

## INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	<i>Review of the requirements for packaging and other measures to prevent packaging waste</i>
<b>LEAD DG (RESPONSIBLE UNIT)</b>	ENV.B3 – Waste management & Secondary Materials
<b>LIKELY TYPE OF INITIATIVE</b>	<i>Legislative</i>
<b>INDICATIVE PLANNING</b>	Q2 2021
<b>ADDITIONAL INFORMATION</b>	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1536752510742&amp;uri=CELEX:01994L0062-20180704">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1536752510742&amp;uri=CELEX:01994L0062-20180704</a>

**The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.**

### A. Context, Problem definition and Subsidiarity Check

#### Context

[Directive 94/62/EC on Packaging and Packaging Waste](#) (hereafter the 'Packaging Directive') regulates the placing on the market of packaging as well as packaging waste prevention and management. All packaging placed on the EU market has to comply with essential requirements relating to its composition and reusable and recoverable nature.

The '[fitness check](#)' of the Directive carried out in 2014 identified the need for clearer and more specific requirements on the composition and the reusable and recoverable, including recyclable, nature of packaging. The initiative also follows up on the [Plastics Strategy's](#) commitment to ensure that plastic packaging is reusable or recyclable in an economically viable manner by 2030, and on the [European Green Deal](#), which broadens this commitment to all packaging, and commits to additional measures to prevent and reduce over-packaging and packaging waste. It also reflects the objectives of the [new Circular Economy Action Plan \(CEAP 2.0\)](#).

#### Problem the initiative aims to tackle

The initiative aims to tackle the limited competitiveness of secondary materials from recycled packaging relative to virgin feedstock in view of its quality and availability and to address the increase in packaging waste generation. It also aims to help Member States achieve recycling targets as agreed in the 2018 waste legislative package in a cost-effective way.

Despite an overall trend towards light weighting across a wider range of packaging formats in the last three decades, there has been an overall increase in packaging waste generated. As a result in 2017, the generation of packaging waste reached a record – 173 kg per capita, the highest level ever. According to [Eurostat](#), 81.5 million tonnes of packaging were placed on the EU market in 2007, compared with 88.4 million tonnes in 2017. This corresponds to 8.5% growth in just 10 years. The packaging sector is the biggest contributor to plastic waste, generating around 17.8 million tonnes in Europe in 2018<sup>1</sup>, accounting for about 60% of post-consumer plastic waste. A mix of drivers are thought to have contributed to the overall increase including growing per capita consumption, a shift from

<sup>1</sup> Plastics Europe (2019). Plastics - The Facts 2019.

<https://www.eea.europa.eu/themes/waste/waste-management/reducing-loss-of-resources-from>

reusable towards single-use and disposable packaging, growing online sales as well as the sometimes still 'excessive' quantities of packaging for goods (over-packaging)<sup>2</sup>.

At the same time, demand for secondary materials from recycled packaging remains too low, resulting in valuable resources being lost to the economy: only a limited share of the packaging waste is recycled and finds its way back into new products or packaging. In 2017 only around 42 % of the plastic packaging waste generated in the EU was being recycled. The rest was disposed of in landfills or incinerated with energy recovery with consequences on the environment including air pollution and greenhouse gas (GHG) emissions. In the production of new packaging virgin materials (e.g. fossil feedstock in the case of plastics) are still widely used, which leads to environmental impacts including higher GHG emissions. The impacts associated with the use of packaging are compounded by the fact that the amount of materials used for packaging is growing continuously in Europe.

The main obstacles to strong markets for secondary materials from recycled packaging are thought to include their higher costs relative to virgin feedstock, and the limited availability of stable quantities and high quality secondary materials. This is partly because the packaging design does not sufficiently consider the difficulties and costs of treatment of packaging waste (including collection and sorting) and thus increases the cost of recycling. This phenomenon is exacerbated by the lack of clear legal rules requiring that packaging can be recycled to high quality in a cost efficient way. It has been calculated that design improvement could halve the cost of recycling plastic packaging waste.<sup>3</sup> Yet, current trends on the packaging market even show an increase in difficult-to-recycle packaging such as flexible multilayer composite packaging. Current essential requirements for packaging, dating back to 1994, do not provide the regulatory push for design changes for re-use and recyclability as they are not fully aligned with the waste hierarchy. The essential requirements also leave too much room to interpretation, in particular about what qualifies as recyclable. This has in particular spurred a trend towards light-weighting of packaging, sometimes at the expense of recyclability. Their very vague and general formulation also results in limited (capacity of) enforcement by Member States<sup>4</sup>.

