



Leaf Environmental Ltd response to the Consultation on removing the self-compliance option for packaging producers under the European Union (Packaging) Regulations 2014

Submission via e-mail to: PRI@decc.gov.ie

Date: 17th October 2022.

Managing Director:



Introduction

Leaf Environmental wishes to make the attached submission in relation the Department of Environment, Climate and Communication (DECC) - Consultation on removing the self-compliance option for packaging producers under the European Union (Packaging) Regulations 2014.

Name

Leaf Environmental Ltd. Contact details are on the cover page to this submission.

Who are we?

Leaf Environmental has been operating since 2001. It is a leading consultancy specialising in Producer Responsibility legislation. It provides project management, audits, advice and support on all PR legislation with a special emphasis on packaging, WEEE & batteries across the British Isles, and increasingly across Europe.

Leaf Environmental provides data and compliance services to companies that are Repak members as well as to those that are self compliant through the Local Authority regime. Leaf's sister company has been operating a packaging compliance scheme in Great Britain since 2006 as well ensuring clients are compliant as direct registrants in Northern Ireland.

We are aware of the legislative framework that producers must work within and the fluidity of the regime. It is our duty to our clients to help inform them of these changes, but also to provide feedback to policy makers and regulators about the impacts of the potential changes.

Consultation

Leaf Environmental is deeply concerned that the consultation has been framed as a set of draft regulations. This does not indicate any willingness to incorporate any responses. We trust that this is not the case and look forward to hearing that affirmed. We are available to discuss the draft regulations and also our responses.

Leaf Environmental cannot support the proposed amendment to the Regulations.

As there are no questions posed, we will outline our concerns below. We have made some observations and posed our own questions. We look forward to receiving the answers to help us understand the reason for this intended change. If any of them need greater explanation, expansion or detail, please do not hesitate to contact us.

1. What evidence of environmental benefit is being presented to support this change?
 - a. We cannot envisage any benefit to the environment to be gained by removing the self compliance option from the regulations

2. What evidence is being presented that self compliant producers are not paying Full Net Costs for their packaging waste?
 - a. We would suggest that the regulations have always required self compliant producers to pay full net costs¹, rather than only when strengthened EPR affected Repak members in the last couple of years; and
 - b. We would suggest that consequently, self compliant producers are the only producers that are wholly aware of their impacts as they do not pass the liability to a 3rd party.
3. Who is promoting, calling for and supporting this change to the regulations?
 - a. Why the change, now?
 - b. What is their motivation for calling for change? and
 - c. Who was consulted before this proposed Amendment was drafted? None of the nearly 20 producers that we do or have worked with on self compliance were consulted, nor are we aware of any of the more than 10 Local Authorities that we do or have worked with having contacted about this.
4. This removes all options for compliance and will enshrine a **monopoly** position in legislation.
 - a. Tyres and ELV have a single PR scheme but they have a very limited number of players and one could point to the fact that their supply chains are relatively straight forward;
 - b. The other Producer Responsibility regimes (WEEE and Batteries) are not like this and so we suspect that this will leave Government open to challenge by the Competition Authority or others; and
 - c. The regulations were designed to be a more administratively complex, but less costly method of compliance alternative to compliance scheme membership².
5. Shared Responsibility
 - a. The packaging waste legislation is unique in that all parts of the supply chain are involved. This adds significantly to complexity and so to Ireland Inc's costs.
 - b. If self compliance is removed as an option, then this will add to the costs incurred by producers (see point 5(c)). These costs would be ones that they have no control or choice over, and so the amendment will turn packaging legislation from Producer Responsibility into a tax, and would be better managed by the Revenue Commissioners
 - c. We are aware that the UK (which to our knowledge is the only other country that uses shared responsibility) is transitioning (with difficulty) to a single (albeit complex) point in the supply chain to place the PR. Should Ireland look at this option?
6. What will Repak do if it has a member that it wants to eject for breaking membership rules?
 - a. How can that producer be legally compliant if it is not a Repak member? and
 - b. Will an alternative compliance scheme be approved to avoid a monopolistic situation?
7. How will the Local Authorities benefit from this change?
 - a. Have LAs been consulted with prior to this?;
 - b. Are LAs aware of the fee income they will lose?; and
 - c. How will enforcement be funded?
8. How will producers benefit from this change?
 - a. Producers have come out of Repak membership to use the self compliance route as business conditions change – Leaf has several clients that have made this change; and

¹ Regulation 5 of SI 242 of 1997

² Pers. Comm with Terry Sheridan, c. 2003



- b. Producers have gone into Repak membership from self compliance as business conditions change – Leaf has several clients that have made this change.
- 9. Exports
 - a. Ireland’s commercial and industrial base has changed significantly since the Regulations were written in the previous century; and
 - b. There is no explicit provision for manufacturers that have customers that export.
- 10. Increase in recycling?
 - a. How will this change lead to an increase in recycling rates, or even better, a reduction in waste arisings?
- 11. We are very concerned about the potential introduction date as this is very late for 2023 budgeting purposes. Businesses are already under significant inflationary pressures and do not need or want unbudgeted surprises.

End of submission.