

## **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<sup>1</sup>. 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<sup>2</sup>. 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)<sup>3</sup>.

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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<sup>1</sup> 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).

<sup>2</sup> 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](#).

<sup>3</sup> 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<sup>4</sup>.

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<sup>5</sup>.

### 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

<sup>4</sup> 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](#), [Case C-309/02](#), [C-246/99](#).

<sup>5</sup> 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



Bureau National Interprofessionnel du Cognac



BusinessEurope



CEFLEX - A Circular Economy for Flexible Packaging



CEO - Comité Européen de l'Outillage



CEPE - European Council of the Paint, Printing Ink and Artists' Colours Industry



Cepi - Confederation of European Paper Industries



Cicloplast - Spanish Association of Plastics Transformers and Raw Materials Producers for Promoting Plastics Packaging Recycling



České průmyslové sdružení pro obaly a životní prostředí

CICPEN - Czech Industrial Coalition for Packaging and the Environment



CITPA - the International Confederation of Paper and Board Converters in Europe



Copa-Cogeca



Cosmetics Europe



COTANCE - Confederation of National Associations of Tanners and Dressers of the European Community



Drinks Ireland



DVI - German Packaging Institute



EAFA - European Aluminium Foil Association



EUROPEAN BALLOON  
& PARTY COUNCIL

EBPC - European Balloon and Party Council



ECMA - European Carton Makers Association



ECMA

ECMA - European Cigar Manufacturers Association



ECOEMBES - Ecoembalajes España



EDA - European Dairy Association



EDANA - International association serving the nonwovens and related industries



European DIY  
Retail Association

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



EUROPEN – 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 Termék tanács



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- & Diamantverktøys- 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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