

On 11 June 2020, the European Commission published a so-called [inception impact assessment](#), which is its **plan for revising the Packaging and Packaging Waste Directive 94/62** (PPWD).

Originally adopted in 1994, the PPWD covers all packaging placed on the European market and all packaging waste. Whilst plastic packaging in particular has received a lot of – mostly negative – attention recently, including from EU policymakers, both the existing law and its revision in principle refer to all packaging and are therefore **relevant to all materials**.

The PPWD has the dual aims to harmonise national measures and to this end to ensure the functioning of the internal market, and to avoid obstacles to trade, while preventing any environmental impact of packaging and packaging waste. Hence, it already includes the objectives to prevent the production of packaging waste and reduce its final disposal, through reusing, recycling and other recovery solutions. All packaging must comply with **'essential requirements'** relating to its composition and reusable and recoverable nature.

The EU last revised the PPWD in May 2018, in the context of its first, 2015 Circular Economy Action Plan.

Context

The Commission notes that it identified a need for clearer and more specific essential requirements already in 2014, before the recent revisions of the PPWD. This new revision of the PPWD builds on the earlier 2018 [Plastics Strategy](#) and the 2019 [European Green Deal](#) Commission policies, which set the ambition to **make all packaging, including plastic packaging, reusable or recyclable in an economically viable manner by 2030**. It also reflects the objectives of the new [Circular Economy Action Plan](#), adopted in March 2020.

The **Commission stops short of** making all ideas the core of this initiative that EU Environment Commissioner Virginijus Sinkevičius floated in an interview with major German newspaper [Welt](#) in January. They included as "an important step [...], for example, to ban plastic packaging." Some trade media interpreted this as the Commission seriously evaluating **a general ban of plastic packaging**. However, with its new initiative, the Commission also does not take specific bans off the table. In addition, other measures such as packaging requirements could have similarly significant impacts.

Problems That The Initiative Aims to Address

With this revision, the Commission wants to address multiple problem clusters, in particular the **limited competitiveness of secondary, recycled materials** vis-à-vis fossil, virgin materials and the **increasing generation of packaging waste**. The Commission also wants to help EU Member States to achieve their recycling targets – which stem from the 2018 revision of the PPWD and other waste laws.

With regard to **recycling**, the Commission finds that packaging design does not sufficiently consider, and therefore increases, the difficulties and costs of treating packaging waste – including collection and sorting. Current trends on the market even showed an increase in **difficult-to-recycle packaging such as flexible multilayer composite packaging**. This was exacerbated by the lack of specific, clear and enforceable legal rules requiring that packaging can be recycled to a high quality in a cost-efficient way. The existing essential requirements left too much room for a trend towards **light-weighting** of packaging, sometimes **at the expense of recyclability**.

With regard to waste **prevention**, the Commission notes that the packaging sector is the biggest contributor to plastic waste, despite an overall trend towards light-weighting. Drivers contributing to growing packaging consumption included the shift from reusable to **single-use** formats, growing **online sales** and 'excessive' **over-packaging**.

Basis For EU Intervention

The Commission wants to maintain the current legal basis of the PPWD, the competence of the EU for the internal market (Article 114 of the Treaty on the Functioning of the European Union). Uncoordinated national measures to address sustainability aspects of packaging could result in obstacles to the free movement of goods and hinder the development of markets for secondary raw materials.

Objectives

In line with this legal basis, the Commission's objectives are to ensure the free movement of packaging and packaged goods, and a well-functioning internal **market** for secondary raw materials through fully harmonised rules, while tackling negative impacts on the **environment** and health by ensuring a reduction in packaging waste generation, including by reducing (over)packaging.

Policy Options

The Commission intends to meet these objectives through **clearer**, more enforceable EU-level requirements on packaging, which are to be **revised to drive design for reuse and recyclability** and **prevent** the continued growth in the generation of packaging waste.

It notes that in a 'baseline scenario', where the PPWD remains unchanged, some improvements should still come from implementing the new rules of the 2019 [Single-use Plastics Directive](#), on the eco-modulation of extended producer responsibility (EPR) fees, as well as from voluntary initiatives such as the [Circular Plastics Alliance](#) and the [European Plastics Pact](#).

Commission officials have indicated that the baseline scenario without a proposal of changes to the PPWD is **highly unlikely**.

The Commission has not been as clear about whether or how the revision of the PPWD and the work of the **Circular Plastics Alliance** (CPA) could be aligned where they overlap. In the CPA, over 200 EU organisations representing virtually all major plastic value chains, including, but not limited to the packaging sector, have been working under the auspices of the Commission towards a **voluntary** goal of using 10 million tons of recycled plastic in products, including packaging, in Europe. Their work includes design for recycling.

