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COMMISSION NOTICE

Guidance document for Regulation (EU) 2025/40 on packaging and packaging waste

(C/2026/3084)

Subject matter and scope of this Commission guidance document

Regulation (EU) 2025/40 on packaging and packaging waste ([1]) (hereafter: PPWR) entered into force on 11 February 2025 and will apply from 12 August 2026.

Following its adoption, and in the context of the Commission's environmental omnibus package and broader simplification efforts, the Commission has received a significant number of questions from stakeholders, including Member States' authorities, regarding the interpretation of certain provisions of the PPWR. To support the effective and timely implementation by economic operators and Member States, the Commission has used its best efforts to respond to the questions raised and to provide clarity and legal certainty as quickly as possible.

To this end, the Commission is issuing this guidance document to interpret selected provisions of the PPWR, with the aim of facilitating a uniform application of the Regulation across the Union. This guidance is complemented by a set of frequently asked questions (FAQs) developed as part of the Commission's ongoing dialogue with stakeholders.

This guidance document is based on the settled case-law of the Court of Justice of the European Union concerning the interpretation of EU law, according to which interpretation requires consideration not only of the wording of a provision, but also its context and the objectives pursued by the legal act of which it forms part ([2]).

This guidance document does not replace, add to, or amend the provisions of the PPWR, which alone establish the applicable legal obligations. It should not be considered in isolation but must be read in conjunction with the relevant legislation and does not constitute a stand-alone reference.

Considering further stakeholder input and practical experience gained with the application of the rules, this guidance document and the accompanying FAQs may be updated as necessary.

However, the binding interpretation of EU legislation remains the exclusive competence of the Court of Justice of the European Union.

Further details will be proposed via several implementing measures, such as implementing acts, delegated acts, standardisation requests and guidelines, to be proposed by the Commission in the coming 2-3 years. It should be noted, in this context, that the Commission does not intend to prioritise the implementing act establishing a methodology for identifying material composition of packaging by digital labelling.

([1]) Regulation (EU) 2025/40 of the European Parliament and of the Council of 19 December 2024 on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (Text with EEA relevance) (OJ L, 2025/40, 22.1.2025, ELI: http://data.europa.eu/eli/reg/2025/40/oj).

([2]) *KRONE-Verlag*, C-65/20, EU:C:2021:471, paragraph 25.

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1. Definition of packaging

Legal provisions:

Article 3(1), point (1), defines 'packaging' as 'an item, irrespective of the materials from which it is made, that is intended to be used by an economic operator for the containment, protection, handling, delivery or presentation of products to another economic operator or to an end user, and that can be differentiated by packaging format based on its function, material and design, including:

(a) an item that is necessary to contain, support or preserve a product throughout its lifetime, without being an integral part of the product, and which is intended to be used, consumed or disposed of together with the product;

(b) a component of, and ancillary element to, an item referred to in point (a) that is integrated into the item;

(c) an ancillary element to an item referred to in point (a) that is hung directly on, or attached to, the product and that performs a packaging function, without being an integral part of the product, and which is intended to be used, consumed or disposed of together with the product;

(d) an item that is designed and intended to be filled at the point of sale in order to dispense the product, which is also referred to as "service packaging";

(e) a disposable item that is sold and filled or designed and intended to be filled at the point of sale and which performs a packaging function;

(f) a permeable tea, coffee or other beverage bag, or soft after-use system single-serve unit that contains tea, coffee or another beverage, and which is intended to be used and disposed of together with the product;

(g) a non-permeable tea, coffee or other beverage system single-serve unit intended for use in a machine and which is used and disposed of together with the product;'.

Annex I to the Regulation provides an indicative list of items that are considered packaging and items that are not. With respect to flowerpots and plant pots, including seed trays, Annex I distinguishes between:

'Items that are packaging: (…) Flower and plant pots, including seed trays, intended to be used only for selling and transporting.

(…)

Items that are not packaging: Flower and plant pots, including seed trays, used in business-to-business relations throughout different stages of production or intended to be sold with the plant'.

Commission's interpretation:

Whether an item qualifies as packaging must be assessed based on the definition of packaging set out in Article 3(1), point (1). Annex I is indicative only and, in line with the case-law of the Court of Justice of the European Union ([3]) under Directive 94/62/EC on Packaging and Packaging Waste, applied by analogy, the inclusion of an item in Annex I alone is not sufficient for it to be classified as packaging. It is also necessary to verify whether the item meets the elements of the packaging definition, in particular whether it is intended to be used by an economic operator to contain, protect, handle, deliver or present a product, without being an integral part of that product, and whether it is intended to be used, consumed or disposed of together with the product, or constitutes an integrated component or an ancillary element performing a packaging function.

For example, if a beverage cup is sold empty in a supermarket to consumers for their private use, it is not considered to be packaging. On the other hand, if the supermarket fills such cups with a product (e.g. coffee) at a refill station, such cups are packaging, more particularly, 'service' packaging.

([3]) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365 31.12.1994, p. 10).

Tea lights or graveside lights' containers, or other candle containers such as filled glasses and ceramic bowls, are not packaging, as these containers do not fit the definition of packaging in Article 3(1), point (1), and 'graveside lights (containers for candles)' are listed as examples of non-packaging in Annex I of the Regulation.

As regards adhesive films used in the production processes of goods, they can be packaging or not depending on their function. Adhesive process films can be designed to enable or facilitate the transformation of raw or intermediate materials into semi-finished or final products, through manufacturing processes. If such films remain on the semi-finished products until their transformation and/or assemblage into subsequent semi-finished products or final products, and act as enablers of the manufacturing cycle and address distinct technical needs of such processes, they are not packaging under Article 3(1) point (1).

Dust bags for shoes and garments are deemed packaging if they are intended to be used for the containment, protection, handling, delivery or presentation of products to an end user. There is no exemption for textile packaging from the general packaging definition contained in Article 3(1), point (1), but textile sales packaging ([4]) is exempted from the recyclability requirements (Article 6(11)(g)). Dust bags for shoes and garments packaging may be packaging if they meet the regulatory definition of packaging. This will depend on their function, i.e. if they are used for the containment or protection of garments or shoes during their handling, delivery, or presentation, and on their intended use, i.e., whether they have been placed on the market by an economic operator as part of a product supply. Such items are not packaging when they are integral to the product (i.e. part of the product and necessary for its intrinsic use, not just for protection or handling), or if they are not placed on the market for packaging use, i.e. if they are sold separately by the consumer or provided free of charge in a non-commercial context.

Flower and plant pots, including seed trays, qualify as packaging where they are intended to be used for sale or transport, including pots and trays, in which the plant was cultivated at the last stage and in which it is sold to the end user. Conversely, pots and trays used by business operators (such as nurseries and growers) as part of their production cycle are not packaging, as they are mere enables of the manufacturing cycle. This applies except to the last pot or tray that is intended to be sold together with the plant to the end user. While the wording for both 'packaging' and 'non-packaging' in Annex I includes the element of selling, in practice, flowers and plants are not transplanted into separate 'transport' or 'sales' pots for marketing purposes. Rather, the same pots in which the plants were grown are used also for transport and sale. The classification of such pots must therefore follow the general definition of packaging, consider their function and intended use, rather than just relying on the indicative wording of Annex I. While the definition of packaging also covers items used in business-to-business relations, flowerpots that merely enable the production process, such as larger growing pots (for example, those exceeding 10 cm in diameter) used throughout the cultivation cycle, should not be regarded as packaging under Article 3(1), point (1).

Intravenous (IV) bags and syringes do not fall within the definition of packaging under Article 3(1), point (1), including where they are placed on the market pre-filled with medicines or saline. Although they may physically contain a substance, IV bags and syringes are not placed on the market merely to contain, protect, transport or present a product. Rather, they are designed, manufactured and regulated as integral delivery devices that enable safe, sterile and accurate administration of fluids or medicines to patients. When supplied pre-filled, the IV bag or syringe forms an integral part of the medicinal or medical product itself, such that the product cannot perform its intended function independently of the device. In this context, the IV bag or syringe is not a packaging component that is discarded to access its contents, but a functional part of the product placed on the market.

([4]) According to Article 3(1), point (5), 'sales packaging' means packaging conceived so as to constitute a sales unit consisting of products and packaging to the end user at the point of sale'.

2. Definition of a manufacturer of packaging

Legal provisions:

According to Article 3(1), point (13), '"manufacturer" means any natural or legal person that manufactures packaging or a packaged product; however:

(a) subject to point (b), where a natural or legal person has packaging or a packaged product designed or manufactured under its own name or trademark, regardless of whether any other trademark is visible on the packaging or on the packaged product, "manufacturer" means that natural or legal person;

(b) where the natural or legal person that has the packaging or packaged product designed or manufactured under its own name or trademark falls within the definition of micro-enterprise set out in Recommendation 2003/361/EC as applicable on 11 February 2025, and the natural or legal person that supplies the packaging to the natural or legal person that has the packaging designed or manufactured under its own name or trademark is located in the same Member State, "manufacturer" means the natural or legal person that supplies the packaging;'

Commission's interpretation:

A manufacturer is a natural or legal person who manufactures packaging or a packaged product. It is not necessarily the natural or legal person that physically produces the packaging. Two elements need to be considered: (1) the role in the design or manufacturing of packaging criterion and (2) the trademark or the branding criterion. If the packaging or packaged product carries a certain name or trademark, it can be assumed that the owner of that name or trademark is the 'manufacturer' pursuant to Article 3(1), point (13)(a), as it will have the decisive power in the contractual relation with its suppliers and will therefore be able to determine also the packaging characteristics.

The wording of the definition of manufacturer indicates that there is always only one manufacturer in a supply chain within the meaning of the PPWR.

As regards sales packaging (except service packaging ([5])), or grouped packaging ([6]), the manufacturer is normally the economic operator that applies the final processing steps (e.g. cutting, filling, sealing) to the packaging supplied by converters (i.e. suppliers) and fills it with its product in order to then place the packaging or the packaged product on the Union market (Article 3(1), points (5)–(6)). In other words, for sales and grouped packaging, the manufacturer will normally be the filler, who is often also the product brand owner.

As regards transport packaging ([7]), service packaging (in their final form), and primary production packaging ([8]) the manufacturer will normally be the company which manufactures the transport or service packaging, unless such packaging is clearly branded by the user of such packaging, by carrying its name or trademark (Article 3(1), points (1)(d) and (7)). In this case, the user is the manufacturer.

Under the conditions set forth in Article 21, importers and distributors may be considered manufacturers for the purposes of this Regulation. This happens when they place on the market packaging under their own name or trademark or modify packaging already placed on the market in a way that could affect compliance with the relevant requirements of this Regulation.

([5]) According to Article 3(1), point 1 (d), 'an item that is designed and intended to be filled at the point of sale in order to dispense the product, which is also referred to as 'service packaging).

([6]) According to Article 3(1), point 6, 'grouped packaging' means packaging conceived so as to constitute a grouping of a certain number of sales units at the point of sale, irrespective of whether that grouping of sales units is sold as such to the end user or whether it serves as a means to facilitate the restocking of shelves at the point of sale or to create a stock-keeping or distribution unit, and which can be removed from the product without affecting its characteristics'.

([7]) According to Article 3(1), point 7, '"transport packaging" means packaging conceived so as to facilitate the handling and transport of one or more sales units or a grouping of sales units, in order to prevent damage to the product from handling and transport, but which excludes road, rail, ship and air containers.'

([8]) According to Article 3(1), point 4, 'primary production packaging' means an items designed and intended to be used as packaging for unprocessed products from primary production as defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council'.

Pursuant to Article 15(1), 'manufacturers shall only place on the market packaging which is in conformity with the requirements laid down in or pursuant to Articles 5 to 12.' The conformity assessment procedure (Article 38) can be carried out by the manufacturer or by someone else on their behalf (e.g. a laboratory or a certification scheme), in accordance with Article 15(2). The EU declaration of conformity (Article 39) must be drafted by the manufacturer, based on the information and documentation provided by suppliers pursuant to Article 16(1), or by an authorised representative, appointed by the manufacturer by a written mandate pursuant to Article 17. This means that the manufacturer is the sole economic operator bearing legal responsibility for the packaging's compliance with the sustainability and labelling requirements, regardless of who might have actually drafted the EU declaration of conformity or parts of it.

However, if the company that has the packaging or packaged product designed or manufactured under its own name or trademark is a micro-enterprise, and the company supplying the packaging is located in the same Member State, then this supplier of the packaging is the manufacturer (Article 3(1), point (13)(b)). This is regardless of whether the latter company is also a micro-enterprise. For example, if a manufacturer of a packaging container is a micro-enterprise but the manufacturer of the packaged product is not, the exemption does not apply. If a manufacturer of a packaging container is not a micro-enterprise, while a manufacturer of a packaged product is, the exemption applies, and it is the manufacturer of the container which should be considered as 'manufacturer' for the purpose of the PPWR.

According to Recommendation 2003/361/EC ([9]), a company is a micro-enterprise if it employs fewer than 10 persons, and its annual turnover or annual balance sheet total do not exceed 2 million EUR. A franchisee can be considered a micro-enterprise if the franchisor does not directly or indirectly own 25 % or more of its capital or voting rights and does not exercise control or decisive influence. If it does, then the relevant thresholds must be calculated by adding the franchisor's corresponding data, as required by Articles 3(2) and 3(3) of the Recommendation 2003/361/EC.

If the packaging does not bear a tradename or a brand name, then the 'manufacturer' could be either the supplier (i.e. the person who actually manufactures the packaging) or the person who places packaged products on the market. The decisive criterion is who places the order and decides on the design specifications for that packaging.

