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Position Paper regarding the Packaging and Packaging Waste Regulation (PPWR) Proposal

GENERAL CONSIDERATIONS

The American Chamber of Commerce in Romania (AmCham Romania) supports the goal of the Packaging and Packaging Waste Regulation (PPWR) proposal to contribute to the efficient functioning of the internal market for packaged goods, while preventing or reducing the adverse impacts of packaging waste on the environment and on human health.

We particularly welcome the shift from a Directive towards a Regulation as a legal instrument and a stronger internal market legal basis, since this serves the purpose of strengthening **harmonisation of packaging regulations across EU Member States and reducing regulatory or market fragmentation**, which entail challenges for both authorities and businesses. With this aim in mind, provisions in the text allowing Member States to introduce or to maintain specific and/or divergent national requirements should be carefully assessed in order to avert risks towards challenging the free movement of packaging and packaged goods.

For the regulation to fulfil its goals, **the industry needs clear implementation timelines and requirements, as well as sufficient time to adapt**. As per the current draft, many of the proposed requirements will have to be implemented 12 months after the entry into force of the Regulation. Yet, unless industry is granted sufficient time to design and produce compliant packaging, and exemptions are established for products that have already been packaged before the entry into force of the requirements (e.g., transitional periods and rules on exhaustion of stocks), additional packaging will be generated to repack products, undermining the objective of the Commission to reduce packaging and packaging waste. Therefore, a generic transitional period would increase legal certainty and provide sufficient time for economic operators to implement the necessary changes. In addition, when it comes to the delegated acts foreseen by the Regulation, we believe that a general safeguard rule is needed to ensure that any delays in the publication of such acts – as experienced in the past with other legislative files – are translated into equivalent transitional periods for the application of different requirements, ensuring legal certainty and predictability for economic operators.

SPECIFIC CONSIDERATIONS

Prevention and recycling

We support draft PPWR proposal prevention targets for each Member State (5% by 2030, 10% by 2035 and 15% by 2040) in order to reduce the packaging waste generated per capita, as

compared to the packaging waste generated per capita in 2018 with a clear methodology and predictable timeline in place.

Recycled content targets

When it comes to minimum recycled content, in light of the currently available quantities of food contact-grade post-consumer recycled material as well as of the available technologies allowing to integrate recyclates in packaging while preserving their functionality and safety features, we believe the **30% post-consumer recycled content per unit of single use plastic bottle target set for 2030 is rather too ambitious** (65% by 2040).

Considering the provisions of Art. 7, we believe that the amount of post-consumer recycled material suitable for food and beverage applications, i.e., complying with sector specific EU legislation and requirements, is insufficient to allow for all food and beverage producers to meet their minimum recycled content targets in plastic packaging. Therefore, these targets should be revised to take into account recyclates availability as well as integration possibilities offered by state-of-the art recycling technologies, i.e., either lowered or calculated across a company outputs and not per unit of packaging). In particular,

- Further clarity is needed on several provisions of the regulation, such as determining what enters under the scope of “packaging other than contact sensitive and single-use plastic bottles” to avoid questions such as: *Does the Commission refer to items entirely made out of plastic or also to items made out of a mix of materials? Do targets apply to transport packaging, such as stretch film used across sectors to fix goods on pallets?*
- When it comes to the *beverage industry* – it shall be noted that operators favour high rPET targets as long as the industry has priority access to recycled content for beverage bottles. This will drive better circular outcomes for PET by building bottle-to-bottle recycling loops and avoiding high quality PET being downcycled into low value plastic and being lost from the loop. In addition to avoiding free riding, priority access would encourage investments on the different loops by the other industries and will create more scale, which is not the case currently;

The industry supports a calculation methodology on average per member states, rather than per unit of packaging (as currently provided in Art. 7). This needs to avoid contradictions with other normative acts, such as, in the case of bottles, the Single Use Plastics Directive proposing that the 30% target of recycled plastic content is on average per Member State, as transposed in the Romanian legislation through GEO 6/2021, whereas the PPWR proposes that recycled content is calculated per bottle. The underlying rationale is that calculating recycled content per unit of packaging brings no environmental benefit, as the amount of recycled content that an operator can use on average across its portfolio will be the same. In addition, an on-average approach helps the producer manage the use of feedstock depending on the availability, demand of products depending on seasons and other market realities. Calculating

recycled content on average at a Member State level, protects the European circular economy from external unpredictable geopolitical events that may impact the value chains.

In connection with this, we welcome the proposal that **Member States shall ensure that systems are set up to provide for the return and separate collection of all packaging waste in a way that facilitates its preparation for re-use and high-quality recycling** (Art. 43.1). However, the proposal does not include any definition of high-quality recycling or any measure that would guarantee that high-quality recycled materials suitable for food-grade applications are used in priority in food-grade applications. This means that high-quality materials (complying with EU food safety requirements) can instead be downcycled and used in non-food applications which do not require the same level of quality. In order to improve the provisions of the regulation, we therefore propose:

- As a first step, to define high-quality recycling in Art. 3 as *"any recovery operation, as laid down in Article 3 point (17) of Directive 2008/98/EC, which ensures that the distinct quality of the waste material collected is preserved or recovered during such recovery operation so it allows further recyclability and can be re-used in the same way and for the same product category it came from, with minimal loss of quantity, quality or function"*. Then, to amend Art. 43.1 to mandate Member States to ensure that a system is set up to give priority to high-quality recycling.

