



Repak Ltd

Consultation on removing the self-compliance option for packaging producers under the European Union (Packaging) Regulations 2014

Repak Submission

10 October 2022

Packaging Regulations Consultation

1. Introduction.

Repak Limited welcomes the opportunity to provide input to the consultation on removing the self-compliance option for packaging producers under the European Union (Packaging) Regulations 2014. If Ireland are to meet the revised 2025 and 2030 EU packaging recycling targets, then a number of significant matters need to be addressed by the regulations. The removal of the option of self-compliance is one of these matters, but there are others that also need to be addressed through amended or revised legislation as quickly as possible.

2. Background to Repak.

As an environmental not-for-profit organisation, with a social mission, Repak's purpose on behalf of its members is to:

- lead the recycling and sustainability of Ireland's packaging waste,
- advocate for a new circular economy,
- educate businesses and consumers on reducing and recycling packaging waste.

Repak is an Extended Producers Responsibility (EPR) scheme set up by business in 1997 and currently has over 3,400 members. The members are producers of packaging and the current threshold in place is for any company who places more than 10 tonnes of packaging onto the Irish market with a total turnover greater than €1 million in the calendar year. Repak's Producer fees are based on a pay-as-you-produce basis i.e., the more packaging placed on the market by a producer, the higher their fee. Repak's fees to its members are defined by the necessary costs of managing packaging waste and these fees also differentiate between recycled and non-recycled material through a system of eco-fee modulation.

The fees paid to Repak by members are used to subsidise the collection and recovery of waste packaging through its network of registered recovery operators, who collect waste packaging from households, civic amenity sites and bottle banks across Ireland, for sorting, separation for recycling. This is how individual member companies comply with the Packaging Regulations and joining Repak is the most efficient and cost-effective way for them to meet their compliance obligations, under the Packaging Regulations.

Repak is approved under licence by the Minister for the Environment, Climate and Communications to operate as a compliance scheme for packaging recovery. Repak members have funded over €500m for the recovery and recycling of packaging waste in Ireland since 1997. Since Repak was set up packaging recycling in Ireland has grown from a very low base to the point where Ireland is now one of the leading recycling countries in the EU.

3. Understanding of the European Union (Packaging) (Amendment) Regulations 2022.

The proposed legislation is an amendment to the 2014 Irish Packaging Regulations and removes the option for major producers to register with Local Authorities and become self-compliant. The sections to be revoked from the 2014 Regulations are:

Regulation 12. Purchase of packaging waste.

Regulation 13. Registration and certification of major producers.

Regulation 14. Application for registration or renewal of registration.

Regulation 15. Implementation plans, annual reports and quarterly reports.

Regulation 16(1). Application of requirements (For major producers with more than 1 premises).

Regulation 16(3). Application of requirements (LAs register of certified major producers).

Regulation 27. Notice and information to the Agency.

Schedule 2, Part 2. REQUIREMENTS REGARDING NOTICES (New self-complying major producers).

Schedule 2, Part 3. REQUIREMENTS REGARDING NOTICES (Renewing self-compliant major producers).

Schedule 3. INFORMATION TO BE COMPILED, MAINTAINED AND SUBMITTED.

The objective is to remove the option to self-comply as a Major Producer and leave the only option to comply as joining an approved body Producer Responsibility Scheme which is specified in:

Regulation 17 - Exemption from certain requirements.

Of interest, however, is that the Draft Regulations have retained the following sections which normally relate to self-compliant major producers:

Regulation 10. Requirements on major producers to recover and recycle packaging waste.

Regulation 11. Recovery and recycling targets for major producers.

Regulation 16(2). Application of requirements (Calculation of weight data for reporting).

Regulation 10 refers to major producers receiving and handling (accepting or taking back) packaging waste to meet obligations, notices etc. If self-compliance is not an option, then this regulation should no longer be relevant. However, as Regulation 17 is structured around “exemption from certain requirements”, we understand that this is what approved body members are exempt from. In effect, this regulation will not apply to anyone, but remains in the legislation due to the way it is being amended.