The same approach explained above applies also for reusable packaging. The decisive criterion is who the natural or legal person who has the packaging designed or manufactured under its own name or trademark is. However, it is useful to clarify this further by putting it in the context of re-use systems.

When packaging is designed following specific requirements of the manufacturers of the packaged product and carries their trademark, the latter (i.e. the users) are the 'manufacturer' of reusable packaging. This will be the case notably in open loop re-use systems ([10]).

However, if a company, which has reusable packaging designed and manufactured under its name and trademark, is a micro-enterprise, and the company that manufactures the packaging is located in the same Member State, then the latter company is the manufacturer. This is regardless of whether the latter company is also a microenterprise.

When reusable packaging is designed following specific requirements of a re-use system operator and carries its trademark, the re-use system operator is the 'manufacturer'. This will be the case notably in closed loop re-use systems ([11]). When reusable packaging does not carry a specific trademark, the manufacturer of the packaging is the 'manufacturer', unless the user (i.e. the re-use system operator) can be identified as the one having ordered such packaging and its specific design.

([9]) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document C(2003) 1422) (OJ L 124, 20.5.2003, p. 36).

([10]) According to Annex VI, point (c), 'open loop system' means a re-use system in which reusable packaging circulates amongst an unspecified number of system participants, and the ownership of the packaging changes at one or more points in the re-use process.

([11]) According to Annex VI, point (b), 'closed loop system' means a re-use system in which reusable packaging is circulated by a system operator or a co-operating group of system participants without the change of the ownership of packaging.

3. Definition of a producer of packaging

Legal provisions:

Recital (122) mentions that '[T]his Regulation seeks to clearly define one producer per packaging unit, whether it is for empty packaging or for packaging containing products. As a general rule, the producer should be the economic operator who, as a manufacturer, importer or distributor established in a Member State, makes available packaged products from within the territory of that Member State and on that same territory. This includes any offer for distribution, consumption or use which could result in actual supply. Thus, where a company buys a packaged product from another Member State other than that where the company is located, or from a third country, and supplies that packaged product in the Member State where it is located, that company should be considered to be the producer, as it is the first company making the packaged product available on the territory of that Member State. With regard to online platforms, the initial offering of a product should be considered as being made available in the sense of the producer definition. However, to minimise any unnecessary administrative burden for small businesses that fill transport packaging, primary production packaging or service packaging, whether as a single-use packaging or as reusable packaging, at the point of sale, the producer should be the manufacturer, distributor or importer of such packaging that makes the packaging available for the first time from within the territory of the Member State, since that economic operator is best placed to comply with the extended producer responsibility obligations.'

Article 3(1), point (15) defines 'producer' as 'any manufacturer, importer or distributor to whom, irrespective of the selling technique used, including by means of distance contracts, one of the following applies:

(a) the manufacturer, importer or distributor is established in a Member State and makes available for the first time from within the territory of that Member State and on that same territory transport packaging, service packaging, or primary production packaging, whether as single-use packaging or as reusable packaging; or

(b) the manufacturer, importer or distributor is established in a Member State and makes available for the first time from within the territory of that Member State and on that same territory products packaged in packaging other than those referred to in point (a); or

(c) the manufacturer, importer or distributor is established in a Member State or in a third country and makes available for the first time on the territory of another Member State, directly to end users, transport packaging, service packaging or primary production packaging, whether as single-use packaging or as reusable packaging; or

(d) the manufacturer, importer or distributor is established in a Member State or in a third country and makes available for the first time on the territory of another Member State, directly to end users, products packaged in packaging other than those referred to in point (c); or

(e) the manufacturer, importer or distributor is established in a Member State and unpacks packaged products without being an end user, unless another person is the producer as defined in point (a), (b), (c) or (d);'

Commission's interpretation:

Producers and manufacturers are defined under the PPWR for different purposes. The producer is responsible for paying the costs for the collection and recovery of packaging waste in the respective Member State (Article 45(1)). To this end, a producer must register and report to the relevant national authorities as specified in Article 44 and pay the extended producer responsibility (EPR) fee in the Member State, in which the packaging is expected to become waste. If fees are paid in a Member State, and afterwards a distributor makes the packaging available for the first time on the territory of another Member State, the fees must be reimbursed. The manufacturer, on the other hand, must ensure that the packaging complies with the sustainability and labelling requirements specified in Articles 5–12, as specified in Article 15(1), before it is made available on the Union market for the first time. There is only one manufacturer throughout the EU (see section 3 above).

Overview of the different roles of manufacturers and producers in the PPWR

	Manufacturer	Producer
Definition	Manufacturers of packaging or a packaged product. According to the above, it is not the person who manufactures the packaging but the person who 'orders and decides on the design specifications for packaging' Exemption for brand owners when they are micro-enterprises, and the person that supplies the packaging is located in the same Member State.	Any manufacturer, importer or distributor who makes packaging or packaged products available for the first time in the Member State where it is present or directly to end users in another Member State.
Quantity	One economic operator EU-wide.	The economic operator who makes packaging available for the first time on the territory of the Member State were the packaging is expected to become waste.
Function	Ensures conformity of the packaging with sustainability and labelling requirements.	Finances waste management in the Member State where packaging is expected to become waste.

A 'producer' is the eligible company in the distribution and supply chain which is responsible for fulfilling the extended producer responsibility obligations in a Member State (Article 45).

The PPWR seeks to clearly define one producer per packaging, whether it is for empty packaging, such as transport and service packaging, or situations where packaging is made available on the market containing products, which is the case for sales and grouped packaging.

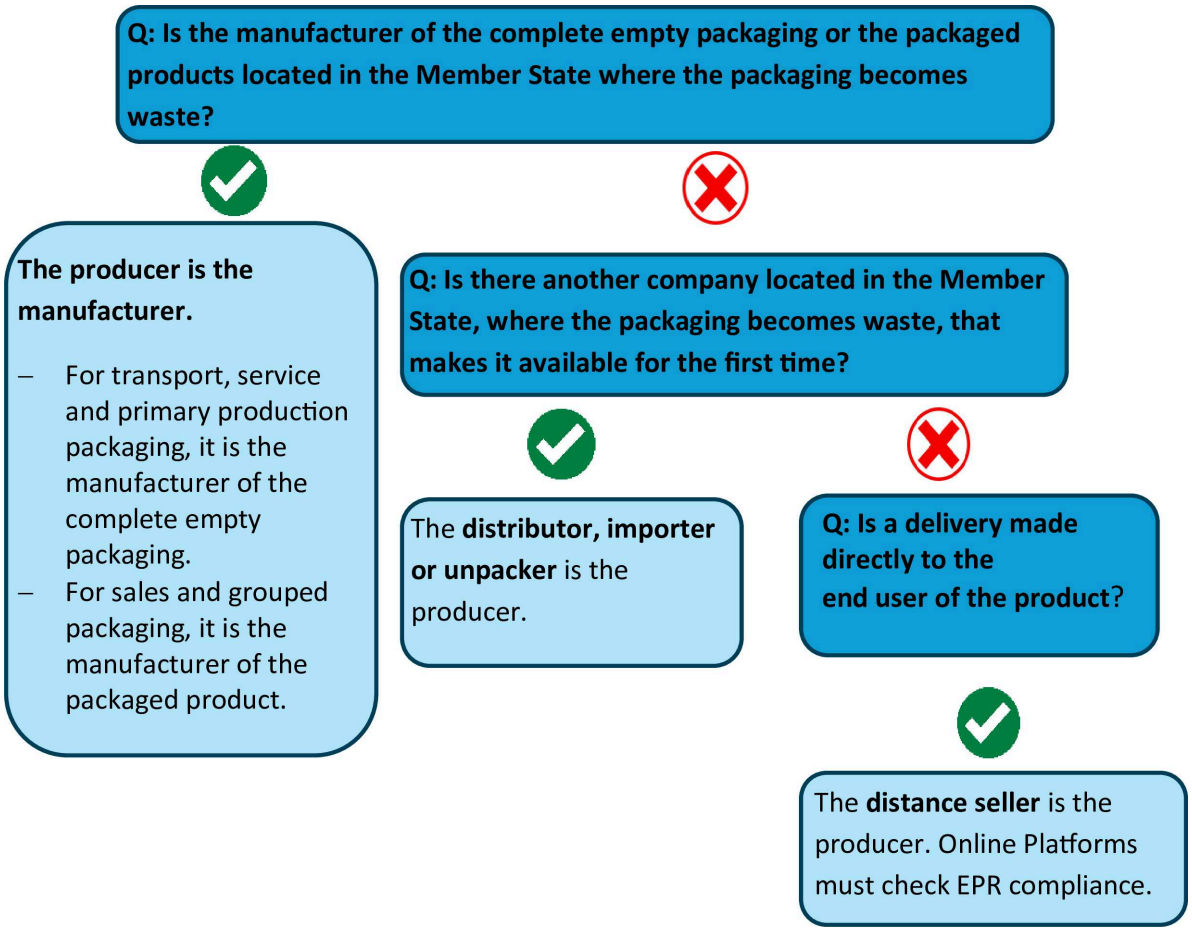
To determine in which Member State EPR obligations apply, it is necessary to check where the packaging is first made available on the territory of a Member State. In practice, this will usually be where the packaging is filled.

The definition of producer seeks to identify the economic operator who is responsible for EPR obligations, whether it is the manufacturer, importer or distributor, in the Member State in which the packaged product is made available for consumption and thereby is expected to become waste. Consequently, the manufacturer and producer may not always be the same economic operator, and the producer of packaging will depend on 1) the type of packaging made available on the market, 2) whether it is in the same Member State as it is manufactured, and 3) whether the packaged product is sold to the end user or is further distributed.

If the packaging or packaged products is exported outside the EU, where it is expected to become waste, extended producer obligations pursuant to the PPWR will no longer apply to the producer.

Packaging is often a part of a long supply and distribution chain in which it is made available several times. Regardless of whether the packaging is further made available in the same Member State or the size of the economic operator, the producer is the economic operator who makes the packaging available for the first time in the Member State. Making available on the market includes any offer for distribution, consumption or use which could result in the actual supply of packaging or packaged products. In the case of online sales, the offering of a product directly to an end user is considered as making available on the market in the Member State of the end user.

Below is a demonstration diagram of how the producer in the EU can be identified.



To identify producers of transport packaging, it is necessary to consider the definition of producer and the following factors:

(1) Is the item ready to serve a packaging function? Transport packaging will often consist of multiple components or ancillary elements, which in themselves do not serve a packaging function. Therefore, if a packaging is only ready to serve a packaging function after other components are added, the assembler will be the manufacturer and the first potential producer.

(2) Who is the manufacturer of transport packaging? Contrary to sales and grouped packaging, a producer of transport packaging must be identified for the empty packaging, because it is often the empty packaging that is made available on the market for the first time. However, if the transport packaging bears a name or trademark, the producer will normally be the filler of the packaging. If the transport packaging is not uniquely identifiable, then the actual manufacturer of the packaging will normally be the producer (for further details see point 3 regarding the definition of manufacturer).

(3) In which Member State and to whom is the packaging made available? If transport packaging is made available for the first time in a Member State other than the Member State, where the manufacturer of packaging is located, the manufacturer will only be the producer, if the recipient is the end user of the packaged product. If this is not the case, the recipient will be the producer.

To exemplify, Company A manufactures big cardboard boxes without a name or trademark in a Member State. Company A sells the empty, cardboard boxes to Company B in the same Member State. In this transaction, Company A is the producer. However, if the cardboard box has the name or trademark of Company B, Company B becomes the producer in that Member State. However, should Company B sell the filled cardboard boxes to Company C in another Member State, the producer will be Company C in the other Member State. Lastly, if the cardboard boxes are exported to a third country, there will be no producer in any Member State as the boxes are not expected to become waste in the EU.

As regards producers of sales packaging, the producer is the economic operator who fills the packaging and makes it available for the first time on the territory of the Member State. To exemplify, Company D fills fruit in a container and sells the packaged fruits to a supermarket in the same Member State. In this case Company D will be considered the producer in that Member State since it makes the packaging available for the first time and the packaging is expected to become waste there. However, if Company D sells the packaged fruits to a supermarket in another Member State, the supermarket in that Member State will be the producer, since it will make the packaged fruits available on the market for the first time in that Member State, where it will become waste.

In the situation described in Article 3(1), point (15)(d), the producer is identified as a manufacturer, importer or distributor that makes packaged products directly available for the first time to end users on the territory of another Member State. According to Article 3(1), point (23), an 'end user' is a natural or legal person that resides in the EU and to whom a product has been made available either as a consumer or as a professional end user, and who does not make that product further available on the market in the form supplied to it. To further exemplify, using the example above, if Company D has a web shop where it sells packaged fruit to an end user of the fruit in another Member State, Company D will be the producer and must fulfil the extended producer responsibility obligations in the other Member State.

The determining factor will therefore be whether the professional end user uses the product in its production and thereby does not make the product further available in the form it was supplied. Logistics companies which receive imported packaged goods from third countries and conduct handling activities, such as unpacking or repacking into smaller quantities before sending the packaged product, are not to be considered end users. Rather, they are the producer of the transport packaging if the product is repackaged, even though they do not have ownership of the packaged products.

4. **Definition of importer and the status of a 'branch'**

Legal provision:

Article 3(1), point (17) lays down the definition of 'importer' as 'any natural or legal person established within the Union that places packaging from a third country on the market.'

