

INSIGHT: New packaging waste regulation draft could prove controversial

By Mark Victory

LONDON (ICIS)--The latest draft of the Packaging and Packaging Waste Regulation (PPWR) – which passed its plenary vote in the EU Parliament on Wednesday 22 November – brings further sweeping changes to the proposed legislation, some of which are likely to prove controversial.

The wide-ranging changes from the [initial draft](#), many of which are in line with the European Parliament's Committee on Environment (ENVI)'s [proposed amendments](#) from October, include:

- A watering down of minimum recycled content and collection targets at member state and company level
- The acceptance of bio-based material as potentially counting towards 50% recycled content targets
- Exemptions for linings in recycled content targets and recyclability assessments, which could encourage the use of difficult-to-recycle paper and cardboard food-contact packaging
- Exemptions from recyclability assessments for wood and wax packaging
- Bans on the intentional addition of bisphenol A (BPA) and per-and-polyfluoroalkyl substances (PFAs) in packaging
- Labelling obligations and data provision obligations – including making information publicly available
- An extension of Extended Producer Responsibility obligations, which would include member states using fees collected to support collection infrastructure and make producers/distributors responsible for covering recycling fees
- A push towards 'regulated value chains'
- Further amendments to the definition of recycling, tying the PPWR to directive 2008/98/EC, as well as the legislation's own definition of recycling
- Amendments to mandated Deposit Return Scheme (DRS) proposals
- Changes to reuse and refill targets, including adding requirements that it must be reusable 'multiple times' to the reuse definition
- Including online retailers into many of the PPWR obligations
- The setting up of a 'Packaging Forum' made up of value chain stakeholders to vet future legislation and targets

The legislation still needs to go through the trilogue stage, where recommendations from the EU Council and other stakeholders will be debated, before it is adopted, and the final version could look quite different from the version voted on by the Plenary.

At a minimum it is likely to provoke heated discussion and lobbying from all sides of the various packaging value chains.

RECYCLED CONTENT TARGETS

What will most likely prove one of the most hotly-debated changes under the latest version of the PPWR is the incorporation of ENVI's proposed amendment on the acceptance of bio-based plastics as counting towards up to 50% of mandated recycled content targets in packaging.

This was something that was heavily criticised by many in the mechanical recycling and packaging chains, when it was adopted by ENVI under their proposed changes.

This is not because the industry doesn't support the development of the bio-based plastic chain, but because the acceptance of bio-based as recycled content could potentially harm investment in and development of the mechanical recycling chain.

Many players have stated that there should potentially be bio-based content targets, but that these should be separate from the recycled content targets.

Coupled with this, many do not view bio-based as a form of recycling – although it reuses biological waste – but as a form of virgin production.

On those targets the minimum recycled content target for contact-sensitive plastic packaging has been reduced to 7.5%, from 10% by 2030, and food-contact material appears to have been granted an exemption from having to meet those targets. It also adds a 25% recycled content target for non-polyethylene terephthalate (PET) contact sensitive packaging.

It also reduces member state packaging collection targets down from 90% in the previous draft, to 85%.

Taken together, these changes amount to a significant dilution of the previous targets. Nevertheless, they remain ambitious, and would require a significant scale-up in packaging suitable recycled content production and collection, particularly in markets such as recycled polyolefins, given current structural shortages in Europe.

Likely to be more warmly received by the industry, the latest version shifts the calculation of recycled content from a per packaging basis, to an average per format, per manufacturing plant, and per year, which would make the regulation more practical to enforce.

The new version also deletes the clause in the draft version that would have allowed the Commission to amend the recycled content targets due to the lack of availability or “excessive prices” of specific recycled plastics.

It would require the Commission to develop a methodology by 31 December 2025 to certify recycled content placed on the market.

LINING EXEMPTIONS AND PAPER AND CARDBOARD PACKAGING

The other area of the new draft likely to cause controversy in the market is the addition of exemptions for linings, coatings, varnishes, paints, inks adhesives, lacquers, and closures from definitions of ‘composite packaging.’

This would appear to remove them from key ‘recyclability at scale’ assessments, and from recycled content targets. Of these, it is the lining exemptions likely to cause the fiercest debate.

This is because food-contact cardboard and paper packaging – outside of corrugated cardboard used in fruit and vegetable packing – typically includes a plastic barrier (now apparently exempted under the lining exemption) which makes it a multi-layer and typically difficult to recycle.

