposits and separate collection targets for EPR schemes.

Commission Proposal	Suggested Amendment
Article 9 Second paragraph (new)	Article 9 Second paragraph (new)
-	<i>Member States shall ensure that those measures are subject to an ex ante assessment with regard to the effects on the functioning of EPR schemes.</i>