Commission's interpretation:

The definition of importer is based on the definition of 'importer' in Article 3(9) of Regulation (EU) 2019/1020 ([12]) and should be interpreted in line with the general interpretative guidance provided for in the Blue Guide ([13]). It follows from that definition that two cumulative conditions must be satisfied: (a) establishment in the EU, and (b) placing on the market packaging or packaged products originating outside the EU.

The concept of being 'established' must be interpreted as having a registered address in a Member State to ensure jurisdiction for enforcement and market surveillance, as well as a guarantee that there is a responsible party within the Union for compliance, traceability, and corrective actions.

In most cases, a branch is not a separate legal entity and, as it only operates under the identity of the parent company, it does not independently assume rights or obligations. Contracts entered into by a branch are therefore legally binding on the parent company.

([12]) Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).
([13]) Commission notice — The 'Blue Guide' on the implementation of EU product rules 2022 (OJ C 247, 29.6.2022, p. 1).

Under EU and national tax laws, a branch is typically treated as a permanent establishment ([14]) for tax purposes. However, having tax obligations and tax registration does not confer separate legal personality and does not change the branches' status for regulatory compliance. Several CJEU rulings ([15]) confirm that a permanent establishment is not equivalent to incorporation.

Because a branch lacks separate legal personality, it cannot qualify as an importer under the PPWR. The requirement of being 'established' refers to a natural or legal person incorporated in the EU, not merely a branch office. A branch may become a separate legal entity (i.e., a subsidiary) when it is incorporated under the law of a Member State, has its own legal personality, rights and obligations, and can own assets, sue and be sued independently.

Therefore, a non-EU manufacturer with only a branch in the EU must either incorporate a subsidiary in the EU, or appoint an authorised representative as defined in Article 3(1), point (19) if so, required by the Member State on which territory it is making packaging or packaged products available for the first time.

The same reasoning applies to the question of whether a branch of a non-EU natural or legal person can be a 'distributor', as defined in Article 3(1), point (18).

The EPR obligations provided under the PPWR apply to 'producers' (manufacturers, importers or distributors) who make available for the first time packaging or packaged products on the territory of a Member State (see point 4 of this document). The Regulation does not explicitly extend EPR obligations to entities that are only VAT-registered or have a permanent establishment without legal personality. Arguing that VAT registration alone equals 'establishment' for the purposes of EPR obligations would conflict with the harmonised definition of importer in Article 3(1), point (17). Member States cannot impose additional requirements that undermine the harmonisation of the notion of producer and importer under the PPWR.

5. Enforcement of PFAS restrictions in food contact packaging and exhaustion of stocks

Legal provisions:

Article 3(1), point (13), defines 'manufacturer' as 'a natural or legal person' that 'has packaging or a packaged product designed or manufactured under its own name or trademark, regardless of whether any other trademark is visible on the packaging or on the packaged product (…).'

Article 3(1), point (10), defines 'placing on the market' 'as the first making available of packaging, whether empty or with a product, on the Union market'. Article 3(1), point (11), defines 'making available on the territory of the Member State' as 'any supply of packaging, whether empty or with a product, for distribution, consumption or use (…) whether in return for payment or free of charge.'

Article 5(5) states: 'From 12 August 2026, food-contact packaging shall not be placed on the market if it contains per- and polyfluorinated alkyl substances (PFAS) in a concentration equal to or above the following limit values to the extent that the placing on the market of packaging containing such a concentration of PFAS is not prohibited pursuant to another Union legal act:

(a) 25 ppb for any PFAS as measured with targeted PFAS analysis (polymeric PFAS excluded from quantification);

(b) 250 ppb for the sum of PFAS measured as the sum of targeted PFAS analysis, where applicable with prior degradation of precursors (polymeric PFAS excluded from quantification); and

([14]) According to Article 5 of the OECD Model Tax Convention, 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partially carried on. It includes especially: (a) a place of management, (b) a branch, c) and office (…).

([15]) Judgment of 7 April 2022, *Berlin Chemie*, C-333/20, EU:C:2022:291; judgment of 13 June 2024, *Adient*, C-533/22, EU:C:2024:501.

(c) 50 ppm for PFASs (including polymeric PFAS); if total fluorine exceeds 50 mg/kg the manufacturer, importer or downstream user as defined respectively in Article 3, points (9), (11) and (13) of Regulation (EC) No 1907/2006 shall, upon request, provide to the manufacturer or the importer as defined respectively in Article 3(1), points (13) and (17), of this Regulation proof of the quantity of fluorine measured as content of either PFAS or non-PFAS in order for them to draw up the technical documentation as referred to in Annex VII to this Regulation.'

Commission's interpretation:

Food contact packaging is packaging which is intended to be brought into contact with food or is already in contact with food and was intended for that purpose, as per the scope of EU food legislation.

The surveillance authorities as referred to in PPWR, based on Regulation (EU) 2019/1020 on market surveillance rules, are competent to verify compliance with the PFAS limits.

Several protocols and methodologies to test the presence of PFAS in different matrices exist, but there is no harmonised methodology for PFAS in food contact packaging at EU level. In this context, the following stepwise approach, based on state-of-the-art analytical capacities and a meta-analysis of PFAS testing of the relevant matrices, is recommended to enforce the PFAS limits as of their application date, i.e. 12 August 2026:

(1) Total Fluorine (TF) quantification (step 1): If TF is below 50 mg/kg ([16]), sample could be considered compliant.

(2) If TF is above 50 mg/kg, methods such as pyrolysis-GC/MS can be used to confirm whether the fluorine is organic (PFAS) or inorganic in step 2. If the organic fluorine is below 50 mg/kg, the sample could be considered compliant.

(3) Direct TOP (total oxidizable precursors) analysis is recommended to check compliance with the 25 µg/kg ([17]) and 250 µg/kg concentration limit in step 3.

On the basis of the evidence currently available to the Commission, all samples compliant with test (1) are also compliant with tests (2) and (3).

This is without prejudice to the application of Regulation (EU) 2017/625 to the controls performed for the verification of compliance with the rules on materials and articles intended to come into contact with food, including the rules laid down in Article 5(5) of the PPWR.

As regards packaging containing PFAS, which has been produced before 12 August 2026, the PPWR does not foresee a transitional period for the exhaustion of stocks. Therefore, food-contact packaging placed on the market after 12 August 2026 must comply with the PFAS limits laid down in this Regulation, while packaging placed on the market before 12 August 2026 may remain on the market and does not need to be withdrawn. There are no exceptions regarding packaging containing recycled material.

In general, sales and grouped food-contact packaging are placed on the market when they are filled, insofar as the final processing steps such as the sealing processes, may influence compliance of the packaging, while transport and service packaging are placed on the market empty.

In line with the Blue Guide on the implementation of EU product rules ([18]), placing on the market occurs when there is an offer or an agreement between parties regarding 'the transfer of ownership, possession or any other property right'. This can be done 'for payment or free of charge' once a manufacturing stage of the product is completed. Consequently, a manufacturer could place empty or filled food-contact packaging on the market by a mere transfer of the legal possession. For imported packaging or packaged products, the relevant timestamp is the 'release for free circulation' at the end of the customs procedure.

([16]) mg/kg = ppm.
([17]) µg/kg = ppb.
([18]) Commission notice — The 'Blue Guide' on the implementation of EU product rules 2022 (OJ C 247, 29.6.2022, p. 1).

6. Date of application of the requirement to ensure that packaging is recyclable

Legal provisions:

Article 6(1): 'All packaging placed on the market shall be recyclable.'

Article 6(2): 'Packaging shall be considered to be recyclable if it fulfils the following conditions:

(a) it is designed for material recycling, which enables the use of resulting secondary raw materials that are of sufficient quality when compared to the original material that they can be used to substitute primary raw materials, in accordance with paragraph 4; and

(b) when it becomes waste, it can be collected separately in accordance with Article 48(1) and (5), sorted into specific waste streams without affecting the recyclability of other waste streams and recycled at scale, on the basis of the methodology set out in accordance with paragraph 5 of this Article.

Packaging that is in compliance with the delegated acts adopted pursuant to paragraph 4 shall be deemed to comply with the condition set out in point (a) of the first subparagraph of this paragraph.

Packaging that is in compliance with the delegated acts adopted pursuant to paragraph 4 and the implementing acts adopted pursuant to paragraph 5 shall be deemed to comply with the conditions set out in the first subparagraph of this paragraph.

Point (a) of the first subparagraph of this paragraph shall apply from 1 January 2030 or 24 months from the date of entry into force of the delegated acts adopted pursuant to the first subparagraph of paragraph 4, whichever is the latest.

Point (b) of the first subparagraph of this paragraph shall apply from 1 January 2035 or, as regards the recycled-at-scale requirement, from 1 January 2035 or five years from the date of entry into force of the implementing acts adopted pursuant to paragraph 5, whichever is the latest.'

Commission's interpretation:

Article 6(1) requires that all packaging placed on the market is recyclable without providing a specific deadline for the application of this provision, which means that it applies from 12 August 2026.

Article 6(2)(a) 'shall apply from 1 January 2030 or 24 months from the date of entry into force of the delegated acts adopted pursuant to the first subparagraph of paragraph 4, whichever is the latest'. According to Article 6(4), this delegated act, which will fully harmonise design for recycling requirements and the related assessment methodology, should be adopted by the Commission by 1 January 2028.

Article 6(1) is similar to an essential requirement in Annex II, point 3(a), of Directive (EU) 94/62/EC on packaging and packaging waste (hereinafter, the PPWD), related to the packaging recoverable in the form of material recycling, but it is not the same. For example, while the PPWD contained 'essential requirements' on packaging composition and design, it did not create uniform technical documentation obligation tied to harmonised recyclability criteria. Also, the language of the essential requirement on 'packaging recoverable in the form of material recycling' (Annex II, point 3(a) PPWD) was vague and difficult to legally enforce. Therefore, it should be understood that until the date of application of Article 6(2)(a) of the PPWR on design for recycling requirements, manufacturers must comply only with requirements in accordance with the PPWD and the related harmonised standards (e.g. EN 13430:2004 - Requirements for packaging recoverable by material recycling ([19])).

([19]) Commission communication in the framework of the implementation of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ C 44, 19.2.2005, p. 23).

From the adoption of the delegated act pursuant to Article 6(4) on, manufacturers will have 24 months to comply with the design for recycling requirements and ensure that only packaging that is recyclable in the sense of PPWR is placed on the market. Should this delegated act enter into force after 1 January 2028, the requirements shall apply 24 months from this date.

Manufacturers do not need to perform the conformity assessment procedure in accordance with Article 38 and Annex VII of the PPWR for recyclability until the entry into force of the delegated act(s) under Article 6(4) PPWR.

7. **Exemptions from recycled content targets**

Legal provisions:

Recital (50): 'Food-contact materials containing recycled plastic have to meet the requirements set out in Commission Regulation (EU) 2022/1616, which includes requirements on recycling technologies. Regarding plastic packaging, except where that packaging is made from polyethylene terephthalate (PET), it is appropriate to re-assess the availability of suitable recycling technologies for such plastic packaging sufficiently ahead of the date of application of the related recycled content requirements. That assessment should also cover the state of authorisation under relevant Union rules and the installation in practice of such technology. Based on that assessment, there might be a need to provide for derogations from the recycled content requirements for specific contact-sensitive plastic packaging or to amend the list of exceptions laid down in this Regulation. To that end, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission.'

Article 7(5) states that 'Paragraphs 1 and 2 shall not apply to:

(a) plastic packaging that is intended to come into contact with food where the quantity of recycled content poses a threat to human health and results in non-compliance of packaged products with Regulation (EC) No 1935/2004;

(b) any plastic part representing less than 5 % of the total weight of the whole packaging unit.'

Article 7(12): 'By 1 January 2028, the Commission shall assess the need for derogations from the minimum percentages of recycled content laid down in paragraph 1, points (b) and (d), for specific plastic packaging, or the revision of the list of exceptions in paragraph 4 for specific plastic packaging.

Based on the assessment referred to in the first subparagraph of this paragraph, where suitable recycling technologies to recycle plastic packaging are not authorised under the relevant Union rules or are not sufficiently available in practice, taking into account any safety related requirements, especially concerning contact-sensitive plastic packaging, including food packaging, the Commission is empowered to adopt delegated acts in accordance with Article 64 to amend this Regulation in order to:

(a) provide for derogations from the scope, timing or level of minimum percentage laid down in paragraph 1, points (b) and (d), of this Article, for specific plastic packaging; and

(b) as appropriate, amend the list of the exceptions in paragraph 4 of this Article.'

Commission's interpretation:

Article 7(5) establishes specific exemptions from the recycled content obligation. The exemption established in Article 7(5)(a) refers to plastic packaging that is intended to come into contact with food where the quantity of recycled content poses a threat to human health and results in non-compliance of packaged products with Regulation (EC) No 1935/2004 ([20]). The exemption established in Article 7(5)(b) relates to plastic parts representing less than 5 % of the total weight of the packaging unit. The notion of 'plastic parts' should be interpreted in line with the definition of composite packaging in Article 3(1), point 24 of the PPWR.

Both exemptions apply directly and therefore do not need to be specifically granted by the Commission or by the national competent authorities. For the exemptions to apply, the manufacturer must substantiate compliance with the requirements of the exemptions in the technical documentation, by providing documented evidence (e.g. on the absence of authorised recycling technologies).

([20]) OJ L 338 13.11.2004, p. 4.

