April 24, 2023

European Commission
Brussels, Belgium

Re: PLASTICS Industry Association Response: Proposal for a Regulation on Packaging and Packaging Waste

Dear Sir or Madam:

The Plastics Industry Association (PLASTICS), through its Food, Drug, and Cosmetic Packaging Materials Committee (FDCPMC),[1] is responding to the European Commission's public consultation "reducing packaging waste – review of rules," including the Commission's proposed Packaging and Packaging Waste Regulation (PPWR). PLASTICS' members are committed to providing consumers safe and suitable packaging materials for food, drugs, and cosmetics, while supporting effective, science-based regulations that protect public health and the environment. Many members of PLASTICS' FDCPMC manufacture and market packaging materials in the European Union (EU) and will be directly impacted by this initiative.

PLASTICS supports reasonable and science-based measures to reduce, recycle, and reuse packaging waste. To be effective, such measures should be based on life-cycle analyses of the relevant packaging products and uses, and should ensure that the desired environmental benefit may be achieved without impeding the ability of the food, drug, and cosmetics industries to deliver safe and functional products to consumers. In doing so, the Commission must consider the benefits of food packaging to preventing food waste and protecting the health and safety of consumers. These essential functions must not be inhibited by any proposed restrictions on packaging waste.

As the Commission moves forward with its proposed regulation on packaging and packaging waste, PLASTICS' FDCPMC submits the following comments on several aspects of the proposal. Our comments focus most heavily on the PPWR's requirements for recyclable and reusable packaging and urge the Commission to consider the impacts of such requirements (*e.g.*, "design for recycling"

[1] PLASTICS was founded in 1937, as the Society for the Plastics Industry (SPI) and is the trade association that represents one of the largest manufacturing industries in the United States. PLASTICS' members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers, and raw material suppliers. The FDCPMC is composed of PLASTICS members with particular interest and expertise in packaging for food, drugs, cosmetics, and related products. The Committee has cooperated with government agencies on regulatory issues concerning packaging since its formation in 1957 and has provided meaningful input on every major regulatory action regarding food-contact substances in the United States thereafter.

criteria, recycled content minimums, refillable packaging) on the packaging industry's ability to deliver safe products in an economical manner.

1) A Deadline Should be Assigned for the Commission's Promulgation of "Design for Recycling" Criteria

Article 6 of the proposed PPWR requires packaging to comply with "design for recycling" criteria beginning January 1, 2030. The proposed PPWR empowers the Commission to adopt delegated acts to establish such criteria; however, there is no deadline by which the Commission must do so.

It is imperative that sufficient time is provided between the establishment of the "design for recyclability criteria" and the January 1, 2030 date by which the supply chain must meet such criteria. In this regard, the plastic packaging supply chain needs approximately three to four years to significantly change its manufacturing methods. This time is necessary not only for identifying, contracting, and installing new supply chain infrastructure, but also for designing new products and conducting testing to ensure that the packaging products meet all relevant regulatory, technical, and environmental requirements. Accordingly, the Committee requests that the Commission include a deadline no later than **January 1, 2026**, in Article 6(4) for the adoption of delegated acts to establish the "design for recyclability" criteria. This would provide industry at least four years to accomplish the tasks above and ensure that industry can safely and reliably produce compliant packaging.

2) Refillable Containers are Not Viable for Many Food Products

Article 26 of the proposed PPWR establishes refill targets for several types of packaging, including hot and cold beverages and take-away, ready-prepared food. While PLASTICS acknowledges that refillable containers are appropriate in some circumstances, such containers may, in other applications, present risks to human health and hygiene.[2] Accordingly, requirements to use refillable food and beverage containers must be developed and implemented in harmony with the EU's existing health and safety guidelines.

PLASTICS further recommends that an exemption be included in Article 26 to allow companies to use non-refillable packaging when doing so is supported by public health standards. This exemption should be broadly applicable and should not require premarket consultation with the Commission, so as to avoid unnecessary disruptions to the supply chain.

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[2] For example, studies have demonstrated that certain reusable articles such as grocery bags and water bottles may serve as vectors for the spread of viruses or infectious bacteria. *See e.g.*, Sinclair RG, Feliz A, Patel J, Perry C. The spread of a norovirus surrogate via reusable grocery bags in a grocery supermarket. Journal of Environmental Health. 2018;80(10):8 – 14; Sun X, Kim J, Behnke C, Almanza B, Greene C, Miller J, et al. The cleanliness of reusable water bottles: how contamination levels are affected by bottle usage and cleaning behaviors of bottle owners. Food Protection Trends. 2017;37(6):392-402.

Further, the initial reuse targets of Article 26 pertaining to the hotel, restaurant, and catering (HORCEA) sector are unduly burdensome in light of current industry practice and consumer behaviors. PLASTICS' members have indicated that, currently, only 1-2% of to-go beverage containers are provided in reusable containers, while to-go food is virtually never served in reusable containers. Article 26, however, proposes to require reusable packaging at rates of 10% for food items and 20% for beverages by 2030, with further increases thereafter. Meeting these requirements would require an unprecedented change of consumer behavior and massive public and private sector investment in infrastructure and systems; however, the proposed PPWR offers no structured plan by which to meet these requirements.

