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REGULATORY SCRUTINY BOARD OPINION

Revision of the Packaging
and Packaging Waste Directive

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Revision of the Packaging and Packaging Waste Directive

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Directive 94/62/EC is the EU instrument that establishes 'essential requirements' that packaging and packaging waste on the EU market have to comply with. These requirements cover the manufacturing and composition of packaging, the reusable or recoverable nature of packaging (recycling, energy recovery or composting/biodegradable packaging) and the minimisation of hazardous substances.

In order to contribute to the objectives of the European Green Deal and to deliver on the commitments of the new Circular Economy Action Plan, the Commission proposes to revise the Directive and to transform it into a Regulation. This is also to address the issues encountered with the implementation of the rules and the indications that some of the recycling targets in place may not be met in a timely manner.

(B) Summary of findings

The Board notes the additional clarifications in the draft report responding to the Board's previous opinion.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report lacks clarity on some measures and does not sufficiently identify, assess, and compare all options.

(2) The cost-benefit analysis and comparison of options do not adequately account for the consumer savings and the costs resulting from sales losses for packaging producers. Proportionality of the preferred option is not sufficiently assessed.

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The report should more clearly present the challenges related to the internal market and assess them in depth, going beyond the proliferation of national labels. It should better analyse why certain Member States reach their recycling rate targets, while others do not and assess the differences between Member State in terms of packaging waste generation and how this affects fragmentation of the single market. It should better explain and substantiate the scale of the problem of consumer confusion resulting from different packaging labelling across the Member States.

(2) The report should explain how the expected impacts of related measures (such as the Single Use Plastics Directive and the Plastics Own Resource) are taken into account in the modelling of the baseline. It should better justify the assumption that the Single Use Plastics Directive will have a low impact on the baseline and clarify how the effects of the Plastics Own Resource drive the baseline modelling.

(3) The report should be clearer on some measures and how they have been reflected in the assessment of the (preferred) option(s). It should provide greater clarity on the role and functioning of potential waste reduction targets for 2035 and 2040, what the evidence base for fixing these targets is and whether alternative targets have been considered. It should be clear whether these targets will be set already in the legislative proposal, and if so, what the additional costs and benefits will be. It should be also clear on which measures greater flexibility will be provided to Member States and present the corresponding rationale in the subsidiarity section. It should be clear which measures will be taken via implementing regulation and on the basis of what analytical evidence base. Finally, the report should consider discarding the option on quantitative definition of recyclable packaging (M22c) upfront, given there seems broad stakeholder consensus that it is not feasible.

(4) The preferred option 2 plus (which is a combination of measures of options 2 and 3) should be identified, assessed, and compared upfront to allow decision makers fully informed decisions based on all costs and benefits of the four options.

(5) While the revised report is now clearer on the distributional transfers, in particular between single-use packaging producers and consumers, this is not adequately reflected in the cost-benefit analysis (and subsequent comparison of options in terms of effectiveness and efficiency). The analysis and overview tables must be clear how the substantial packaging producer sales revenue losses and the consumer savings have been reflected in the costs and benefits estimates of the economic impact assessment. In presentational terms, the report should present both the costs and benefits in a clear way to allow easy calculation of net benefits or costs (and related benefit-cost ratios).

(6) The report should be clearer on the net impact on employment, including by adding further detail on the methodology and providing monetised estimates of expected additional jobs. It should explain how the employment impacts are reflected in the cost-benefit and efficiency analysis.

(7) On the basis of a complete cost-benefit analysis of the four main policy options, the report should further develop the comparison of the policy option section, by being more explicit on how effective the options are in delivering on the three specific objectives and by reviewing some of the efficiency scores. For example, it is not clear why the scoring of efficiency of the (low-cost) option 1 performs less well when compared to efficiency scoring of the more costly and difficult to implement options.

(8) Based on a more complete cost-benefit analysis and a reinforced comparison of options, the report should strengthen the proportionality assessment of options and the choice of the preferred option (including all the measures where the report remains vague on their final inclusion).

(9) The report should provide further clarification of the administrative costs for the One In, One Out approach. It should be clearer on the underlying assumptions and how the costs were calculated.