Not least, we recommend avoiding a universal/standardized packaging at industry levels, especially in the context of increased reuse targets for producers, as this will limit the innovation for enhanced recyclability, reusability, and minimum impact on environment.

Deposit-return systems (DRS)

We support mandatory DRS & minimum requirements for their effective and efficient operation across Europe. This includes improving the minimum requirements in terms of retention of unredeemed deposits by the deposit operator, VAT exemption on unredeemed deposits and ownership of collected materials by the deposit operator.

Considering the number of amendments submitted at European level expressing the view that the DRS shall be voluntary, we reinforce that the Regulation must keep its proposed wording in terms of **mandatory DRS**, such systems being the main instruments in attaining high collection rates and high-quality recycling of beverage packaging in the EU.¹

The exemptions from the obligation to set up deposit and return systems for beverage packaging must be limitative and of strict interpretation, and furthermore, to provide a proper correlation with the provisions and targets laid down in the Single-Use Plastics Directive.

¹ https://www.europarl.europa.eu/doceo/document/ENVI-AM-749039_EN.pdf

We stand for attribution of priority access to the material collected under the DRS, as well as to the recyclates resulting from the processing of post-consumer packaging waste. This is essential to avoid downcycling. Bottlers who contribute to the collection and recycling of their packaging materials through a deposit-based collection system should be able to get access to the collected material. Otherwise, it may not be possible to meet obligations on recycled content and would lead to down-cycling, as currently already experienced. Hence, it should be mandatory for a DRS to offer the collected material to the contributing bottlers, for example on a pro rate basis and at market price. In the current context, today it is impossible to produce food contact grade material out of anything else than food contact grade material waste. Therefore, once a food contact grade material has been recycled into a non-food contact item, it falls outside of the food contact grade material loop, and the circularity loop is breached.

Moreover, in view of building a strong ecosystem of DRS across the EU, we consider that all beverage packaging should be included. The PPWR proposal provides in Article 44 para. 1 the obligation to set up DRS for single use plastic beverage bottles and single use metal beverage containers only, excluding other types of beverage packaging from the system (*i.e.*, **glass**, which is highly used on the markets of beer, beer mixes, mixes of alcoholic beverages, cider, other fermented beverages, juices, nectars, soft drinks, mineral waters and drinking waters of all kinds – as such, not only on the wines and spirits markets excluded from the system proposed in the PPWR).

Thus, in connection to the above, we support an **equal treatment of the beverage packaging**, including **alcoholic beverages (spirits, wines, beers) without discrimination to ensure that reuse is developed in all applications in which it makes sense from an environmental standpoint**, based on an environmental lifecycle assessment. The PPWR proposal does not provide any justification for the apparent discrimination operated between wines, spirits and other alcoholic beverages. DRS should be about the beverage container rather than the contents. Wine and spirits cans, glass bottles and PET bottles are included in existing European and non-European DRS systems, whether or not on a mandatory basis. E.g: Romania, Netherlands, Estonia, Croatia, Finland. The DRS provisions focus on metal cans and plastic bottles. There is no logic, environmental or otherwise, why certain containers containing wine or spirits should be a priori excluded, but others included, simply on the basis of their content when the container itself is identical. Moreover, such a discrimination counters the environment protection objectives of the proposal, which include reducing as much as possible the overall amount of packaging placed on the EU market, and by extension, the resulting waste. In line with this ambition, it does not make sense to exclude certain sectors from the implementation of reuse targets, unless it would result in a negative environmental impact. If nonetheless a justification exists for the discrimination operated between wines, spirits and other alcoholic beverages under the reuse targets suggested in the proposal (such

as a comparative environmental lifecycle assessment made between wine, spirits and other alcoholic beverages' packaging), this should be disclosed by the Commission.

Labelling of packaging

We consider that **additional sorting and/or reuse labels on packaging which is already part of DRS may lead to confusion and unnecessary burden**. The deposit logo message in itself already conveys the message of both reusability and recyclability of the packaging. The duplication of logos risks ultimately to confuse consumers, reduce the effectiveness of well-functioning systems and increase GHG emissions as bigger packaging and labels will be needed to contain all the required information. We support compliance with the obligations of producers from art. 11 (1) and (2) can be carried out after the entry into force of the provided delegated acts and not after the entry into force of the Regulation.