The Commission's policy options include **amending the essential requirements** along with **additional measures to tackle waste generation**. This could be achieved by introducing **general, overall or material- and/or format-specific targets and measures**, e.g. waste reduction targets. It may also include **making reuse mandatory for some formats**, in particular in the area of transport packaging.

Other measures that the Commission will examine include:

- Requiring **all packaging to be reusable or recyclable** (in a cost efficient, economically viable manner) and providing an enforceable **definition of 'recyclable packaging'**;
- **Restricting the use of materials** to certain applications, in particular where alternative reusable products or systems are possible or consumer goods can be handled safely without packaging;
- **Reducing the complexity of packaging materials** including the number of material and polymers used;
- Introducing **recycled content targets** for specific packaging formats; and/or
- Introducing **minimum mandatory green public procurement** criteria and targets.

Restrictions, i.e. **bans** of certain material-application combinations, which the Commission has considered include, e.g., plastic for fruits and vegetables, teabags and coffee capsules.

Commission officials have indicated that reducing the **complexity of packaging materials** goes beyond looking at so-called **complex packaging** that combines multiple materials or polymers in one product in a way that makes it harder to sort and recycle it. They have suggested that the Commission is contemplating assigning certain applications, such as food contact packaging, to certain plastic, in order to decrease the number of different polymers on the market, regardless of whether they are combined in a product or not.

Preliminary Assessment of Expected Impacts

From an **economic and social perspective**, the Commission foresees that clearer and more harmonised rules on packaging will increase long-term planning certainty for investments. Reinforcing the essential requirements would improve the cost-effectiveness of sorting and subsequent high quality recycling of packaging waste, even though in the short term **packaging manufacturers and users may face increased costs**. Measures to reduce packaging waste would likely require the adaptation of producers, retailers and consumers to new business and consumption models. However, adaption costs could be offset through lower EPR fees and better consumer acceptance.

The Commission says it will **take into account** the **impacts of COVID-19**, in particular concerning the impacts on the EU recycling sector, as well as safety and hygiene implications for consumers.

It expects that an increased reliance on reusable packaging, increased recycling and a more competitive market for secondary materials will have positive impacts in terms of **job creation**. It plans to further assess impacts on jobs and the distribution of costs, benefits and administrative burdens – in particular on SMEs and public authorities.

Environmental impacts to be assessed would include reduced greenhouse gas emissions, increased resource efficiency, reduced pollution to water (including marine litter), soil and air from landfilling and incineration, related ecosystem degradation and health risks. The Commission says that it will pay particular attention to the impact on **food waste** generation.

Despite contemplating specific restrictions, i.e. **bans**, the Commission considers fundamental rights, such as the freedom to conduct a business and the right to property, or impacts on them, not applicable.

In fact, specific waste reduction targets and **mandatory design requirements** for example, could also have **significant** indirect and direct **impacts on what packaging producers will be allowed to place on the European market** and consequently **limit** their **customers' choice**.

Evidence Base

The evidence base for the revision will include several studies conducted for the Commission, including an extensive [scoping study on the reinforcement of the essential requirements](#), which a consortium of consultants carried out in 2019-2020, and which included multiple stakeholder consultations.

Next Steps

The Commission **invites** stakeholders to provide **comments** on its plan until **6 August**.

Work on a full impact assessment, which will underpin an eventual legislative proposal, has already started. This process is partly by-invitation-only.

It is expected to include a **call for evidence**, especially on hazardous substances (**July-September**); followed by a **public consultation**, including on most problematic packaging types (**August-October**); and further stakeholder **workshops** as well as **interviews** (**September-October**). A **final report** is expected in **March 2021**.

The Commission is expected to make a **legislative proposal in Q2 2021**.

That proposal will then go through the EU 'ordinary legislative procedure', involving the Council (representation of the Member States) and European Parliament.

How We Can Help

For more information about this important new initiative and how it relates to multiple other EU policies and laws on the Circular Economy, packaging and plastics, or to discuss how to best engage in the legislative process, please get in touch with us.

We can help you understand their implications and impact on your operations, propose matching legal, regulatory and other risk mitigation measures or devise a strategy to maximise potential opportunities for you.

We have a global network of 45 offices in 20 countries, with 15 of those offices located in Europe. This allows us to combine the expertise of more than 600 lawyers across Europe with our "best in class" Public Policy team in order to help clients successfully navigate their way through complex legal, regulatory and policy matters at the national and EU level.

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