Future legislation could remove this by saying:

“Major producers who are members of an approved body shall....”

rather than

“Major producers shall....” and then *“members of an approved body are exempt from...”*

Regulation 11 refers to 2008 recovery and recycling targets. While the legislation was amended in 2020 to add 2025 and 2030 targets (See section 8A of current legislation), the 2008 targets are still in place. They will remain there until 2025 when the new targets will be implemented.

Regulation 16(2) refers to the method of calculation of aggregate packaging data with detail on re-use, export and packaging waste from recovery operators. As the 2008 targets remain in place, we understand that this regulation follows on from Regulation 11, detailing how the targets can be achieved.

In future legislation these two regulations (11 and 16(2)) could be grouped with the earlier Producer regulations and away from this set of “self-complier” regulations.

Note that for major producers in an approved body such as Repak, their recovery and recycling targets, and any conditions on how those targets are calculated are provided in the licence approval document for the compliance scheme.

4. Removal of the option for self-compliance.

Repak agrees with objective of the legislation to remove the option of self-compliance and note that it is important that this amended legislation be implemented as planned by 31st December 2022 to ensure that self-compliance is not an option in 2023. This is also required to support the implementation of the Net Necessary Cost and Eco-Fee Modulation timescale as required by the EU and National Waste framework Directives.

5. Proposals for future legislation.

Repak requests that future legislation be revised (not amended) so that it can be restructured and simplified to make it clearer that there is only one option for obligated major producers (i.e., to join an approved body).

Repak also requests that future legislation go further than the current requirements and deal with issues that have already been identified as problematic, i.e.

- Removal or reduction of the de minimis
- Capture of backdoor packaging from exporters
- Obligate parent companies of multiple legal entities (i.e., franchises)
- Obligate online retailers/distance sellers

To resolve these issues, a broader definition of ‘Producer’ would be required, as well as the removal of the concept of a ‘Major Producer’ as it would no longer be required. A suggested definition of a Producer could be:

“producer” means any natural or legal person who in the course of their trade or otherwise in the course of business:

(a) removes, handles, sells or otherwise supplies to other persons packaging, packaging material or packaged products; or

(b) places packaging, packaging material or packaging waste on the market for the first time within the territory of Ireland.

5.1 Removal or reduction of the de minimis

Removing the de minimis exemption entirely would bring all producers within the scope of the obligations of the regulations. This would be achieved by removing the concept of a ‘major producer’ and bring all producers, defined in a broad manner as suggested above, within the scope of the regulations. This would also align with the Single Use Plastic directive requirements that has no reference to a de minimis.

5.2 Capture of backdoor packaging from exporters

This could be achieved in the regulations by the introduction of broad definition of ‘producer’ as suggested above, to ensure that the obligations of a ‘producer’ in relation to back-door waste includes importers/exporters.

5.3 Obligate parent companies of multiple legal entities (i.e., franchises)

The regulations need to be revised to address “Parent companies and Licence owners”. This would ensure that where a producer is a part of a group of companies or operating under a trade name pursuant to a licence agreement that the parent company/licensor “shall be deemed to be the producer” for the purposes of the regulations. Thus, the parent company/licensor would be deemed to be the producer within the regulations and responsible for the obligations that attach to that definition.

5.4 Obligate online retailers/distance sellers

The most effective way to capture online retailers/distance sellers is through an expanded definition of ‘producer’ as suggested above, and, in the case of those producers without a premises in Ireland, through the introduction of a requirement to appoint an ‘authorised representative’. How the authorised representative requirement would operate in practice will need to be defined in the regulations, but the primary point is that once they are appointed, the authorised representative assumes the role of the producer, and the obligations attaching to that definition, for the purposes of the regulations.

6. Conclusion

Repak supports the objective of this amended legislation to remove self-compliance by 31st December 2022. Repak requests that once this amended legislation is implemented, the Regulations are then revised to simplify and restructure the requirements within the legislation; and also requests that the Regulations are expanded to address the issues described in this submission.

With only the removal of self-compliance in place by the end of 2022, it is imperative that revised legislation be put in place as soon as possible in 2023 so it can be aligned with other legislation (such as the Single Use Plastics directive) and assist in the attainment of challenging packaging waste recycling targets by 2025.