(10) The presentation of costs and benefits in [annexes 3 and 9 and the executive summary,] should be fully aligned with the revised cost-benefit analysis, including full reporting of the savings and costs related to the One In, One Out approach.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Revision of Directive 94/62/EC on Packaging and Packaging Waste Directive to reinforce the essential requirements for packaging and assess the feasibility to establish EU level packaging waste prevention measures and targets
Reference number	PLAN/2019/5396
Submitted to RSB on	12 September 2022
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option *Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together)*		
Description	***Amount***	***Comments***
Waste management costs	Saving of EUR 4.2 billion in 2030	Significant reduction in waste management costs associated with improvements in efficiency, and reduced volumes of waste.
Material savings	Saving of EUR 10.2 billion in 2030	
Biowaste contamination	Saving of EUR 122 million in 2030	
Reduction in packaging consumption	Saving of EUR 45.8 billion in 2030	Calculated through reduction in unit consumption, and including material savings and waste management savings. Assumption that costs (savings) for producers, will be passed on to consumers (who will though face some offsetting hassle costs).
Reduction in GHG emissions and air pollutants	26 million tonnes CO2e in 2030, plus reduction in air pollutants. The estimated value of externalities reduction is EUR 7.1 billion in 2030	
Reduction in packaging waste	Reduction of 19% compared to the baseline	
Reduction in financial costs associated with packaging and packaging waste	The net financial impacts are a saving of EUR 47.8 billion in 2030.	As part of this will be reduced through consumer changes in behaviour, there could be some offsetting inconvenience (not costed). Other changes will not have offsetting effects (eg reduction in over packaging).

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Action	Direct adjustment costs				EUR 4 billion (for reuse schemes) EUR 523 million (for DRS schemes)		
	Direct administrative costs			EUR 30 million	EUR 1.26 billion		
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Costs related to the 'one in, one out' approach							
Actions	Measure 10 - standardisation of reusable packaging formats and effective reuse systems with the aim of optimising reusable packaging relative to function and environmental performance				Negligible admin costs for participation in the standardisation process		
	Measure 2b: Mandatory 5% absolute 'intensity' reduction in 2030		Unclear – will depend on MS implementation		Unclear – will depend on MS implementation		

			choices, but could include monitoring and reporting		choices, but could include monitoring and reporting		
	Measure 8c: Mandatory targets to increase the reuse of packaging – high level				The economic operators will face the administrative burden of reporting their progress presumably by sharing data/information on sales/trips for their multiple use items with the Member States.		Costs incurred for meeting legal obligations to provide information, for this measure are expected to derive from monitoring and reporting the progress with respect to the targets
	Measure 21 and 28: Update of Essential Requirements and recyclability definition				Negligible admin costs for participation in the standardisation process		
	M22b: definition of recyclable packaging				certification of recyclability, administrative costs for the packaging producers of EUR 1.14		

					billion		
	Measure 23: Harmonisation of EPR Fee Modulation Criteria				Negligible, as EPR fees are already set		
	Measure 29d: Compostability for plastics packaging				Small reduction as reduced assessment requirements		
	Measure 35em/h: Broad targets for plastic packaging – certification scheme and audit			EUR 30 million	Certification of plastic packaging EUR 120 million		
	Mx Update of current material-based labelling				Savings from simplification, reduced labels		
	Measure 32b – Notification of substances of concern in packaging				Minimal costs associated with notification		
	Measure 42b: Harmonization of extended producer responsibility reporting				Possible negligible costs if increased data required but reporting already in place		
	Measure 27c-y: Labelling criteria to facilitate consumers´			EUR 10.3 billion (spread over 4 years) but			

	sorting and Measure Mk: Restrictions on use of confusing labels			more than offset by administrative savings so assumed net zero			
	Measure 38-j: Labelling criteria for Recycled Content				No additional costs		
	Measure 40b: Mandatory minimum Green Public Procurement criteria				Small savings from harmonisation		
	Measure PCB1: Reporting obligation on plastic carrier bags (PCB)				Possible negligible costs		

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Opinion

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Overall opinion: NEGATIVE

(A) Policy context

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In order to contribute to the objectives of the European Green Deal and to deliver on the commitments of the new Circular Economy Action Plan, the Commission proposes to revise the Directive and to transform it into a Regulation. This is also to address the issues encountered with the implementation of the rules and the indications that some of the recycling targets in place may not be met in a timely manner.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) The report is not sufficiently clear about the remaining gap that the initiative aims to address, given related initiatives and policies (notably, Single Use Plastics Directive and the Plastics Own Resource covering plastic waste). It is not sufficiently clear how full coherence between these initiatives will be ensured.

(2) The report does not sufficiently explain how the proposed change of legal instrument to a Regulation fits with the discretion given to Member States in the Plastics Own Resource to define the most suitable policies to reduce plastic waste in line with the principle of subsidiarity.

(3) The report does not elaborate enough the options regarding the main policy choices for decision makers and the content, functioning and practical feasibility of the specific measures. It is not sufficiently clear which decisions will be taken as part of this initiative, which will be subject to implementing legislation and further evidence gathering.