Not including a barrier would expose the paper or cardboard to food-contamination and moisture, which would make the material non-recyclable.

Coupled with this, non-plastic food packaging alternatives typically [have higher energy usage, carbon dioxide \(CO2\) emissions, and higher weight](#) (which results in higher emissions and fuel consumption when transported).

While cardboard and paper packaging does have high recycling rates of 81.5% in the EU27 in 2020, according to Eurostat data (the latest year for which data is available, although 2021 rates have been estimated by Eurostat at 82.5%), much food-contact packaging falls in to the 18.5% not currently recycled.

Coupled with this, recycling rates for cardboard and paper packaging have been falling from a peak of 85.4% in 2016 and 2017. Correlation is not causation, but this coincides with increased adoption of paper and cardboard in food-contact packaging.

When this amendment was first proposed by ENVI a number of players in the industry expressed concern both that this would leave the impression in the consumer's mind that paper and cardboard food-contact packaging is more recyclable and sustainable than it actually is, and that it would hasten a shift to alternative materials and away from plastic.

Tempering this slightly, barriers are now included in the annex under the list of indicative parameters to be considered when establishing design criteria for recycling, along with:

- Additives
- Labels/sleeves
- Closure systems and small parts
- Adhesives
- Inks/printings
- Colours
- Material composition
- Coatings
- Products residues/ease of emptying
- Ease of dismantling

Wood and wax packaging have been exempted from recyclability criteria.

RECYCLING DEFINITIONS AND CHEMICAL RECYCLING

The new version incorporates ENVI's proposed rewording of the regulations definition of recycling, which appears to re-add the ambiguity for pyrolysis-based chemical recycling on whether pyrolysis oil would count towards the targets that exists in current recycling definitions under EU law.

This is an ambiguity the original draft had seemingly sought to remove. It also adds in requirements that material meets the definition of recycling under 2008/98/EC, which [has itself created ambiguity](#) on the legal status of pyrolysis-based chemical recycling.

By tying chemical recyclers to both definitions it could potentially make it more difficult for pyrolysis oil – the dominant output of chemical recycling in Europe – to be considered as recycled material, depending on how definitions interpreted and enforced.

REGULATED VALUE CHAINS

The new draft also adopt ENVI's proposed wording in the recital portion of the regulation around developing 'regulated value chains' although there are no details around what this would mean in practice.

It would also require member states to set up a system "to provide safe and equitable access to recycled materials for use in applications where the distinct quality of the recycled material is preserved or recovered in such a way that it can be recycled further and used in the same way and for a similar application, with minimal loss of quantity, quality or function," by January 2029.

Again, there is no detail or clarity on what 'equitable access' would mean in this context, but it has the potential to fundamentally reshape the value chain and existing pricing and contract mechanisms.

EXTENDED PRODUCER RESPONSIBILITY

The changes stipulate that funds raised by Extended Producer Responsibility fees set out in the draft are earmarked to finance the cost of collection, sorting and recycling of packaging.

Lack of sufficient infrastructure has consistently been one of the key challenges to reaching scale for recycled plastics commonly mentioned by players throughout the value chain. It is likely to be welcomed.

Less likely to be welcomed are requirements for public disclosure of information collected under its Extended Producer Responsibility (EPR) proposals, online and free of charge.

The new draft would also extend EPR costs to also cover the subsequent transport and treatment of waste, in addition to waste collection and infrastructure costs that formed part of the initial draft.

OTHER MEASURES

The PPWR would create a number of new labelling obligations under a harmonized system, including pictograms and minimal language, to detail recycled content and recyclability.

The latest version extends many of the proposed regulations' requirements to online platforms.

It also adds obligations on member states to reduce per capita packaging waste by 10% by 2030, 15% by 2035, and 20% by 2040, compared with 2018 levels.

Lastly, the latest version would see the creation of a 'Packaging Forum' consisting of stakeholders throughout the value chain across member states - including waste treatment industry representatives, manufacturers and packaging suppliers, distributors, retailers, importers, SMEs, environmental protection groups and consumer organisations – to be consulted on the preparation of delegated and implementing acts under the regulation.

The scope of the PPWR is wide-ranging, and with the trilogue period approaching – which will seek to harmonise the view of the EU Parliament, the Council, the Commission, and the industry – discussion is likely to be intense and the final form of the regulation currently unknowable.

Whatever form it takes, it is likely to have major repercussions across the packaging chain and any players connected to the market will need to familiarize themselves with the proposals and ensure their voice forms part of the debate.