To qualify for the exemption in Article 7(5)(a), the technical documentation must specify, for each plastic part that represents 5 % or more of the total weight of the packaging unit, the polymer used. It must confirm that, considering the intended use of the packaging and the target:

— 'Annex I to Regulation (EU) 2022/1616 does not list a suitable recycling technology for that polymer'; and,

— 'no recycling technology is available at an industrial scale to manufacture that polymer in accordance with the processes described in Article 4(3) of that regulation'.

Finally, the Commission will assess by 1 January 2028 the need for granting further exemptions from the recycled content obligations for plastic packaging or revising the existing exemptions listed in Article 7(4) of the PPWR.

8. **Flexibility for Member States to mandate compostable packaging and presumption of conformity**

Legal provisions:

Recital (53): 'The bio-waste waste stream is often contaminated with conventional plastics and the material recycling streams are often contaminated with compostable plastics. This cross-contamination leads to waste of resources and lower quality secondary raw materials and should be prevented at source. In light of that concern, Member States should specify the appropriate waste management on their territory for compostable packaging. As the proper disposal route for compostable plastic packaging is becoming increasingly confusing for consumers, it is justified and necessary to lay down clear and common rules on the use of compostable plastic packaging, mandating it only when its use brings a clear benefit for the environment or for human health. This is particularly the case when the use of compostable packaging helps collect or dispose of bio-waste, for example for products where the separation between the content and packaging is particularly complex, such as tea bags.'

Recital (54): 'For limited packaging applications made of biodegradable plastic polymers, there is a demonstrable environmental benefit in using compostable packaging which enters composting plants, including anaerobic digestion facilities under controlled conditions. Furthermore, where a Member State applies Article 22(1), second subparagraph, of Directive 2008/98/EC and appropriate waste collection schemes and waste treatment infrastructures are available in that Member State, there should be flexibility for that Member State to decide whether to allow the making available on its territory for the first time of compostable packaging for coffee, tea or other beverage system single-serve units that are composed of packaging material other than metal, and very lightweight plastic carrier bags, lightweight plastic carrier bags and the making available on their territory for the first time of other packaging that was subject to a requirement to be compostable before the date of application of this Regulation. In order to avoid consumer confusion about the correct disposal route, and considering the environmental benefit of circularity of carbon, all other packaging should go into material recycling and the design of such packaging should ensure that it does not affect the recyclability of other waste streams.'

Recital (56): 'As described in the "EU policy framework on biobased, biodegradable and compostable plastics", set out in the communication of the Commission of 30 November 2022, compliance with standards for industrial composting does not imply decomposition in home composting. In industrial composting, the required conditions are high temperatures and high humidity levels. In home composting, which is carried out by private individuals, including in communities, the actual conditions depend very much on local climate circumstances and consumer practices. Hence, biodegradation in home composting risks being slower than in industrial composting or not to be completed. In particular, home composting for plastic packaging should only be considered for specific applications and in the context of specific local conditions under the supervision of the relevant authorities.'

Article 9(2): 'By way of derogation from Article 6(1), where Member States allow waste with similar biodegradability and compostability properties as bio-waste pursuant to Article 22(1) of Directive 2008/98/EC to be collected together with

bio-waste, and appropriate waste collection schemes and waste treatment infrastructure are available to ensure that compostable packaging enters the bio-waste management stream, Member States may require that the following packaging shall be made available on their territory for the first time only if the packaging is compostable:

(a) packaging referred to in Article 3(1), point (1)(g), composed of material other than metal, very lightweight plastic carrier bags and lightweight plastic carrier bags;

(b) packaging other than that referred to in point (a) of this paragraph for which the Member State already required that they be compostable before the date of application of this Regulation.'

Commission's interpretation:

Member States can decide whether packaging additional to packaging formats listed in Article 9(1) and in point (a) of Article 9(2) should be compostable on their territories until 12 August 2026. Member States may only decide that such additional compostable packaging formats are industrially compostable. Member States should communicate any national rules mandating compostability for additional packaging items clearly to the economic operators and to the general public, as well as to the European Commission, to avoid any confusion. Member States are advised to compile explicit lists of such items and make them public to ensure that economic operators can comply with the related labelling and compostability requirements.

While the Regulation allows home-compostability for a limited number of plastic packaging items listed in Article 9(1), reflecting situations where Member States implement home-composting as one of the waste management options for bio-waste, the home-composting should only be considered in the context of specific local conditions and implemented under the supervision of the relevant authorities. Member States should communicate any national rules mandating home-compostability clearly to the economic operators and to the general public, as well as to the European Commission, to avoid any confusion. Member States are advised to compile explicit lists of such items and make them public to ensure that economic operators can comply with the related labelling and compostability requirements.

The PPWR allows Member States to mandate home-compostability before the adoption of the relevant harmonised standards, or even in their absence.

As regards the presumption of conformity of home-compostable packaging, any existing national standards on home-compostability and existing certifications schemes may be used by manufacturers to demonstrate compliance with Article 9, but such certifications do not create a presumption of conformity with the compostability requirement.

By 12 February 2026, the Commission will request the European standardisation bodies to create a new, EU-wide standard on home compostability, pursuant to Article 9(6).

The existing standard EN 13432 on industrial composting ([21]) can be used as guidance until the new standard is adopted. However, the presumption of conformity with the new harmonised standards on compostable packaging will only be possible again from the date when a new decision listing relevant harmonised standards, as requested by the Commission pursuant to Article 9(6), is published in the *Official Journal of the European Union*.

9. **Definition of the terms 'permeable' and 'soft after-use' in the context of compostable packaging**

Legal provisions:

Article 3(1) states: 'For the purposes of this Regulation, the following definitions apply:

(…)

(f) a permeable tea, coffee or other beverage bag, or soft after-use system single-serve unit that contains tea, coffee or another beverage, and which is intended to be used and disposed of together with the product'.

([21]) Packaging - Requirements for packaging recoverable through composting and biodegradation - Test scheme and evaluation criteria for the final acceptance of packaging.

Commission's interpretation:

Article 9(1) is a material-neutral provision and could refer to permeable tea, coffee or other beverage bags, or soft after-use system single-serve units made of any material, including paper-based single-serve units. Therefore, pursuant to Article 9, such packaging must be designed for composting by 12 February 2028.

10. **Packaging minimisation**

Legal provisions:

Recital 60: '(...) While marketing and consumer acceptance remain relevant for packaging design, they should not be part of performance criteria justifying on their own additional packaging weight and volume. (…)'

Article 10(1): 'By 1 January 2030, the manufacturer or importer shall ensure that the packaging placed on the market is designed so that its weight and volume is reduced to the minimum necessary to ensure its functionality, taking account of the shape and material from which the packaging is made.'

Article 10(2): 'The manufacturer or importer shall ensure that packaging which does not comply with the performance criteria set out in Annex IV (…) is not placed on the market, unless (…).'

Article 10(2)(a) and (b) provide for two exemptions, namely:

(a) the packaging design is protected by a Community design pursuant to Council Regulation (EC) No 6/2002 or by design rights falling within the scope of Directive 98/71/EC of the European Parliament and of the Council, including international agreements having effect in one of the Member States, or its shape is a trademark falling within the scope of Regulation (EU) 2017/1001 of the European Parliament and of the Council or Directive (EU) 2015/2436 of the European Parliament and of the Council, including trademarks registered under international agreements having effect in one of the Member States, the design rights and trademarks are protected before 11 February 2025, and the application of the requirements under this Article would affect the packaging design in a way that it would alter its novelty or its individual character, or would affect the trademark in a way that the trademark is no longer capable of distinguishing the marked product from those of other undertakings; or

(b) the packaged product or beverage benefits from a geographical indication protected under Union law, such as under Regulation (EU) No 1308/2013 for wine, Regulation (EU) 2019/787 for spirit drinks or Regulation (EU) 2023/2411 for craft and industrial products, or is covered by a quality scheme as referred to in Regulation (EU) 2024/1143.

Article 10(3): 'By 12 February 2027, the Commission shall request the European standardisation organisations to prepare or update, as appropriate, harmonised standards laying down the methodology for the calculation and measurement of compliance with the requirements concerning packaging minimisation under this Regulation. For most common packaging types and formats, such standards should specify maximum adequate weight and volume limits, and, where appropriate, wall thickness and maximum empty space.'

Annex IV Part A point 4: 'Packaging functionality: the packaging design shall ensure its functionality, taking into account the purpose of the product and particularities giving rise to its sale, such as sales for gift purposes, or on the occasion of seasonal events.'

Commission's interpretation:

Packaging minimisation requirements help Member States achieve their general packaging waste reduction targets in a harmonised manner and reduce the need to recur to divergent national measures to comply with the waste prevention target as laid down in Article 43.

These are not new requirements. They already existed under the PPWD as essential requirements with an associated harmonised compliance methodology standard (EN 13428:2004) ([22]). While the elements for the assessment of packaging minimisation have been moved from the harmonised standard into the PPWR, 'consumer acceptance' and 'marketing' were removed as reasons ('performance criteria') justifying extra packaging weight and volume. On the other hand, other reasons, such as recyclability, recycled content or re-use, were added as new criteria.

To implement this modification, the PPWR mandates the Commission to request CEN to update the existing standard by 12 February 2027. In addition to the updated methodology for assessment, the updated standard will provide for the maximum adequate weight and volume limits for the most common packaging types and formats.

Standardisation will help industry prove compliance with the minimisation requirements, given that compliance with a harmonised standard creates a presumption of compliance with the sustainability requirement. Member States will have to accept such compliant packaging and allow it to be made available on their markets without the possibility of setting different or additional national requirements.

According to Article 70(1)(b), the existing packaging minimisation requirements and their compliance standard will remain in effect until the end of 2029. After that, both paragraphs 1 and 2 of Article 10 will apply (from 1 January 2030), while the existing harmonised standard EN 13428:2004 can still be used as guidance but only until a new or updated standard is available.

Industry will have the opportunity to contribute to the development of new standards through their experts in the regular standardisation process. In this process, issues such as packaging 'shape' and packaging functionality will be duly taken into account.

11. **Relationship between the minimisation requirements in Article 10 and the empty space ratio in Article 24**

Legal provisions:

Article 10(1): 'By 1 January 2030, the manufacturer or importer shall ensure that the packaging placed on the market is designed so that its weight and volume is reduced to the minimum necessary to ensure its functionality, taking account of the shape and material from which the packaging is made.'

Article 10(2): 'The manufacturer or importer shall ensure that packaging which does not comply with the performance criteria set out in Annex IV of this Regulation and packaging with characteristics that aim only to increase the perceived volume of the product, including double walls, false bottoms and unnecessary layers, is not placed on the market, unless: (…).'

Article 24(1): 'By 1 January 2030 or 3 years from the entry into force of the implementing acts adopted pursuant to paragraph 2, whichever is the latest, economic operators who fill grouped packaging, transport packaging or e-commerce packaging shall ensure that the maximum empty space ratio, expressed as a percentage, is 50 %.'

Commission's interpretation:

The empty space ratio in Article 24 applies to grouped, transport, and e-commerce packaging and needs to be complied with by the natural or legal person using or filling such packaging. The Commission will establish the methodology for calculation of the empty space ratio in an implementing act which will be adopted before 12 February 2028.

([22]) EN 13428:2004 - Packaging - Requirements specific to manufacturing and composition - Prevention by source reduction. The reference to this harmonised standard was published in Commission communication in the framework of the implementation of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ C 44, 19.2.2005, p. 23).

For sales packaging, the minimisation requirements related to empty space are not linked to any predefined threshold and will therefore have to be assessed based on the existing standard EN 13428:2004 ([23]), which applies until 1 January 2030, and will be updated in line with the updated performance criteria provided for in Part A of Annex IV and the requirements set out in Article 10. The obligated party is the manufacturer who will need to carry out the conformity assessment and draft the technical documentation and the EU declaration of conformity for the packaging.

12. **Reusable packaging placed on the market prior to the application of the requirements in Article 11**

Legal provisions:

Article 11(1): 'Packaging placed on the market from 11 February 2025 shall be considered to be reusable where it fulfils all of the following requirements:

(a) it has been conceived, designed and placed on the market with the objective to be re-used multiple times;

(b) it has been conceived and designed to accomplish as many rotations as possible under normally predictable conditions of use;

(c) it fulfils applicable requirements regarding consumer health, safety and hygiene;

(d) it can be emptied or unloaded without being damaged in a way that would prevent its further function and re-use;

(e) it is capable of being emptied, unloaded, refilled or reloaded while maintaining the quality and safety of the packaged product and ensuring compliance with the applicable safety and hygiene requirements, including those on food safety;

(f) it is capable of being reconditioned in accordance with Part B of Annex VI, while maintaining its ability to perform its intended function;

(g) it allows for affixing of labels and the provision of information on the properties of that product and on the packaging itself, including any relevant instructions and information for ensuring safety, adequate use, traceability and shelf-life of the product;

(h) it can be emptied, unloaded, refilled or reloaded without risk to the health and safety of those responsible for doing so; and

(i) it fulfils the requirements specific to recyclable packaging set out in Article 6, so that it can be recycled when it becomes waste.'

Article 11(2): 'By 12 February 2027, the Commission shall adopt a delegated act in accordance with Article 64 to supplement this Regulation by establishing a minimum number for the rotations for reusable packaging, for the purpose of paragraph 1, point (b), of this Article for the packaging formats which are most frequently used in re-use, taking into account hygiene and other requirements such as logistics.'

Article 15(9): 'By way of derogation from paragraph 8 of this Article, the obligation to bring into conformity, withdraw or recall packaging which is believed not to be in conformity with the requirements laid down in or pursuant to Articles 5 to 12 shall not apply to reusable packaging placed on the market before 11 February 2025.'

