Essential Requirements: proposed approach

This paper outlines EXPRA's views on the Essential Requirements in the context of preparation of the European Commission's future review, as envisioned in the 2018 Packaging and Packaging Waste Directive (PPWD).

Regulatory context

Recital 21 of the PPWD (Directive (EU) 2018/852) highlights the need to review the Essential Requirements (ER), as laid out in Directive 94/62/EC, in order to boost prevention of packaging waste, reduce its environmental impact and promote recycling materials of high quality, while also safeguarding the functioning of the internal market, avoiding obstacles to trade and preventing distortion and restriction of competition. Article 9(5) of the 2018 PPWD further states that the European Commission shall, by 31 December 2020, *"examine the feasibility of reinforcing the essential requirements with a view to, inter alia, improving design for reuse and promoting high quality recycling, as well as strengthening their enforcement."*

In this process, the European Commission has tasked Eunomia with preparing a study, in consultation with relevant stakeholders, the conclusions of which will inform the EU executive's future course of action in this regard. The views set out below respond to the suggestions and options raised during this process thus far.

EXPRA's views

The Extended Producer Responsibility Alliance (EXPRA), representing industry-owned, non-profit packaging and packaging waste recovery and recycling systems, welcomes the opportunity to strengthen the Essential Requirements and their contribution to improving packaging design. In doing so, we believe it is crucial to adopt a measurable, documented approach that follows a *"plan, do, check, act"* rationale, and addresses the issues raised below:

- **Headline requirements**

A significant share of the discussions thus far has focused on **the definitions of recyclable and reusable packaging**. However, we believe that the general discussion should first pivot around the overarching principle of *"packaging functionality"*, with the assessment of the overall environmental performance of packaging taking into account also the product contained in the packaging. This is particularly important in cases where packaging has a lower share of the total environmental impact compared to the product it contains (e.g. meat and oils). If this is not the case, the resulting definition of recyclable and reusable could lead, together with eco-modulation requirements for EPR systems, to market barriers for packaging that performs better from an overall environmental perspective but which is not recyclable or reusable. This could in turn lead to more food waste, contrary to the EU's objective, and to more waste of hazardous substances. EXPRA is very much for stimulating reusable and recyclable packaging, albeit within the functionality of the packaging (and without any concession to it).

In this vein, mandatory quantitative requirements for efficient use of packaging should be removed, whereas **the ratio of packaging to product** should be included under the headline requirements of minimisation. Meanwhile, rewarding e-commerce packaging that complies with

international recommendations on efficient logistics or looking into modular packaging designs as a way to improve efficiency of packaging in logistics should be considered.

In addition, the definition of 'recyclable or reusable in **a cost effective manner**' must be further detailed and clearly distinguish between what is considered as cost-effective versus lower-cost. This should crucially avoid linking the requirements with EPR fee modulation, as the latter is not related to packaging design alone, but also to the design of the (local) packaging waste management system and market trends. Otherwise, environmental modulation would also have to be equally implemented under any other packaging waste management system, such as deposit refund systems (DRS) or taxation. Instead, the EU guidelines for eco-modulation must remain relatively general and light-touch at this stage, whilst being adapted in light of the updated Essential Requirements only once these are agreed upon and integrated into EU law.

Finally, while the existing Essential Requirements and the accompanying CEN Standards may no longer be entirely fit for purpose, we do not believe these Standards should be removed. Instead, these should be revised in order to better reflect existing needs and realities and subsequently better enforced. They should also be reviewed periodically, and updated if and when necessary. This should act as a complementary enforcement tool and be carried out either individually (self/third party declaration) or at EU level. The structure of CEN standards (which should remain harmonised) should also enable producers and importers of packaged goods to set up an administrative system, making use of environmental tools (e.g. LCAs), to evaluate various effective and functional packaging alternatives and their environmental performance. This should fully substantiate their choices for packaging, and if done correctly, their compliance with the Essential Requirements. The standards should be written in a way that enables the competent authorities to check and enforce compliance if necessary.

- **Definition of recyclable**

With regards to the definition of recyclable, a qualitative, rather than quantitative, harmonised standard should be adopted. A quantitative threshold system as proposed among the draft options is not only unclear but also inapplicable, given that the recycling process and the recycling rates are based on material or material mix and not on packaging type or packaging.

The proposed option of a generic definition already accounts for the fact that practical interpretation will vary between Member States. This should continue to allow sufficient flexibility to account for the fact that while in some Member States, the collection system may not be elaborate enough to allow for a packaging's recycling, this does not necessarily mean that the packaging is by definition not recyclable. As such, if recycling of a given material is proven, and takes place on a normal scale, it should be deemed recyclable in the country of which the waste that is recycled is originating. Developing a detailed breakdown of types of packaging that is actually recycled to guide enforcement in this area could be considered.