#### **Basis for EU intervention (legal basis and subsidiarity check)**

The amendment to Directive 94/62/EC on Packaging and Packaging Waste is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU). It is necessary to strive for full harmonisation of rules on packaging across the internal market to preserve its integrity and allow for a smooth free movement of packaging and packaged goods. Uncoordinated national measures to address sustainability aspects of packaging result in obstacles to the free movement of goods and hinder the development of markets for secondary raw materials.

The review of the essential requirements is based on Article 9(5) of the Packaging Directive, which mandates the Commission "to examine the feasibility of reinforcing the essential requirements with a view to, inter alia, improving design for re-use and promoting high quality recycling, as well as strengthening their enforcement".

#### **B. Objectives and Policy options**

The general objective is a well-functioning internal market through fully harmonised rules on packaging while tackling negative impacts on environment and health from packaging and packaging waste.

The specific objectives are: (1) Ensure free movement of packaging and packaged goods; (2) Ensure a well-functioning market for secondary raw materials and support compliance with recycling targets for packaging; (3) Ensure reduction in packaging waste generation, including by reducing (over)packaging.

This is meant to be achieved in particular through (1) clearer, more enforceable EU level requirements on packaging, which are (2) revised to drive design for reuse and recyclability of packaging and prevent the continued growth in the generation of packaging waste.

In the baseline scenario, the Packaging Directive's essential requirements are unchanged. Significant packaging waste prevention is not expected, even though some should come from the implementation of new rules in Directive 2019/904, from rules on the eco-modulation of extended producer

<sup>2</sup> Eunomia, 2020, *Effectiveness of the essential requirements for packaging and packaging waste and proposals for reinforcement*. For European Commission, DG Environment. Available [here](#).

<sup>3</sup> Ellen MacArthur Foundation, *The New Plastics Economy: Catalysing action*, January 2017

<sup>4</sup> Bio Intelligence Service (BIOIS), 2011, *Awareness and Exchange of Best Practices on the Implementation and Enforcement of the ER for Packaging and Packaging Waste*. For European Commission, DG Environment. Available [here](#);

Arcadis, 2009, *A survey on compliance with the Essential Requirements in the Member States*. For European Commission, DG Environment. Available [here](#).

responsibility fees set in Directives 2018/850 and 2018/852 as well as from voluntary initiatives, such as the [Circular Plastics Alliance](#) and the [European Plastics Pact](#).

In order to meet the specific objectives, the set of policy options will include measures to amend the essential requirements to improve design for reuse and promote high quality recycling, as well as additional measures to reduce packaging waste generation, including over-packaging, and may include the setting of targets. These targets and measures may be general (overall packaging waste reduction target or waste generation limit), or set at the level of a specific material or packaging formats, and may include making reuse mandatory for some packaging formats, in particular in the area of transport packaging.

Other measures that will also be examined in the context of this initiative will include:

- requiring all packaging to be reusable or recyclable and providing an enforceable definition of 'recyclable packaging';
- restricting the use of some packaging materials to certain applications, in particular where alternative reusable products or systems are possible or consumer goods can be handled safely without packaging;
- reducing the complexity of packaging materials including the number of material and polymers used;
- introducing recycled content targets for specific packaging formats;
- introducing minimum mandatory green public procurement (GPP) criteria and targets for packaging.

### C. Preliminary Assessment of Expected Impacts

#### Likely economic impacts

Clearer and more harmonised rules on packaging will increase long-term planning certainty for packaging related investments and have a positive impact on the internal market and support a level-playing field for packaging producers.

More effective packaging waste prevention will reduce the cost associated with the collection and treatment of waste. A shift towards certain reusable packaging types may require initial investments to establish reuse systems, but these costs should be offset by operational savings. New business models based on reusable, closed loop packaging solutions would be created.

