



Packaging Regulations Consultation  
PRI Unit  
Circular Economy Materials Management Division  
Department of Environment, Climate and Communications  
Newtown Road, Wexford  
Y35AP90

16<sup>th</sup> November 2022

**Re: Packaging Regulations Consultation**

Dear Sir, Madam,

Please see below feedback form Fingal County Council on the draft regulations.

**1/ Aim of the Regulations**

In the public Consultation introduction on the website, reference is made to the Programme for Government from June 2020 and its commitment to end self-compliance as an option under Extended Producer Responsibility. The introduction goes on to say that the draft regulations provide for the removal of the self-compliance option from the Packaging Regulations by the end of December 2022.

Our reading of the draft Regulations is that they do not remove the self-compliance option, but remove the requirement for Major Producers who do not join the approved body (i.e. compliance scheme) to register annually with Local Authorities and produce reports etc.

In the current draft, Regulation 9 leaves that option open not to join the compliance scheme (approved body in the regulations), in which case the Major Producer must then comply with Regulations 10, 11 and 16.

In our understanding of the draft regulations, Regulations 10 and 11 remain unchanged and therefore leave the door open to self-compliance. Regulations 12 to 15 are removed, which would mean that companies opting to self-comply with Regulations 10 and 11 no longer have to register with the Local Authorities and submit quarterly and annual reports to the Local Authority.

This would result in a situation where Local Authorities are responsible for the enforcement of the Regulations without having any of the reporting from Companies who opt to comply themselves with Regulations 10 and 11 rather than joining the approved body set out under Article 17. This would result in the following:

- (a) Impossibility to know whether a Company is self-complying as the regulations do not provide for a business to register/declare that they are self-complying.
- (b) Impossibility for the Local Authorities (responsible for enforcement of the Regulations) to assess whether the targets set out in Regulation 11 are achieved by Major Producers.
- (c) It would make self-compliance a more attractive option than it currently is as all the reporting and payment of registration fees to the Local Authority are removed.

The next comments are based on the assumption that either we misunderstood the points made at 1/ or that these points are addressed and the draft Regulations actually mean an end to self-compliance.

## 2/ Transitional Arrangements

- (a) Under the current Regulations, Section 13(1)(b) a company having newly registered as a Major Producer with the Local Authority shall not be required to make an application to renew their registration within 4 months of their initial registration. This in effect means that if a company newly registers with the Local Authority in October November or December 2022 they are registered until December 2023. What would happen to that company if the draft regulations are passed? They would have a certificate of registration from the LA that they are registered until December 2023 – would they still be a self complier in 2023?
- (b) How would approved body back fees be considered when a new business is brought in compliance following Local Authority enforcement? Local Authorities investigate Suspected Major Producers every year (from a list supplied by WERLAs following consultation with the DECC and Repak), which may result in these companies being found to be Major Producers. They currently have an option of joining the approved body (Repak) or self-comply, and our experience is that companies who do not opt to join the approved body do so as they cannot afford to pay back fees. They opt to self-comply for a few years prior to joining the approved body.
- If back fees are staying will there be a system to allow a business to discharge such over a period of time while being a member of the approved body? If not this may result in Local Authorities being forced to bring to Court companies for breaches of the Packaging Regulations – where the issue rests with an inability to pay a large back fee.

## 3/ Other issues which may be worth considering.

In the current regime of the Regulation, a loophole exists where companies with distribution warehouses in the country, and placing more than 10T of packaging in the market fall outside the Major Producer status because their legal set-up does not involve a company registered in the Republic of Ireland. The Department should consider the definition of Major Producer to capture such companies.

Consideration should be given to the inclusion of “expanded polystyrene” in the definition of specified packaging, to force the industry to either stop using this form of packaging or make its recycling widespread so that it can be collected in green bins for recycling.

Finally, Fingal County Council welcomes the opportunity to contribute to the consultation and hope the above input will be of use to the Department.

Yours Sincerely,