These requirements, as well as the Article 6 requirement that packaging be "recycled at scale," will likely result in a de facto ban on almost all packaging currently used to serve takeaway food and drink, potentially eliminating the business of takeaway food and beverages altogether. It is certainly not the goal of the PPWR to eliminate takeaway food and beverage establishments and put the livelihoods of these business owners and employees at risk. Accordingly, the PPWR should eliminate these requirements, or collaborate with industry to create a plan by which reusable packaging may be introduced in the HORCEA sector without risking companies' ability to provide food and beverages to consumers.

3) Requirements on Plastic Packaging Should Not Contribute to Food Waste

Besides protecting food from contamination, food packaging extends the shelf life of food, allowing for the maximum possible time between food production and consumption.[3] Currently, the food supply chain favors food packaging that extends the shelf-life of the packaged food while also protecting the food from contamination.

The EU has been active in seeking to combat food waste, as can be seen in its efforts pursuant to the Farm to Fork Strategy, among others.[4] This important issue has wide-reaching effects not only for consumers, but for the environment, as producing and shipping wasted food has a significant impact on energy consumption and emissions.

The proposed PPWR's restrictions should not further contribute to the already critical issue of food waste. For example, the requirements in Article 9 regarding packaging minimization (sometimes known as "lightweighting") may prompt companies to use thinner or lighter packaging materials, which in turn may hinder the shelf-life of the packaged food. Alternatively, the strict requirements of

[3] Several scientific articles have assessed the effect of food packaging on the shelf-life of food products. *See*, *e.g.*, https://www.sciencedirect.com/science/article/abs/pii/S0260877408002847; https://link.springer.com/article/10.1007/s13197-011-0305-4.

[4] *See* https://food.ec.europa.eu/safety/food-waste/eu-actions-against-food-waste/food-waste-reduction-targets_en.

Article 6 may prompt companies to choose materials that are less protective of food, likewise impacting shelf-life.

Food waste is a multi-faceted issue with several causes and no single solution. However, food packaging plays an important role in fighting this critical issue. Accordingly, we urge the Commission to consider the impacts of the proposed PPWR on food waste, and to ensure that the restrictions therein do not further contribute to the global challenge of food waste.

4) Chemical Recycling and Biobased Content Should be Permitted and Encouraged for Use in Meeting Recycling Targets

Chemical Recycling (*e.g.*, pyrolysis and methanolysis) provides an effective means by which to convert plastic waste into new articles including food, drug, and cosmetics packaging. The draft PPWR is ambiguous as to whether chemical recycling would be accepted as "recycling" both for meeting recycling requirements (*e.g.*, the Article 6(1) requirement that all packaging be recyclable) as well as the minimum recycled content requirement for plastic (*e.g.*, Article 7). The commission should clarify that chemical recycling is "recycling" for the purposes of the PPWR and allow companies to use chemically-recycled material to meet their recycled content minimums.

In addition to chemical recycling, biobased plastics produced from sustainably-sourced biomass can help lower the packaging industry's carbon footprint. It is consistent with the stated goals of the PPWR to allow companies to meet recycling targets by increasing their use of biobased plastics. For the same reason, biobased plastics that meet the requirements of Annex III to the proposed PPWR should be permitted for use in food packaging broadly, without reference to specific authorizations such as those in Article 8.

5) Exemptions Must be Available for Critical Foods and Emergency Situations

Packaging materials are an essential part of the food supply chain. In light of recent food shortages (*e.g.*, the recent shortage of infant formula in the United States), it has become apparent that the global food infrastructure must have mechanisms in place to deal with shortages, supply chain disruptions, and other events to avoid a situation in which critical foods do not reach consumers.

Although the proposed PPWR includes a mechanism by which the Commission may amend certain requirements as needed (*e.g.*, recycled content requirements in Article 7(10)), the PPWR must include emergency provisions which would allow companies to bypass the requirements of the PPWR in the case of shortages, critical needs for foods, etc. Specifically, a new article should be added to the proposed PPWR stating that in emergency situations (*e.g.*, food shortages, severe supply chain disruptions, etc.), companies may provide notice to the Commission of the circumstances surrounding the emergency and may thereafter provide noncompliant packaging materials for a temporary period (*e.g.*, three months) to fill an immediate need. To allow for timely responses to global crises, the emergency provisions must be self-executing, allowing companies to rely upon an emergency exemption without seeking pre-approval from the Commission. Such provisions should provide relief from the requirements of the PPWR both before and after compliance deadlines. This solution would

allow the PPWR to address packaging waste issues under the majority of circumstances, while maintaining essential supply chains that should not be disrupted on account of packaging issues.

6) Recycled Content Requirements Should Apply to All Packaging Types

Article 7 of the proposed PPWR establishes recycled content requirements applicable only to "the plastic part in packaging." While PLASTICS does not object to the imposition of such targets to plastic packaging, recycled content minimums should likewise be applied across packaging types to packaging made of paper, metal, glass, and/or other materials. Doing so would be an effective way to achieve one of the goals of the PPWR to incentivize the use of recycled material and to increase the use of recyclable materials. Because all packaging types would be required to be "recyclable" under the PPWR, it follows that the benefits of the recycled content minimums would likewise apply across packaging materials.

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We appreciate this opportunity to comment on the Commission's proposed Packaging and Packaging Waste Regulation. We hope that you will find our comments to be supportive of the Commission's goals of protecting the environment and public health, while also providing practical and achievable regulations for the packaging supply chain. PLASTICS' FDCPMC looks forward to continuing to support such efforts. Should you have any questions or comments regarding our feedback, please do not hesitate to contact us.

Cordially yours,

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