Reinforcement of the essential requirements should improve the cost-effectiveness of sorting and subsequent high quality recycling of packaging waste. In the short term, packaging manufacturers and fillers may face an increase in costs, as they adapt to the new requirements. However, these investments could be rewarded through lower extended producer responsibility fees and better consumer acceptance. This will have a positive impact on the EU industry and the SMEs that make up the majority of waste recovery operators.

The economic impacts that will be assessed include job creation, distribution of costs and benefits, and administrative burden (in particular on SMEs and public authorities).

The impacts of the COVID-19 pandemic will be taken into account in the business as usual scenario and as much as possible in the assessment of policy options, in particular, concerning the impacts on the EU recycling sector.

#### Likely social impacts

Measures to reduce packaging waste will likely require adaptation of producers, retailers and consumers to new business and consumption models.

The assessment will also take into account the impact on job creation. An increased reliance on reusable packaging, increased recycling and a more competitive market for secondary materials is expected to have positive impacts in terms of job creation.

Implications on safety and hygiene for the consumer will be considered, also in the context of the lessons learnt from the COVID-19 pandemic, in particular as regards food packaging and food contact materials.

#### Likely environmental impacts

Environmental impacts to be assessed will include reduced greenhouse gas emissions, increased resource efficiency, reduced pollution to water (including marine litter) soil and air from landfilling and

<p>incineration and related ecosystem degradation and health risks.</p> <p>The initiative should also contribute with a reduction in health impacts from air pollution from the incineration of unrecycled packaging waste.</p> <p>Particular attention will be paid to the impact of the proposed measures in terms of food waste generation.</p>
<p><b>Likely impacts on fundamental rights</b></p>
<p>N.A.</p>
<p><b>Likely impacts on simplification and/or administrative burden</b></p>
<p>Businesses will benefit from further harmonization and clarity on the product requirements. They may however incur some additional administrative burden (depending on the option retained). Importance will be attached to the identification of measures that minimise such burden or can contribute to further simplification. There may also be an indirect positive impact on the administration of extended producer responsibility fee modulation if certain of its elements can be addressed in a harmonised way at EU level.</p> <p>Member States already incur compliance monitoring and enforcement costs. Whereas cost-effectiveness is expected to increase with clearer requirements, new requirements may need additional administrative resources.</p>
<p><b>D. Evidence Base, Data collection and Better Regulation Instruments</b></p>
<p><b>Impact assessment</b></p>
<p>An impact assessment will be prepared in 2020 to underpin the Commission's proposal, which is planned for adoption in 2021.</p>
<p><b>Evidence base and data collection</b></p>
<p>The Commission has collected and analysed information relating to the Packaging Directive as part of the '<a href="#">Ex-post evaluation of the Five Waste Stream Directives</a>'. Moreover, the Commission has carried out several studies on related topics including most recently a <a href="#">scoping study on the reinforcement of the essential requirements</a>. Existing data that will inform the analysis includes Eurostat's <a href="#">packaging waste statistics</a>, and other packaging data relevant to the issue at stake. A support study is underway to collect further evidence on the expected impacts of different policy options.</p>
<p><b>Consultation of citizens and stakeholders</b></p>
<p>In 2019, the Commission carried out relevant consultations with Member State experts, stakeholders and relevant NGOs in the context of the <a href="#">above-mentioned scoping study</a>. Position papers from stakeholders received in this context have informed the findings on a wider set of measures to reinforce the essential requirements. There is significant stakeholder support for the revision of the essential requirements to introduce harmonised rules on packaging that reflect better the principles of circular economy.</p> <p>In the course of 2020, in addition to the feedback received on this Inception Impact Assessment, the following consultation activities are planned:</p> <ul style="list-style-type: none"> <li>• a 12-week public consultation accessible via the Commission's '<a href="#">Have your say</a>' website will be carried out along further targeted consultations with Member State experts and stakeholders. The questionnaire of the public consultation will be published in all official EU languages. Respondents may reply in any official EU language.</li> <li>• further workshops and targeted stakeholder interviews will also take place.</li> </ul> <p>Once all consultation activities are closed, a synopsis report will be published on the consultation page.</p>
<p><b>Will an Implementation plan be established?</b></p>
<p>The need for an implementation plan will be assessed and will depend on the chosen policy option and measures, in particular, concerning the waste prevention measures.</p>