(4) The report does not sufficiently assess the distributional and overall impacts, in particular on consumers and producers. It is not clear to what extent Member States are affected differently.

(5) The report does not present the overall costs and benefits of the option packages. It does not provide a clear comparison of options in terms of effectiveness, efficiency/proportionality and coherence. The choice and proportionality of the preferred option is not sufficiently justified.

(6) The report does not present in a systematic and transparent manner the views of stakeholders on the options.

(C) What to improve

(1) The report should clearly set out whether the initiative's primary focus is on waste recycling or on waste prevention. It should present a coherent narrative and data when it comes to the existing packaging waste generation levels and recycling and other targets and the likelihood that Member States will reach them. It should explain the precise problems to be tackled, better specify their scale, including the remaining gap regarding plastics given the expected impact of related measures (such as Single Use Plastics Directive and the Plastics Own Resource). It should better explain and substantiate with robust evidence the scale of the problem of consumer confusion resulting from different packaging labelling across the Member States and how this confusion prevents to reach policy objectives. It should further develop and substantiate the problem of fragmentation of the internal market and the resulting costs for producers and consumers under the baseline.

(2) The report should pay greater attention to respect for the principle of subsidiarity – notably on the Plastics Own Resource – and to the trade-off between harmonisation on some aspects while leaving freedom to Member States to determine the best approach on others. The report should substantiate with evidence the claim that too much discretion for national authorities requires further harmonisation.

(3) The presentation of the options should be improved with a view to bringing out more clearly the key choices for policy makers. It should provide further detail to clarify the content, functioning and rationale of some of the key measures considered, including the introduction of a mandatory labelling system, mandatory corporate waste prevention plans (including the justification for the envisaged SME exemption) and minimum criteria for green public procurement.

(4) As regards the reuse and reduction targets, the report should be specific on the concrete values envisaged for which kind of sectors and packaging, it should explain how these have been determined and which alternative targets were considered. Current differences between Member States' performance should be explained and the potential for targeted solutions explored. Given the presence of strong subsidiarity issues, the report should present the determination of the legal delivery instrument as a policy choice, at a minimum when discussing the preferred option. The report should be clear which measures are determined by the initiative and which will be the subject of subsequent (implementing) legislation, for instance once the necessary evidence base (e.g. consumer testing for the labelling system) is available. It should discuss why a possible national exemption from the mandatory deposit return systems was not considered as an option.

(5) The report should transparently present the distributional impacts across affected actors

taking into account any transfers or cost pass-through and all costs and benefits for each group. It should explain and substantiated with evidence how the estimated EUR 50 billion revenue loss for the packaging industry will translate into tangible benefit for consumers. The analysis of the impacts on consumers should explains how consumers' behaviour will be affected by the labelling changes and should also take into account any potential price increases given the expected loss of revenues for packaging producers. The latter aspect should be explicitly discussed and reflected as producer costs (both in the main report and in Annex 3). The robustness of the presented cost and benefit estimates for consumers and producers should be clarified. The report should set out more clearly the methodology for the calculation of impacts on employment, including generation of "green" jobs. It should make clear how the impacts will differ across Member States and sectors.

(6) It should also provide further clarification and analysis of the administrative costs. It should be more explicit about how the estimated EUR 10.3 billion costs for businesses related to labelling will be offset by the expected EUR 18 billion administrative savings as a result of removal of the diverging national labelling systems. The report should make an effort to quantify the administrative costs stemming from the corporate waste prevention plans (as the costs are expected to be significant) and provide further detail in this respect in terms of 'one in, one out' approach.

(7) The report should be explicit about the overall costs and benefits of the three options, including by intervention area, bringing together the estimates of all monetise impacts. It should provide a clearer assessment and comparison of options in terms of effectiveness, efficiency/proportionality and coherence and better explain and justify the applied scoring methodology**.** The comparison of the impacts and proportionality of the options should benefit from greater use of cost-benefit analysis, including by intervention area per option package. The report needs to better demonstrate (including via revised modelling runs) that the combination of measures included in the preferred option is overall the best performing and most proportionate option and fully respects the subsidiarity principle regarding all measures included.

(8) The report should systematically and transparently present the views of the different stakeholder groups, including any dissenting views and show how the Commission has considered this input.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Revision of Directive 94/62/EC on Packaging and Packaging Waste Directive to reinforce the essential requirements for packaging and assess the feasibility to establish EU level packaging waste prevention measures and targets
Reference number	PLAN/2019/5396
Submitted to RSB on	13 April 2022
Date of RSB meeting	11 May 2022