Commission's interpretations:

Article 11 sets re-use criteria applicable from 11 February 2025, which is the date of entry into force of the Regulation. However, the Regulation applies from 12 August 2026. This means that reusable packaging already placed on the Union market before the date of entry into force of the Regulation (11 February 2025) does not need to be brought in compliance with these requirements retroactively. This is explicitly stated in Article 15(9) of the Regulation.

([23]) EN 13428:2004 - Packaging - Requirements specific to manufacturing and composition - Prevention by source reduction. The reference to this harmonised standard was published in Commission communication in the framework of the implementation of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ C 44, 19.2.2005, p. 23).

Reusable packaging placed on the market after 11 February 2025 will have to comply with the Regulation. However, the competent authorities will be able to check the compliance of such packaging in accordance with Article 11 and other provisions of the Regulation only after 12 August 2026.

The requirements set out in Article 11 are substantially like the requirements on reusable packaging contained in the previous PPWD and the related harmonised standard EN 13429:2004 ([24]) on packaging re-use. This means that the requirements on reusable packaging under the PPWR are not completely new.

13. **Scope of harmonised packaging labelling**

Legal provisions:

Article 12(1): 'From 12 August 2028 or 24 months from the date of entry into force of the implementing acts adopted pursuant to paragraphs 6 or 7 of this Article, whichever is the latest, packaging placed on the market shall be marked with a harmonised label containing information on its material composition in order to facilitate consumer sorting. The label shall be based on pictograms and be easily understandable, including for persons with disabilities. (…)'

Commission's interpretation:

Packaging labelling under the scope of Article 12 is exhaustive and fully harmonised, except as regards deposit and return schemes. National rules which add sorting instructions are not allowed based on the principle of primacy of EU law. Member States will not be allowed to keep their national labels next to EU harmonised labels after 12 August 2028 or 24 months from the date of entry into force of the implementing act specifying the labelling rules and pictograms. As economic operators cannot adapt to a new labelling regime without a transition period, the national measures should be repealed before that date or adapted to allow for that transition. Where national measures concerning sorting instructions might be judged disproportionate in view of their impact on the internal market, such measures should be repealed as soon as possible, regardless of the date of the entry into force of the harmonised EU requirements to be adopted by the Commission in accordance with Article 12(6).

The Commission Decision 97/ 129 of 28 January 1997 establishing the identification system for packaging materials ([25]), which sets up a system of numbering and abbreviations to identify the material composition of packaging mainly aimed at waste managers to help them sort packaging waste, still applies until 12 August 2028. The use of this decision and of the system of abbreviations that it sets up is voluntary for manufacturers, but Member States are obliged to ensure that no other system to identify packaging materials than the one defined in the Decision is used. In other words, where an identification system is used, then it must be the one defined in the Decision. However, the use of the abbreviations as established under the Decision will be no longer allowed after 12 August 2028. This is because technological advances in separation of waste after collection are reducing the necessity for such markings for recyclers and to ensure harmonised labelling across the Single Market.

The objective of the labelling requirements provided for in Article 12(1) is to improve the sorting of packaging waste by consumers. Therefore, these requirements do not apply to the packaging of certain products, such as human or veterinary medicinal products, medical devices or in vitro diagnostic medical devices, that can only be used by professional end users in the course of their industrial or professional activities. The Regulation expressly excludes from this labelling obligation transport packaging, except for e-commerce packaging, and packaging that is subject to a deposit and return system. The specifications for the waste sorting labels will be established in an implementing act by 12. August 2026.

([24]) EN 13429:2004 - Packaging re-use. The reference to this harmonised standard was published in Commission communication in the framework of the implementation of the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ C 44, 19.2.2005, p. 23).

([25]) Commission Decision of 28 January 1997 establishing the identification system for packaging materials pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste (OJ L 50, 20.2.1997, p. 28).

As regards labelling for reusable packaging under Article 12(2), Member States will not be allowed to keep their national labels next to EU harmonised labels after 12 February 2029 or 30 months from the date of entry into force of the implementing act specifying the related labelling rules.

The use of waste sorting labels and labels for reusable packaging is mandatory.

As regards labels for recycled content and bio-based content under Article 12(4), they will be fully harmonised from 12 August 2028 or 24 months after the entry into force of the related implementing act, but the use of these labels is voluntary. This means that economic operators are not obliged to indicate the recycled content or bio-based content on their packaging, but if they wish to indicate this, they must use the EU harmonised technical specifications.

As regards labelling of packaging covered by the mandatory deposit and return systems under Article 50(1), Member States may require that such packaging be marked with a harmonised colour label (Article 12(1), fourth sub-paragraph).

While Member States are not required to use the EU harmonised deposit and return (DRS) label, they cannot prohibit the affixing of DRS labels on their market packaged products carrying DRS labels which have been affixed in other Member States, and this applies to both mandatory and non-mandatory deposit and return systems. By using the harmonised label, Member States will reduce the risk of creating barriers to the internal market via national DRS labels. When providing rules for national DRS labels, Member States are recommended to consider the Communication from the Commission — 'Beverage packaging, deposit systems and free movement of goods' (2009/C 107/01) ([26]).

As regards labels for extended producer responsibility (EPR) ([27]), the PPWR bans physical labels and allows such information or labels to be provided only in a digital format (Article 12(9)).

As regards the derogation provided for in Article 12(11), for medical devices and in vitro diagnostic medical devices there are no definitions for inner and outer packaging in Regulations (EU) 2017/745 and (EU) 2107/746. To ensure the derogation is correctly applied for those products, the reference to immediate packaging should be understood as referring to the packaging in contact with the device while the outer packaging should be understood as referring to the sales packaging of the device.

As Article 12 fully harmonises packaging labelling in the Union, Member States are not allowed to adopt other national mandatory packaging labelling requirements. This is justified by the significant impact on the internal market impact of packaging labelling requirements.

14. **Labelling of existing reusable transport packaging**

Legal provisions:

According to Article 12(2) '(…) reusable packaging placed on the market from 12 February 2029 or 30 months from the date of entry into force of the implementing act adopted pursuant to paragraph 6, whichever is the latest, shall bear a label informing users that the packaging is reusable. Further information on reusability, including the availability of a local, national or Union-wide re-use system and information on collection points, shall be made available through a QR code or other type of standardised, open, digital data carrier that facilitates the tracking of the packaging and the calculation of trips and rotations, or, if that calculation is not feasible, an average estimation. (…)'

According to Article 12(3) these requirements do not apply to 'open loop systems which do not have a system operator in accordance with Annex VI.'

([26]) Communication from the Commission — Beverage packaging, deposit systems and free movement of goods (OJ C 107, 9.5.2009, p. 1).

([27]) See Article 45 of the PPWR on extended producer responsibility. Accordingly, 'producers shall have extended producer responsibility under the schemes established in accordance with Articles 8 and 8a of Directive 2008/98/EC and with this Section for the packaging, including packaging of packaged products, that they make available for the first time on the territory of a Member State or that they unpack without being end users.'

Article 12(6) gives a mandate to the Commission to define the packaging labels: 'By 12 August 2026, the Commission shall adopt implementing acts to establish a harmonised label and specifications for the labelling requirements and formats, including where provided through digital means, for the labelling of packaging referred to in paragraphs 1, 2 and 4 of this Article. (…)'

Article 12(12) provides: 'Packaging as referred to in paragraphs 1, 2 and 4 that is manufactured in the Union or imported before the deadlines referred in those paragraphs and that does not comply with the criteria laid down in those paragraphs may be made available on the market until 3 years from the date of entry into force of the labelling requirements laid down in those paragraphs.'

Article 15(9) provides: 'By way of derogation from paragraph 8 of this Article, the obligation to bring into conformity, withdraw or recall packaging which is believed not to be in conformity with the requirements laid down in or pursuant to Articles 5 to 12 shall not apply to reusable packaging placed on the market before 11 February 2025.'

Commission's interpretation:

It is necessary to distinguish between:

(a) reusable transport packaging placed on the market before the entry into force of the PPWR, i.e. before 11 February 2025 and

(b) reusable transport packaging placed on the market after 11 February 2025 (i.e., after the entry into force of the PPWR) but before the date of application of the implementing act on labelling for reusable packaging, which should be adopted by 12 August 2026 and apply from 12 February 2029 or 30 months from the date of entry into force of the implementing act, i.e., reusable transport packaging placed on the market between 11 February 2025 and 12 February 2029.

Reusable packaging under (a) may remain in circulation until it is removed from the re-use systems due to functional obsolescence or operational limitations.

Reusable packaging under (b) should comply with the labelling requirements at the latest by February 2032. Considering that the new labelling rules will be known by the industry already at the time of the adoption of the implementing act, i.e. in August 2026, a limited amount of reusable transport packaging will need to be brought into compliance. In practice, packaging that will be placed on the market during the period between February 2025 and August 2026 will have to be refurbished with labels according to the new rules by February 2032. It should be recalled that after the entry into force of the PPWR, operators no longer have legitimate expectations to not being subject to the new labelling rules.

The conditions of Article 12(5) warranting the provision of information via websites or accompanying documentation are met in the case of reusable transport packaging in a business-to-business situations (i.e. consumer not being the end user of the transport packaging), managed by a system operator in a closed-loop system.

15. **Reporting obligations for waste management operators**

Legal provisions:

According to Article 23(1), 'Packaging waste management operators shall, on an annual basis, provide the competent authorities with the information on packaging waste listed in Table 3 of Annex XII to this Regulation, with the exception of information on packaging made available on the territory of the Member State for the first time, through the electronic registry or registries, in accordance with Article 35(1) of Directive 2008/98/EC.

The packaging waste management operators shall, on an annual basis, provide the producers, in the case of individual fulfilment of extended producer responsibility obligations, or the producer responsibility organisation entrusted with carrying out those obligations, in the case of collective fulfilment of extended producer responsibility obligations, with all the information necessary to comply with the information obligations laid down in Article 44(10).

Member States may, in accordance with national law, provide that, where public authorities are responsible for the organisation of the management of packaging waste, packaging waste management operators shall, on an annual basis, provide such public authorities with all the information necessary to comply with the information obligations laid down in Article 44(10), or with other means to supplement the electronic registry or registries, in accordance with Article 35(1) of Directive 2008/98/EC.'

According to Article 44(10), 'Producers, in the case of individual fulfilment of extended producer responsibility obligations, the producer responsibility organisation entrusted with carrying out those obligations, in the case of collective fulfilment of extended producer responsibility obligations, or the re-use system operators, in the case where re-use systems are fulfilling the extended producer responsibility obligations, shall submit the information set out in Part B, point 3, of Annex IX to the competent authority for each preceding calendar year on an annual basis.

Where under national law public authorities are responsible for the organisation of the management of packaging waste, Member States may provide that those authorities shall submit the information set out in Part B, point 3, of Annex IX.'

Commission's interpretation:

Waste management operators should be understood as any operator that handles 'the collection, transport, recovery (including sorting), and disposal of waste, including the supervision of such operations and the aftercare of disposal sites, and including actions taken as a dealer or broker' as defined in Article 3(9) in the Waste Framework Directive (WFD).

Article 23 does not specify who the obliged packaging waste management operator is, how the information is to be submitted, or under what circumstances it must be submitted. It is therefore the understanding of the Commission that the obligations for waste management operators to provide information on packaging waste should be interpretated as general requirements to help the Producer Responsibility Organisations (PROs), producers and competent authorities to fulfil their reporting obligations set out in Article 44(10). Member States would therefore need to specify under what circumstances it is necessary that a packaging waste management operator provides the required information.

The first subparagraph of Article 23(1) lays down that packaging waste management operators must provide competent authorities with the information listed in Table 3 of Annex XII, with the exception of information on hazardous packaging waste, which is already reported to competent authorities, as specified under Article 35(1) of the WFD, and packaging made available on the territory of the Member State for the first time or unpacked, as packaging waste management operators would not have such information. Given that competent authorities will receive the information in Table 3 of Annex XII via the register of producers, to be established under Article 44, packaging waste management operators must provide this information only if it is needed to cross-check that the data reported by the producer responsibility organisation (PRO), producer, or another competent authority is accurate, or under other circumstances specified by a Member State.

16. **Relationship between the Single-Use Plastics Directive (SUPD) and PPWR as regards packaging bans**

Legal provisions:

Recital (13): '(…) The definition of composite packaging in this Regulation should not exempt single-use packaging partially made of plastics, regardless of the threshold level, from the requirements of Directive (EU) 2019/904 of the European Parliament and of the Council.'

Recital (180): '(…) This Regulation provides a restriction on the placing on the market of plastic products listed in Annex V point 3 thereto, while Directive (EU) 2019/904 allows the Member States to take the necessary measures to achieve reduction in the consumption of those single-use plastic products. Since national implementing measures under Directive (EU) 2019/904 can be less restrictive than a ban on the placing on the market, this Regulation should prevail over Directive (EU) 2019/904 as regards such products falling within the definition of packaging, in order to boost the reduction of single-use plastic packaging and reduce the quantity of single-use plastic packaging in the environment. (…).'

Article 3(1), point (24): '"composite packaging" means a unit of packaging made of two or more different materials which are part of the weight of the main packaging material and cannot be separated manually and therefore form a single integral unit, unless one of the materials constitutes an insignificant part of the packaging unit and in any event no more than 5 % of the total mass of the packaging unit and excluding labels, varnishes, paints, inks, adhesives and lacquers; this is without prejudice to Directive (EU) 2019/904.'