In terms of *"high quality"* recycling, the draft option proposes to link this to a threshold related to the number of use-cycles. However, in practice what material is of high quality is defined on the

basis of end products applications and their market value. As such, adopting this requirement as proposed is neither effective nor feasible.

Above all, any definition of recyclability must be fully aligned with the provisions set out in the 2018 PPWD. The obliged industry, and its producer responsibility organisations (PROs), are responsible for compliance with the provisions of the PPWD. Setting the criteria for recyclability beyond what the PPWD already prescribes would make it more difficult for the obliged industry and/or PROs to meet the already ambitious targets of the PPWD and expose these to high non-compliance fines. In this respect, it should also be noted that PPWD does not prescribe closed loop recycling. The latter is also not necessarily possible and/or desirable for all materials. While inert materials such as glass and metals enable closed loop recycling, other packaging materials such as paper or PET bottles cannot be continuously recycled due to their gradual degradation. Any solution proposed that is not in line with the current PPWD provisions risks having a negative impact on the functioning of the internal market and could also lead to legal conflicts.

- **Definition of reusable**

For the definition of reusable, we believe the following aligns with the content and intent of the Waste Framework Directive (WFD): *"Packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled."* Any further qualifications must avoid setting arbitrary thresholds (e.g. an X amount of minimum trips or rotations) which would undermine the very rationale of reusability.

In addition, as regards the proposed ex-ante assessment approach for planned single-use packaging to determine whether reuse alternatives are an environmentally and economically viable option, any such assessment must take into account, inter alia, product and consumers safety viability.

- **Recycled content**

With regards to requirements on recycled content, the implementation of mandatory general requirements can be feasible if these are coupled with compliance with existing EU regulations. However, the adoption of a standard that provides a process by which producers have to go through to maximise the recycled content of a packaging unit should be voluntary. This is due to several factors, including the fact that brand owners cannot always influence the process as such and that the viability of incorporating recycled content differs per material, with plastic and paper, for example, being better predisposed to this. As such, setting a mandatory target for recycled content in certain types of packaging can also pose an important barrier to trade and distort competition. Moreover, methods that can verify the proportion of recycled content, for example in plastic packaging, are currently lacking, meaning that recycled content cannot be guaranteed for all packaging. Furthermore, it must be noted that the capacity for recycling should be sufficient so as to enable compliance with minimum levels of recycled content. To recall, the Circular Plastics Alliance set up by the European Commission aims to increase the recycling of plastic waste from the current 2 million tonnes per year to 10 million tonnes per year as from 2025. This implies that the capacity is currently not sufficient. Moreover, neither producers and importers of packaged goods, nor EPR systems, are responsible for these investments in the first place.

- **Composting**

The proposed requirement relating to compostability of packaging ignores the fact that not all packaging can feasibly be covered by it. In fact, compostability is only desired for certain packaging, such as small or fast food packaging.

- **Hazardous substances**

As regards the proposed measure on hazardous substances, it should be noted that pre-requirements in this area are already defined under the REACH legislation. In this context, food contact material for packaging is already subject to very strict requirements when it comes to hazardous substances. As such, the requirement to expand the hazardous substances list could prove redundant.

- **Labelling**

The requirement to implement mandatory labelling standards for compostable, recyclable and reusable packaging goes against the new CEN approach, under which standards are voluntary. Meanwhile, digital watermarking for all packaging by 2030 should only be implemented if carried out in a cost-effective way. In any scenario, however, favouring a specific type of technology to facilitate sorting, such as watermarking, may be too limiting and thus ineffective.

- **Enforcement**

We support, in principle, the proposal to oblige producers or fillers to self-certify via an online compliance form or the implementation of harmonised CEN standards. Given the administrative burden on producers stemming from compliance with the essential requirements, we believe that compliance alternatives, such as accrediting specific tools aimed at assessing packaging sustainability as certification tools, should be explored as a complementary step to the self-certification system. These could automatically assess conformity with the essential requirements as part of their wider packaging sustainability assessment.

However, we do not recommend implementing a requirement for an explicit approval from a Member State authority, nor an EU level body, for placing on the market, as these could have a negative impact on the market as such due to the expected delays in the process of approval.

*** *** ***

About EXPRA

EXPRA is *the Extended Producer Responsibility Alliance* – the organisation for packaging and packaging waste recovery and recycling systems. EXPRA acts as the authoritative voice and common policy platform representing the interests of its members, which were all founded and are run by or on behalf of the obliged industry and work on a not-for-profit or profit-not-for-distribution basis. Over the past 20 years, its 26 members across 23 countries, including 17 EU Member States, have co-organised the collection, sorting and recycling of used packaging (with a focus on household packaging) on behalf of the obliged industry. In so doing, they fulfil their legal take-back and recycling obligations, serving over 200 million inhabitants and recycling over 18 million tons of packaging per year. For more information, please visit www.expra.eu.