With regards to **QR codes or other types of digital data affixed to packaging** that tracks the packaging and the trips, we believe they should either not be applied or constitute a voluntary measure, since neither sufficient technologies exist for all packaging types nor could there be a unique design/QR code compatible with all packaging formats. If this is not possible then sufficient transition phase required, especially with regards to QR code implementation (e.g. on all new purchased bottles from 2030 onwards). If nonetheless, EU policy makers persist with the introduction of mandatory sorting and reuse labels, taking into consideration the time necessary to adapt operators' production processes to a new labelling system, therefore EU policy makers should consider an extended transition period to 5 years (currently 3,5 years out of which from 1,5 to 2 years will be used by the Commission to draft the secondary legislation laying out the criteria for establishing the requirements of the new labelling system).

Restrictions on use of certain packaging formats

The PPWR proposal foresees a ban on certain categories of packaging as of 2030. In line with the proportionality principle, we believe that packaging formats that are today collected for recycling should not be subject to these bans because there is already a viable and effective way to manage the material.

- For instance, we consider the ban on shrink wraps is not environmentally justified, considering that an carbon footprint study covering the entire lifecycle of a can shows that the use of 100% recycled shrink wraps, has the lowest carbon footprint when compared to available alternatives (including paper packaging) thanks to it lightness. As per the experience of the inudstry, plastic shrink wraps are fully recyclable and can be made of a 100% recycled plastic content. In addition, replacing shrink wraps would involve important additional costs for the industry to change production processes, whereas these funds could be invested in research and development.

Reuse & refill

We agree that **reusable formats are part of the solution to eliminating plastic pollution and reducing greenhouse gas (GHG) emissions**. However, reuse targets should be set in a way that takes into account geographical, environmental, economic and infrastructure factors.

With this aim in mind, we recommend considering a broad definition and wide scope of reuse, as per the definition of the Ellen MacArthur Foundation (e.g. refill and reusable/dispensed) and not limit it only to refillables. We support that the economic operator is accountable for the targets vs all industry per Member State while advocating for shared responsibility with retailers on offering reusable packaging formats to end-consumers.

A strong implementation of reuse will only be possible if the concept of reuse as well as the types of packaging it covers are clearly defined. For instance,

- When it comes to the *beer industry* – we recommend clarifying that kegs should be considered as reusable packaging, and taken into account in the calculation of the attainment of the reuse targets. The beer industry uses an important number of reusable kegs and casks with a life span which can cover decades. They greatly contribute to the reduction of packaging placed on the EU market, and it is important that this contribution is accounted for in the calculation of the PPWR reuse targets;

We believe that the proposed reuse and refill targets do not appropriately take into consideration that their opportunity should be assessed on the basis of several criteria, such as the preparation of the packaging for reuse (i.e. washing), hygiene requirements and the required infrastructure and logistics. These targets should be carefully evaluated and revised where appropriate, based on scientific evidence assessed under real-life conditions and life cycle analyses, particularly for 2040, as well as the need for a sufficient transitional period, considering the different levels of advancement of the 27 Member States on reuse. In addition,

- Reuse targets should also include at-home solutions – included in the EMF definition. This will encourage producers to provide solutions that are not only HORECA or retailers' oriented, but also solutions for home and this would bring scale to reuse;
- The accountability of targets should be per operator and per Member State versus across industry per Member State, in order to avoid free riding and competitive disadvantage of the early movers;
- Finally, calculation methodology must be clearly defined by 2025 and not 2028, reuse to include refill for at-home and out-of-home.
- When it comes to transport packaging – we recommend a balanced approach considering impact of existing solutions versus investments needed for new innovative ones. For instance, currently, no reusable packaging solutions are used to fix goods on pellets for practical reasons, therefore a 10% reuse target set on such packaging by

2030 is too steep of an increase. Industry operators thus signal the need for considering an additional and reasonable timespan (e.g. 5 years) to develop a scalable and practical reusable alternative and integrate it into its production processes;

- When it comes to the *beer industry* – operators signal that methodology requirements shall be adapted to sector-specific traits. Beer is oftentimes sold in larger packaging with a capacity of more than 3L, i.e., a keg has a capacity of 50L. The use of larger packaging is beneficial to the environment as it reduces the overall quantity of packaging used. Therefore, it is important that the reuse targets calculation methodology takes into account the specificities of large capacity packaging, for instance by including an equivalence system between small and large packaging. (note – a keg is designed to be used for unlimited time depending on market situation, very often hundreds times a year, for almost unlimited time. Kegs are used 10+ years, they are repairable, recyclable, reusable. Kegs volume is from 13l+ to 50l. One 50l keg counts 100 times per use if we take a pint of 0,5L as unit of reference);
- When it comes to packaging with high recycling performance - we draw attention to the fact that should not be subject to reuse targets. Well-functioning recycling systems are based on the commitment and investments in infrastructure (collection, sorting and recycling facilities) and in technological development made by the industry to optimise the recycling performance. Replacing them with reuse systems without clearly defined logistics and without being able to guarantee an equal environmental outcome at minimum, would be counterproductive.

On a final note, we believe that the revision of the PPWR presents a significant opportunity to further enable the development of circular economy around the EU. The PPWR proposal should also support Member States in establishing and upgrading recycling facilities, as well as infrastructure, effective separate collection and sorting of waste.