Article 25(1): 'From 1 January 2030, economic operators shall not place on the market packaging in the formats and for the uses listed in Annex V.'

Annex V, point 3: 'Single-use plastic packaging for foods and beverages filled and consumed within the premises in the HORECA (Hospitality, Restaurant, and Catering) sector, which include all eating areas inside and outside a place of business, covered with tables and stools, standing areas, and eating areas offered to the end users jointly by several economic operators or a third party for the purpose of food and drinks consumption. Establishments in the HORECA sector that do not have access to drinking water are exempted.'

Directive (EU) 2019/904 (SUPD) ([28]) (Article 3, point (2)) defines single use plastic products, as 'a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived.'

According to Article 4 and Part A of the Annex to the SUPD, Member States have a possibility to impose national restrictions on single-use plastic rigid food containers used to contain food for immediate consumption and beverage cups.

According to Article 67(1)(a) ([29]), the SUPD prevails over the PPWR in case of conflict, unless provided otherwise. Article 67(1)(b) provides otherwise for packaging bans under point 3 of Annex V.

According to Article 70(4) 'Member States may maintain national provisions restricting the placing on the market of packaging in the formats and for uses listed in points 2 and 3 of Annex V until 1 January 2030. Article 4(3) shall not apply in relation to those national measures until 1 January 2030.'

Commission's interpretation:

SUPD and PPWR are two legal instruments that co-exist and have different purposes.

Recitals (13) and (180) addresses the relationship between the PPWR and the SUPD and indicate that composite packaging can be considered single use plastic packaging according to the PPWR.

PPWR defines 'composite packaging' by introducing a 5 % threshold below which packaging is deemed to be a mono-material. Therefore, 'single-use plastic packaging' in Annex V can only refer to packaging that contains more than 5 % plastic. However, the definition of 'composite packaging' is 'without prejudice' to the SUPD (see Article 3(1), point 24 and recital 13 of the PPWR). Consequently, composite packaging, including paper-based packaging containing 5 % or more plastic, is covered by the packaging bans in Article 25 and Annex V, points 1– 4 of the PPWR, while packaging containing not more than 5 % of plastic is not covered by this ban.

As the PPWR and the SUPD coexist, their respective scopes must be read together. The PPWR prevails with regard to the packaging formats, materials and uses listed in Annex V. In these situations, Member States must apply the PPWR and may not rely on Article 4 of the SUPD to introduce national measures. On the other hand, packaging that is not covered by the restrictions in Annex V, remains subject to the SUPD where it qualifies as a single-use plastic product within the meaning of

([28]) Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ L 155, 12.6.2019, p. 1).

([29]) According to Article 67(1)(a): 'Directive (EU) 2019/904 is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 2 is replaced by the following: "2. Where this Directive conflicts with Directive 94/62/EC or 2008/98/EC, this Directive shall prevail unless provided otherwise by Regulation (EU) 2025/40 of the European Parliament and of the Council"

(b) the following paragraph is added:

"3. Where Article 4 of this Directive conflicts with Article 25(1) and (6) of Regulation (EU) 2025/40 as regards single-use plastic packaging listed in point (3) of Annex V to that Regulation. Article 25(1) and (6) of that Regulation shall prevail"'.

Article 3, point (2), of the Directive. In such cases, Article 4 of the SUPD continues to apply, requiring Member States to adopt measures to reduce consumption of cups for beverages and rigid food containers used to contain food for immediate consumption. Such national consumption reduction measures can remain in place even after 1 January 2030. Member States must demonstrate, case-by-case-, that any such national measure is proportionate to the objectives pursued by the SUPD and non-discriminatory under EU law. Potential impacts on the internal market need to be considered and whether a specific national measure satisfies these requirements will be assessed by the European Commission.

The obligation under Article 25(2) of the PPWR to repeal national restrictions by 1 January 2030 applies only to measures concerning packaging formats, uses and materials that fall under Annex V.

Therefore, regarding points 2-4 of Annex V: where a packaging format, material and use is not covered by Annex V, points 2 - 4, but qualifies as a single-use plastic product under the SUPD, Article 4 of the SUPD applies.

In this way, the PPWR establishes harmonised restrictions for the packaging covered by Annex V, while the SUPD continues to operate for single-use plastic products that fall outside the scope of those specific restrictions.

Finally, in view of the evaluation of the SUPD due in 2027, the Commission will assess the need to review the Directive, including to ensure coherence and consistency with the PPWR, promote a Single Market for packaging, and secure a level playing field.

As regards expanded polystyrene (EPS) food containers, beverage containers and cups for beverages, they are already banned under the SUPD (Article 5). Article 67(5) PPWR amends the SUPD to explicitly include also extruded polystyrene (XPS) formats; this will apply from 1 January 2030; no transposition by Member States is necessary.

17. **Scope of the packaging bans in Article 25 and Annex V, points 1–4, as regards plastic content**

Legal provisions:

According to Article 25(1) 'From 1 January 2030, economic operators shall not place on the market packaging in the formats and for the uses listed in Annex V.'

Annex V, points 1–4, restricts the use of *single use plastic packaging* for different packaging applications.

Commission's interpretation:

Packaging bans under points 1–4 of Annex V do not cover only items that are made of 100 % plastic material. Such an interpretation could lead to situations, where adding any insignificant amount of material other than plastic, would exclude packaging from the ban.

Therefore, in the absence of a definition of 'single-use plastic packaging', it should be considered that composite packaging, including paper-based packaging containing 5 % or more plastic, is covered by the packaging bans in Article 25 and Annex V, points 1– 4 of this Regulation. Packaging containing not more than 5 % of plastic is thus not covered by this ban.

18. **Re-use targets for sales packaging used for transporting products**

Legal provisions:

Article 29(1): 'From 1 January 2030, economic operators that use transport packaging, or sales packaging used for transporting products, including for products distributed via e-commerce, within the territory of the Union, in the form of pallets, foldable-plastic boxes, boxes, trays, plastic crates, intermediate bulk containers, pails, drums and canisters of any size or material, including flexible formats or pallet wrappings or straps for stabilisation and protection of products put on pallets during transport, shall ensure that at least 40 % of such packaging in total is reusable packaging within a re-use system.'

Article 3(1), point (5), defines sales packaging as meaning 'packaging conceived so as to constitute a sales unit consisting of products and packaging to the end user at the point of sale.'

Article 3(1), point (7), defines transport packaging as meaning 'packaging conceived so as to facilitate the handling and transport of one or more sales units or a grouping of sales units, in order to prevent damage to the product from handling and transport, but which excludes road, rail, ship and air containers.'

Commission's interpretation

'Sales packaging used for transporting products' are packaging formats that can be considered both transport and sales packaging. However, some formats listed in Article 29(1) in which products are being transported, for example pails, drums and canisters, are filled with products, such as pesticides, paints, plasters or adhesives, which may make their re-use either impossible or possible but only at disproportionate costs and resource use, because such viscous filling materials may harden in the packaging after opening or the filling material may migrate into the packaging material and contaminate it.

Therefore, whether sales packaging can be re-used depends primarily on the filling product. Only sales packaging with an evident transport function is covered by the re-use targets. The requirement 'for transporting products' can be indicated, for example, by a special design, shape or size of the packaging.

The following are some illustrative examples:

— Plastic buckets filled with paints, chemicals, or sauces altering the properties of the container: Residues or odours may render challenging the re-use of reusable packaging formats for the transport of such products. Removing such residues or odours from the interior of the used bucket is technically feasible. However, in certain cases, and depending on the type of the packed product, the removal of residues might require intense cleaning in terms of chemicals, water or energy use. This would make the re-use of the plastic buckets a feasible option only if the intense cleaning processes do not result in disproportionate costs and resources.

— Breakfast cereals or other solid food in rigid packaging formats e.g. drums: The transport of such food in reusable packaging formats such as drums circulated within the same company (but different sites) or linked enterprises or within the same Member State is feasible. Residues or odours from cereals in the drums do not alter the interior of drums making re-use a feasible option.

— Bulk materials, e.g. sand, rocks transported in flexible intermediate bulk carrier bags: The transport of bulk materials in reusable flexible intermediate bulk carrier bags is feasible. These products do not alter the properties of the interior of such packaging and in addition do not require intense cleaning.

— Fresh fruits transported in plastic boxes or crates: A box or crate is considered sales packaging when is filled in with fresh fruits. However, considering though that this box or crate contains typically larger amounts of fresh fruits than a single portion and is transported to arrive to points of sale, it is considered sales packaging used for transport. Such packaging format can be reusable.

19. **Re-use targets for transport packaging in international trade**

Legal provisions:

Article 29:

'(1) From 1 January 2030, economic operators that use transport packaging, or sales packaging used for transporting products, including for products distributed via e-commerce, within the territory of the Union, in the form of pallets, foldable-plastic boxes, boxes, trays, plastic crates, intermediate bulk containers, pails, drums and canisters of any size or material, including flexible formats or pallet wrappings or straps for stabilisation and protection of products put on pallets during transport, shall ensure that at least 40 % of such packaging in total is reusable packaging within a re-use system.'

(2) From 1 January 2030, by way of derogation from paragraph 1 of this Article, economic operators that use transport packaging or sales packaging used for transporting products, in the forms as listed in paragraph 1 of this Article, within the territory of the Union, between different sites on which the operator performs its activity, or between any of the sites on which the operator performs its activity and the sites of any other linked enterprise or partner enterprise, as defined in Article 3 of the Annex to Recommendation 2003/361/EC as applicable on 11 February 2025, shall ensure that such packaging is reusable within a re-use system'.

(3) From 1 January 2030, by way of derogation from paragraph 1, economic operators that use transport packaging or sales packaging used for transporting products, including for products distributed via e-commerce, in the forms as listed in paragraph 1, to deliver products to another economic operator within the same Member State shall ensure that such packaging is reusable within a re-use system.'

Commission's interpretation:

The re-use targets for transport packaging (and sales packaging used for transporting products) are limited to situations where such packaging is used 'within the territory of the Union'. Thus, both operators, i.e importers and distributors, must be located in the EU. In relation to transport packaging (and sales packaging used for transporting products) from third countries, this requirement should be understood as applying from the moment of import, and placing on the market, which means that it has completed all required import procedures and is allowed to circulate on the EU market. This typically takes place in the first warehouse in the EU.

The re-use targets shall apply to imported goods in transport packaging after they are placed on the EU market. These targets shall apply from the first warehouse located within the Union until the final destination within the Union territory, where the first warehouse is not the final destination of the consignment.

For the purpose of this provision, the 'first warehouse' means the facility within the Union where goods in transport packaging first arrive and are stored and unpacked for the purpose of onward distribution within the EU supply chain.

Consignments arriving at the first warehouse and destined for a single final destination shall not be required to be unpacked and repacked into reusable packaging. Distribution centres and logistics hubs shall not be considered as final destination.

20. **Responsible economic operator for the re-use targets on transport packaging**

Legal provisions:

Article 29(1): 'From 1 January 2030, economic operators that use transport packaging, or sales packaging used for transporting products, including for products distributed via e-commerce, within the territory of the Union, in the form of pallets, foldable-plastic boxes, boxes, trays, plastic crates, intermediate bulk containers, pails, drums and canisters of any size or material, including flexible formats or pallet wrappings or straps for stabilisation and protection of products put on pallets during transport, shall ensure that at least 40 % of such packaging in total is reusable packaging within a re-use system. From 1 January 2040, those economic operators shall endeavour to use at least 70 % of the packaging referred to in the first subparagraph in a reusable format within a re-use system.'

Commission's interpretation:

The transport packaging re-use targets are set at the level of economic operators who use transport packaging or sales packaging used for transporting.

Therefore, the re-use targets fall on the user of transport packaging, or user of sales packaging used for transport. The user of transport packaging or the user of sales packaging used for transport, is the economic operator that places a product on the Union market in a relevant transport packaging, be it as a manufacturer, importer or distributor.

21. **Exemptions of the custom-designed transport packaging from the re-use targets**

Legal provisions:

Article 29(4) states: 'The obligations set out in paragraphs 1, 2 and 3 do not apply to transport packaging or sales packaging:

(a) used for the transportation of dangerous goods in accordance with Directive 2008/68/EC;

(b) used for the transportation of large-scale machinery, equipment and commodities for which packaging is custom-designed to fit the individual requirements of the economic operator that made the order.'

Commission's interpretation:

Article 29(4)(b) provides an exemption for packaging used for the transportation of large-scale machinery, equipment and commodities for which packaging is custom designed to fit the individual requirements of the economic operator that made the order. Large-scale machinery, equipment, and commodities should be understood in this context.

Economic operators who want to make use of this exemption must provide proper documentation that shows that the packaging is custom designed for an individual product. This documentation should be provided in the technical documentation for the packaging, and shall cover any design, manufacture and operation of the packaging necessary to access conformity with the conditions for the exemption set forth in Article 29(4b).

22. **Definition of 'making available' in the context of compliance with the re-use targets for beverages**

Legal provisions:

According to Article 29(6), 'From 1 January 2030, final distributors that make alcoholic and non-alcoholic beverages in sales packaging available on the territory of a Member State to consumers shall ensure that at least 10 % of those products are made available in reusable packaging within a re-use system'.

Article 3(11) establishes that 'making available on the territory of the Member State means any supply of packaging, whether empty or with a product, for distribution, consumption or use on the territory of the Member State in the course of a commercial activity, whether in return for payment or free of charge'.

A final distributor is defined in Article 3(1), point (21), as 'the natural or legal person in the supply chain that delivers packaged products, including through re-use, or products that can be purchased through refill to the end user'.

Commission interpretation:

For the purpose of this Regulation, a final distributor making beverages in sales packaging available to consumers shall, in most cases, be a retail shop or bars and restaurants in the HORECA sector. In case of distance sales, the final distributor shall be the economic operator that makes the beverage in sales packaging available to consumers via a website.

Making available shall not require the actual completion of a sale of the beverage in sales packaging to the consumer. It shall be sufficient that the final distributor offers for sale at least 10 % of its beverages in reusable sales packaging.

The reference to a 'reuse system' in Article 29(6) refers to the requirements applicable to reuse systems as defined in Annex VI, Part A, of the Regulation. The proper functioning of such a system entails, inter alia, the establishment of appropriate information, display or communication arrangements for consumers, in accordance with Article 12(2), enabling the identification and promotion of the offer of beverages in reusable sales packaging, with a view to their effective placing on the market and commercialisation.

The calculation for calculating the re-use targets for beverages shall be laid down in an implementing act adopted pursuant to Article 30(3).

23. **Re-use targets for beverages in the HORECA sector**

Legal provision:

Article 29(6), first subparagraph, PPWR states:

'From 1 January 2030, final distributors that make alcoholic and non-alcoholic beverages in sales packaging available on the territory of a Member State to consumers shall ensure that at least 10 % of those products are made available in reusable packaging within a re-use system.'

Commission's interpretation:

Beverages sold in large reusable beverage containers, such as beer kegs, to bars and restaurants (business-to-business) to be made available to consumers by the operators of the bars and restaurants (i.e. in the HORECA sector) do not contribute to the re-use targets applicable to the HORECA sector operators. Such beverages are not made available to consumers in sales packaging. Only when the filled large reusable container is made available to a consumer, can the beverage container contribute towards the re-use targets of the beverage distributor.

By contrast, in case of smaller beverage packaging, such as reusable bottles, they shall count towards the reuse targets, as they are sales packaging and can be provided directly to consumers.

24. **National exemptions from the re-use targets**

Legal provisions:

Article 29(14) establishes cumulative conditions under which Member States may exempt economic operators on their territories from the re-use targets for a period of 5 years. These are:

'(a) the exempting Member State reaches 5 percentage points above the targets for recycling of packaging waste per material to be achieved by 2025 and is expected to reach 5 percentage points above the 2030 target according to the report published by the Commission 3 years before that date;

(b) the exempting Member State is on track to achieve the relevant waste prevention targets set out in Article 43 and can demonstrate to have reduced the packaging waste generated per capita by at least 3 % by 2028 compared to the packaging waste generated per capita in 2018; and

(c) the economic operators have adopted a corporate waste prevention and recycling plan that contributes to achieving the waste prevention and recycling objectives set out in Articles 43 and 52, respectively.

That period of 5 years may be renewed by the Member State provided that all the conditions are fulfilled.'

The recycling targets to be reached by Member States are laid down in Article 52. The targets are set for the following packaging materials: paper and cardboard, plastic, glass, wood, metal, and aluminium.

Commission's interpretation:

a) The possibility for a Member State to exceed all material specific recycling targets

The use of the plural ('targets') should be understood against the background that several material specific targets exist but not all these targets must be exceeded simultaneously to comply with the conditions for the application of this exemption.

For example, if the recycling target for aluminium is exceeded in a given Member State, retailers could be allowed to deduct beverages sold in aluminium cans from the products within the scope of the obligation to sell 10 % of the beverages in reusable packaging. The retailers will still have to fulfil the re-use target for beverages sold in packaging made from other materials, such as glass and plastic, but the 10 % target is proportionally reduced for the share of beverages sold in aluminium cans.

b) Conditions regarding the exemption applying to composite packaging

In case of composite packaging, the relevant recycling targets for the materials that are used in the packaging must be exceeded. In practice, the recycling targets for all materials representing more than 5 % of the packaging unit's weight should be exceeded.

c) Conditions related to waste prevention target

The respective Member State must be on track to meet the overall waste prevention target for all packaging waste generated in the exempting Member State. There is no material-specific waste prevention target.

d) Conditions for renewal of the exemption:

If a Member State wants to continue using the exemption from the re-use targets after 5 years, it needs to fulfil the waste prevention targets in years 2035 and 2040. The intention of the co-legislators, when allowing the possibility to renew the exemption, was to make certain that economic operators meet the targets on re-use and that Member States continue reducing the generation of packaging waste according to the reduction targets, as laid down for the years 2035 and 2040. If new data is available and new targets apply, those should be considered at the relevant time, otherwise the objectives of PPWR, particularly the reduction of packaging waste, could be compromised.

25. **Member States' flexibilities to set up national measures**

Legal provisions:

Article 4:

'1. Packaging shall only be placed on the market if it complies with this Regulation.

2. Member States shall not prohibit, restrict or impede the placing on the market of packaging that complies with the sustainability, labelling and information requirements laid down in or pursuant to Articles 5 to 12.

3. If Member States choose to maintain or introduce national sustainability requirements, or information requirements additional to those laid down in this Regulation, those requirements shall not conflict with those laid down in this Regulation and the Member States shall not prohibit, restrict or impede the placing on the market of packaging that complies with this Regulation for reasons of non-compliance with those national requirements.'

Commission's interpretation:

The PPWR leaves a margin of discretion to the Member States in some matters or sets only minimum requirements or requires implementation by Member States for provisions which are not fully harmonised. In addition, there are delayed deadlines for application of some provisions.

Divergent national provisions for packaging are impacting virtually every economic sector and product's value chain. Therefore, Member States must ensure that national measures do not create disproportionate and unjustified barriers to trade in the internal market or competitive distortions.

Anticipated application of EU harmonised rules, i.e. when Member States adopt binding implementing legislation prior to the harmonised deadlines, in particular if such provisions require implementing measures to be first adopted at EU level, constitutes a breach of the principle of sincere cooperation enshrined in Article 4(3) TEU and of Article 288 TFEU which sets out the principle of direct applicability of regulations. Such anticipation of national legislation, which might be allowed by the existing legal framework (PPWD, Treaty) will have to be repealed at the latest by the entry into force of the harmonised provisions and already be in line with the margin of discretion as provided in specific provisions of the Regulation.

As regards the possibility of Member States to introduce sustainability requirements going beyond those laid down in the Regulation, Article 4(2) PPWR gives assurance to the economic operators that packaging which complies with the requirements of the Regulation will not be restricted from being placed on the market by any national rules.

Article 4(3) PPWR should be interpreted as restricting the freedom of Member States in their action and not as allowing for the possibility of derogating from the general rule contained in Article 4(2) PPWR. Therefore, any national sustainability or labelling requirement may not restrict the placing on the market of packaging that complies with the sustainability and labelling requirements under the PPWR, may not conflict with these requirements, and may not create barriers to the internal market.

Various provisions of the Regulation, specify the margin of Member States' powers to adopt national measures. or allow Member States to introduce additional exemptions or requirements. This is the case for provisions on compostability (Article 9), restrictions on the use of certain packaging formats (Article 25(2) and (3), Article 70(4), Annex V, point 2, Article 29, on re-use targets (see paragraphs 11, 12, 14, 15, 16), and Article 33(6) on re-use offer.

Several provisions ([30]) require national implementation (e.g. to reach a certain target or to report) and are a mix of fully harmonised requirements and possibilities for national flexibilities. However, the conditions for the use of these 'flexibilities' are always 'framed' with harmonised conditions and Member States must comply with these conditions to comply with the PPWR (see point 29 below on recycling targets). Some of these provisions contain also directly applicable obligations on economic operators, for example, Article 31 on reporting to the competent authorities on re-use targets.

26. **Flexibility for Member States to set additional recycling targets**

Legal provisions:

Article 52(6): 'A Member State may, while observing the general rules laid down in the TFEU and acting in accordance with this Regulation, adopt provisions which go beyond the minimum targets set out in this Article.'

Article 4(3): 'If Member States choose to maintain or introduce national sustainability requirements, or information requirements additional to those laid down in this Regulation, those requirements shall not conflict with those laid down in this Regulation and the Member States shall not prohibit, restrict or impede the placing on the market of packaging that complies with this Regulation for reasons of non-compliance with those national requirements.'

Commission's interpretation:

Member States can set higher recycling targets, as well as additional ones, provided that they do not undermine the internal market. Some Member States already have additional targets, for example for liquid packaging board.

The PPWR echoes the previous Packaging and Packaging Waste Directive (PPWD), which gave Member States discretion in terms of organising their waste management.

Additional recycling targets may enhance efficiency in the packaging waste value chain and are therefore beneficial for economic operators. However, Member States must demonstrate, on a case-by-case basis, that such targets do not conflict with the PPWR's internal market objectives.

27. **Flexibility for Member States to set additional or higher re-use targets**

Legal provisions:

Article 29(15) lays down: 'Subject to the conditions set out in Article 51, Member States may set targets for economic operators that exceed the minimum targets set out in paragraphs 1, 2, 3, 5 and 6 of this Article to the extent that such higher targets are necessary for the Member State to achieve one or more of the targets set out in Article 43.'

([30]) Articles 13, 23, 31, 34, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57 58, 59, 60, 61, 62, 63, 67, 68.

Article 29(16) lays down: 'Subject to the conditions set out in Article 51, Member States may set targets for economic operators with regard to beverages made available in sales packaging which does not fall under paragraph 6 of this Article, if those additional targets are necessary for the Member State to achieve one or more of the targets set out in Article 43.'

Article 51 on re-use and refill states:

(1) 'Member States shall take measures to encourage the establishment of re-use systems for packaging with sufficient incentives for return and of refill systems in an environmentally sound manner. Those systems shall comply with the requirements laid down in Articles 27 and 28 and Annex VI and shall not compromise food hygiene or the safety of consumers.

(2) The measures referred to in paragraph 1 may include: (…)

(c) obligations on manufacturers or final distributors to make available in reusable packaging within a re-use system or through refill a certain percentage of products other than those covered by the re-use targets laid down in Article 29, on condition that that does not lead to distortions on the internal market or trade barriers for products from other Member States.'

Article 33(6), which is related to the re-use offer obligation in the take-away sector, refers to Article 51 as regards the conditions pursuant to which a Member State may set targets that go beyond the minimum 2030 indicative target of 10 % laid down in Article 33(5) PPWR for take-away packaging 'to the extent that higher targets are necessary for the Member State to achieve one or more of the targets set out in Article 43.'

Commission's interpretation:

To achieve the waste prevention targets in the PPWR, Member States may need to complement the EU measures with national measures, such as higher or additional national re-use targets for packaging. However, in doing so, Member States need to comply with certain strict conditions:

(a) As regards the conditions under Article 51, the Commission considers that the cumulative conditions that need to be fulfilled to increase the re-use targets in Article 29(15), need to be fulfilled also for setting new re-use targets pursuant to Article 51(2)(c), which allows Member States to establish re-use targets for products not covered by the re-use targets contained in Article 29. These conditions are the following:

— The new targets are necessary for the Member State to reach its waste reduction targets (5 % by 2030; 10 % by 2035; 15 % 2040), which it must prove with facts and data; and

— The new targets do not lead to distortions on the internal market or trade barriers for products; and

— The new targets are notified via TRIS procedure, which establishes that Member States must notify their legislative proposals to COM to prevent creating barriers to the internal market, since such measures are technical regulations.

Article 51(2)(c) permits Member States to establish re-use targets for products not covered by the re-use targets contained in Article 29, and that are not explicitly exempted in Article 29, which means, for instance, that it allows Member States to set re-use targets for the take-away sector. This is explicitly allowed also by Article 33(6) of the PPWR.

Therefore, if a Member State wants to set new national re-use targets in other sectors or for packaging formats or products other than those listed in Article 29, it needs to prove that this is necessary to meet its waste prevention targets. This assessment should be included when a Member State notifies such measures in the TRIS notification system.

(b) While Article 43 allows Member States to set higher national packaging waste prevention targets than those set out at EU level ([31]), higher national prevention targets cannot be used as a justification to increase the harmonised EU-level re-use targets. This stems from the principle of primacy of EU law over national law as, otherwise, the objective of market harmonisation could be compromised by Member States.

(c) Unless otherwise provided, Member States cannot alter directly applicable and harmonised EU provisions. They cannot:

— set re-use targets for transport packaging, such as cardboard boxes, which are expressly exempted from re-use under PPWR, or

— make indicative re-use targets for year 2040, as laid down in second sub-paragraph of Articles 29(1), 29(5), and 29(6), binding.

28. National exemptions from Deposit and Return Systems (DRS)

Legal provisions:

Article 3(1), point (62), defines 'deposit and return system' as 'a system in which a deposit is charged to the end user when purchasing a packaged or filled product covered by that system and redeemed when the deposit bearing packaging is returned through one of the collection channels that are authorised for that purpose by the national authorities.'

According to Article 50(1), 'By 1 January 2029, Member States shall take the necessary measures to ensure the separate collection of at least 90 % per year by weight of the following packaging formats made available on the market for the first time in that Member State in a given calendar year:

(a) single-use plastic beverage bottles with a capacity of up to three litres; and

(b) single-use metal beverage containers with a capacity of up to three litres.'.

Article 50(2) provides that 'In order to achieve the targets set out in paragraph 1, Member States shall take the necessary measures to ensure that deposit and return systems are set up for the relevant packaging formats referred to in paragraph 1 and that a deposit is charged at the point of sale.'

Article 50(5) offers Member States an exemption possibility from the obligation in paragraph 2 under the following conditions:

'(a) the rate of separate collection as required under Article 48 of the relevant packaging format as submitted to the Commission under Article 56(1), point (c), is 80 % or more by weight of such packaging made available on the territory of that Member State for the first time in the calendar year 2026; and

(b) by 1 January 2028, the Member State notifies the Commission of its request for exemption and submits an implementation plan showing a strategy with concrete measures, including their timeline, that ensure achievement of the 90 % separate collection rate by weight of the packaging referred to in paragraph 1.'

Commission's interpretation:

PPWR does not provide more lenient conditions for border region retailers. On the contrary, it imposes specific obligations ([32]) on cross-border businesses to prevent circumvention, which could undermine the deposit and return system (DRS) objectives and requirements.

([31]) Ref. Article 43(7) states: 'For the purpose of paragraph 5, Member States may introduce packaging waste prevention measures that exceed the minimum targets set out in paragraph 1, while acting in accordance with PPWR.'

([32]) Article 50(11) provides: 'By 1 January 2029, Member States shall ensure that at least the deposit and return systems established under paragraph 2 of this Article following the entry into force of this Regulation meet the minimum requirements listed in Annex X.
(…)
By 1 January 2038, the Commission, in collaboration with the Member States, shall assess the implementation of this Article and identify how to maximise the interoperability of deposit and return systems.'
Annex X provides: 'Member States with regions with high transboundary business shall ensure that the deposit and return systems allows for collection of packaging from other Member States' deposit and return systems at designated collection points and shall endeavour to enable the possibility of return of a deposit that was charged to the end user when purchasing the packaging.'

The exemption possibility for Member States under Article 50(5) of the PPWR is related to performance criteria and not to geographical criteria and, like any exceptions, must be interpreted restrictively.

The two conditions, namely charging a deposit and establishing a DRS, are cumulative because the charging of a deposit is impossible in the absence of a DRS. This is underlined in the definition of deposit and return systems. Consequently, a final distributor can only be exempted from charging a deposit if the Member State, as a whole, has obtained an exemption from setting up a DRS. In other words, the final distributor cannot be exempted from charging a deposit if the Member State in which it is located has a DRS and is therefore obliged to charge a deposit onto consumers from other Member States.

29. **Minimum requirements for existing Deposit and Return Systems (DRS)**

Legal provisions:

According to Article 50(11) of the PPWR, Member States shall by 1 January 2029, ensure that at least the DRS for single use plastic beverage bottles and single use metal beverage containers meet the minimum requirements listed in Annex X.

Article 50(11) also states that the minimum requirements listed in Annex X shall not apply to DRS established before the entry into force of PPWR, and which achieve the 90 % targets set out in Article 50(1) by 1 January 2029. Member States shall, however, endeavour to ensure that existing DRS comply with the minimum requirements in Annex X, when they are first reviewed. If the 90 % target is not achieved by 1 January 2029, existing single-use DRS shall comply with the minimum requirements in Annex X at the latest by 1 January 2035.

Recital (145) explains that the minimum requirements in Annex X will help deliver greater consistency and higher return rates across Member States. They have been set based on stakeholder views, expert analysis and best practices from the existing deposit and return systems.

Commission's interpretation:

A review of an existing DRS should be understood as any regulative action established through legislation, imposing a substantial change to the DRS.

The minimum requirements can help strengthen the environmental performance of the DRS, notably the collection rate. Before 1 January 2029, Member States shall consider if the DRS can be expected to fulfil the 90 % separate collections targets set in Article 50(2) when they perform a review of the DRS. If the DRS achieves separate collection rates of at least 90 % it does not have to comply with the minimum requirements. However, if it does not, the Member State should consider ensuring that the DRS complies with the minimum requirements in Annex X. After 1 January 2029, a DRS for single use beverage packaging that does not fulfil the separate collection obligations must comply with the minimum requirements by 1 January 2035.

30. **Acceptance by retailers of deposit-bearing beverage container**

Legal provisions:

According to Point l, Annex X, 'Member States shall ensure that final distributors are obligated to accept the deposit bearing packaging of the packaging material and format that they distribute and to provide end users with redeemed deposits when the deposit bearing packaging is returned, unless end users have equally accessible means to redeem the deposit after the use of the deposit bearing packaging, through one of the collection channels that, for food packaging, ensure food grade recycling and that are authorised for that purpose by the national authorities. This obligation does not apply where the sale surface area does not make possible for end users to return deposit bearing packaging. However, final distributors will always have to accept the return of the empty packaging of products they sell'.

Article 50(11) sets that 'By 1 January 2029, Member States shall ensure that at least the deposit and return systems established under paragraph 2 of this Article following the entry into force of this Regulation meet the minimum requirements listed in Annex X. The minimum requirements listed in Annex X shall not apply to deposit and return systems established before the entry into force of this Regulation which achieve the 90 % target set out in paragraph 1 of this Article by 1 January 2029. Member States shall endeavour to ensure that existing single-use deposit and return systems comply with the minimum requirements in Annex X when they are first reviewed. If the 90 % target is not achieved by 1 January 2029, existing single-use deposit and return systems shall comply with the minimum requirements in Annex X at the latest by 1 January 2035'.

Commission's interpretation:

According to the minimum requirements for DRS as set out in Annex X, final distributors must accept empty packaging of the products they sell and redeem the deposit. This obligation applies without proof of purchase.

Furthermore, Member States must ensure that final distributors are obliged to accept all the deposit-bearing packaging of the same packaging material and format that they sell and pay out the deposit to the end user. The obligation to redeem the deposit does not apply where the sale surface area of the final distributor does not make it possible for the final distributor to accept the return the deposit-bearing packaging, or if end users have equally accessible means to redeem the deposit through another established and equally accessible collection channel for single use beverage packaging, authorised for that purpose. Member States must establish how these exemptions apply.

The requirements specified in Annex X only apply to DRS established after 11 February 2025 or if a DRS does not achieve the 90 % separate collection targets by 1 January 2029. Consequently, DRS that must not fulfil the minimum requirements are not concerned by the take-back obligations set in PPWR.

31. **End of life treatment of separately collected packaging which is designed for recycling**

Legal provisions:

According to Article 48(1), 'Member States shall ensure that systems and infrastructures are set up to provide for the return and separate collection of all packaging waste from the end users, and to facilitate its preparation for re-use and high-quality recycling. Packaging that complies with design for recycling criteria established in delegated acts adopted pursuant to Article 6(4) of this Regulation shall be collected for recycling. Incineration and landfill of such packaging shall be prohibited, with the exception of waste resulting from subsequent treatment operations of separately collected packaging waste for which recycling is not feasible or does not deliver the best environmental outcome'.

Article 48(2) establishes that 'in order to facilitate high-quality recycling, Member States shall ensure that systems and infrastructures for comprehensive collection and sorting are in place to facilitate recycling and to ensure that plastic feedstock is available for recycling'.

Article 48(3) states that 'Member States may derogate from the return and separate waste collection obligation in paragraph 1 of the Article for certain formats of waste, provided that collecting fractions of packaging waste together, or collecting packaging waste or fractions of such packaging waste together with other waste does not affect the capacity of such packaging or fractions of packaging waste to undergo preparing for re-use, recycling or other recovery operations and generates output from those operations which is of comparable quality to that achieved through separate collection'.

Article 49: 'By 1 January 2029, Member States shall set mandatory collection objectives and take the necessary measures to ensure that the collection of the materials listed in Article 52 is consistent with the recycling targets set out in that Article and with the mandatory recycled content targets set out in Article 7'.

Commission's interpretation:

According to Article 48(1) of the PPWR, incineration and landfilling of packaging that complies with the Design for Recycling (DfR) criteria under Article 6 is not allowed. As the DfR criteria will be set in delegated acts specified set out in Article 6(4) by 1 January 2028 and apply two years later, the ban will take effect from 1 January 2030.

The packaging of the formats and materials that are exempted from the DfR criteria are also exempted from the ban on incineration and landfilling. The exemptions include packaging materials such as lightweight wood, cork, textile, rubber, ceramic, porcelain or wax. There are also exemptions for certain packaging applications, such as medical devices and transport of dangerous goods. The exempted packaging can be collected with the residual waste and be incinerated or landfilled. All other packaging that will have to comply with the design for recycling criteria will have to be separately collected and, in principle, recycled.

Packaging designed for recycling will not be allowed to be incinerated or landfilled when it becomes waste, except for the packaging waste, which has been separately collected, sorted and treated, but for which recycling is not feasible or does not deliver the best environmental outcome, as specified in Article 48(1).

Member States can decide that packaging waste that is not separately collected, as described above, is sorted prior to energy recovery operations to remove packaging designed for recycling (Article 48(4) PPWR).

Article 48(3) allows for a derogation from the separate collection requirements, if, first, such collection does not affect the capacity of packaging waste or fractions of packaging waste to be recycled and if, second, the resulting recycled material is of comparable quality as if it was separately collected. Even if such a derogation is used, the ban on incineration and landfilling still applies to the packaging waste collected by commingling streams of packaging waste.

It is the obligation of the Member States to ensure that sufficient systems and infrastructure are set up to provide for separate collection of all packaging waste. To facilitate that the collection of packaging waste is consistent with the binding recycling targets and requirements for recycled content, Member States must also set mandatory collection objectives by 1 January 2029.

32. **Separate collection rate of deposit-bearing packaging in 2026 and obligation to set up a DRS by 2029**

Legal provisions:

Article 50(1) states that 'by 1 January 2029, Member States shall take the necessary measures to ensure the separate collection of at least 90 % per year by weight of the following packaging formats made available on the market for the first time in that Member State in a given calendar year: (a) single-use plastic beverage bottles with a capacity of up to three litres; and (b) single-use metal beverage containers with a capacity of up to three litres'.

Article 50(2) establishes that 'in order to achieve the targets set out in paragraph 1, Member States shall take the necessary measures to ensure that deposit and return systems are set up for the relevant packaging formats referred to in paragraph 1 and that a deposit is charged at the point of sale'.

Article 50(5) states that 'Member States may be exempt from the obligation under paragraph 2 if:

(a) the rate of separate collection as required under Article 48 of the relevant packaging format as submitted to the Commission under Article 56(1), point (c), is 80 % or more by weight of such packaging made available on the territory of that Member State for the first time in the calendar year 2026; and

(b) by 1 January 2028, the Member State notifies the Commission of its request for exemption and submits an implementation plan showing a strategy with concrete measures, including their timeline, that ensure achievement of the 90 % separate collection rate by weight of the packaging referred to in paragraph.

It is further specified, that for the purposes of point (a), where the information on the rate of separate collection of the relevant packaging format has not yet been submitted to the Commission, the Member State shall provide a reasoned explanation as to how the conditions for the exemption set out in this paragraph are otherwise fulfilled. The reasoned explanation shall be based on validated national data and include a description of the measures implemented'.

Commission's interpretation:

Member States must ensure that 90 % of single use plastic bottles and metal containers, as specified in Article 50(1), are separately collected by 1 January 2029. To achieve these collection targets, Member States should ensure that they have established a deposit and return system (DRS) for the relevant packaging formats, that is fully operational by 1 January 2029, unless the Member State has asked for an exemption by 1 January 2028 and has received a positive reply or no answer within three months from the receipt of the implementation plan.

If Member States fulfil the cumulative requirements for an exemption from setting up a DRS laid down in Article 50(5), they can be exempted from the obligation of setting up a DRS. If a Member State wishes to use that exemption, it needs to separately collect 80 % of single-use plastic bottles and metal containers made available on the territory of that Member State in the calendar year 2026. This is to be reported to the European Commission at the latest by 1 July 2028. Such data would be based on estimated collection rates, but Member States should include available data for collection of single-use plastic bottles as required under SUPD. If the Member State does not fulfil the 80 % collection target, it does not qualify for an exemption. According to the PPWR, a Member State must also present an implementation plan at the latest by 1 January 2028. It is the Commission's interpretation that the option for an exemption is to be considered a 'one-off option'. If a Member State does not apply for an exemption following the provisions and dates established in Article 50, it must establish a DRS.

If a Member State has received an exemption and does not separately collect 90 % of the single-use beverage packaging for three consecutive years, the exemption will no longer apply, as specified in Article 50(7) of the PPWR. The Member State will then have to establish a DRS by 1 January of the second calendar year following the year in which the Commission notified the Member State that the exemption no longer applies.

33. Member States' 90 % collection target for single-use plastic beverage bottles and metal beverage cans and the contribution of regional deposit return schemes

Legal provisions:

Article 50(1) states that 'by 1 January 2029, Member States shall take the necessary measures to ensure the separate collection of at least 90 % per year by weight of the following packaging formats made available on the market for the first time in that Member State in a given calendar year: (a) single-use plastic beverage bottles with a capacity of up to three litres; and (b) single-use metal beverage containers with a capacity of up to three litres'.

Article 50(2) lays down that 'in order to achieve the targets set out in paragraph 1, Member States shall take the necessary measures to ensure that deposit and return systems are set up for the relevant packaging formats referred to in paragraph 1 and that a deposit is charged at the point of sale'.

Commission's interpretation:

The 90 % separate collection targets for single-use plastic beverage bottles and metal beverage containers in Article 50(1) applies to the Member State as a whole and is based on the quantity of such packaging formats made available on the territory of a Member State in a year.

All single-use plastic beverage bottles and metal beverage containers, except those expressly exempted from this obligation by Article 50(4), are required to be part of a DRS. Member States must ensure that their whole territory is covered by the separate collection for these packaging formats, but may implement DRS schemes at a subnational level to take relevant national administrative divisions and overseas territories into account.