

## Working Party on Environment – 16 and 20 February 2024

### Packaging and Packaging Waste Regulation

#### Steering note

In preparation for the second and last Trilogue, to be held on 4 March in Brussels, the Presidency is looking back at a number of points under discussion for which a revised mandate may be necessary.

Taking into account the outcome of the first trialogue, ongoing discussions at technical level and input from the Member States, the Presidency invites delegations to consider the compromise options set out below and to express their views on them.

Delegations are also invited to inform the Presidency and the Commission's colleagues in advance of any points they wish to raise at the meeting.

#### I. Horizontal issues and Definitions

**T1.** The European Parliament insists on including coatings and linings in the list of excluded elements within the definition of composite packaging (see row 188). The European Parliament is also strongly suggesting to include a 10% threshold for "insignificant part of the packaging unit" in that definition.

As a compromise, the European Parliament agreed to concede one of the two suggested additions: the inclusion of a 5% threshold and not the coating and lining in the list of excluded elements, or the inclusion of the coating and lining without including any threshold.

The Presidency's interpretation is that all packaging components not excluded from the definition of composite packaging must also comply with the obligations laid down in the Regulation, unless otherwise provided for.

The Presidency, after consulting delegations, suggests not including a threshold in the definition, but suggests including this threshold where relevant (as in the exemption from the obligation to include recycled content for plastic parts of less than 5% of the total weight of the packaging).

Noting, however, that to ensure that the text is perfectly readable and effectively implemented, it is proposed that the words "the predominant packaging material" be incorporated into certain provisions where appropriate.

Nevertheless, for sake of consistency with SUPD, it is suggested to exclude paints, inks and adhesives from the list of excluded elements. Indeed, recital 11 of SUPD explicitly mentions the following elements: paints, inks and adhesives as polymeric materials.

The definition of 'composite packaging' should be read as follows:

*(3(19)) "composite packaging" means a unit of packaging made of two or more different materials, excluding materials used for labels, **paints, inks, adhesives**, closures and sealing **which are part of the predominant packaging material**, which cannot be separated manually and therefore form a single integral unit;*

#### Q- Delegations are invited to give their views on these proposals

**T2.** The European Parliament asked the Presidency why the definition of "manufacturer" (row 178), in the case of microenterprises, requires the provider to be located in the same Member State.

The Presidency is convinced that it is preferable, for reasons of implementation and enforcement, to make it an additional condition for the provider to be located in the same Member State as the microenterprise. The definition would therefore remain unchanged.

Alternatively, the Presidency may propose extending the supplier location requirement to the EU market as a fallback solution. Indeed, the Presidency identifies the need to prevent imports from third countries for which it is extremely complicated to enforce compliance with sustainability requirements, thus compromising the level playing field with the European manufacturers.

For the sake of legal clarity, the Presidency also proposes to revise the wording and replace the term "provider" by "supplier" as defined in Article 3(1)(11).

The definition should therefore be adapted as follows:

*(3(9)) "(...) In case of transport packaging, reusable packaging, primary production packaging or service packaging, if the natural or legal person which has the packaging designed or manufactured under its own name or trademark falls under the definition of micro-enterprise in accordance with Commission Recommendation 2003/361/EC as publicly available on IOP: Please insert the date = the date of entry into force of this Regulation, and the [provider]~~supplier~~ of the packaging is located in the ~~same Member State~~ European Union, then the [provider]~~supplier~~ of the packaging shall be considered the manufacturer.*

#### Q- Delegations are invited to give their views on these proposals

**T3.** The Presidency has been informed of a possible legal loophole in the current definition of the producer of commercial and industrial packaging waste, which is generally generated by companies involved in the logistics activity.

The Presidency understands that these are economic operators involved in logistics, for example major European importers of products from third countries. Those economic operators receive the products packaged on arrival, for example in transport packaging. All these goods are first stored in the importers' storage premises; the importing operators may then carry out some processing operations (e.g. unpacking or repackaging in smaller formats to meet its customers' requirements). The products are then delivered, without the original transport packaging, to (final) distributors in other European countries.

- The economic operators involved in logistics will be the producers of the sales packaging (and, where applicable, grouped packaging and transport packaging) used for the products subsequently supplied in the European Union. These cases are covered by points 3.10(i) and (ii).
- Those economic operators should also be recognised as the producer of all packaging waste resulting from its processing operations on the packaging of the imported packaged products that remains in its storage facilities (mainly transport packaging).

For the time being, this packaging waste resulting from processing operations on the importer's storage premises is not subject to any EPR obligations since

- (1) this waste is generated on European soil, but has been imported from outside the European Union and is not covered by points (i) and (ii) of the definition of 'producer';
- (2) the final recipient of the packaged products is almost certainly a European (final) distributor and not an end user and therefore could not be covered by point (iii) of the definition of 'producer'.

The Presidency therefore proposes adjusting the definition of producer as follows:

*(3(10)) "producer' means any manufacturer, importer or distributor, who, irrespective of the selling technique used, including by means of distance contracts as defined in Article 2(7) of Directive 2011/83/EU, either:*

- (i) *is established in a Member State and makes available for the first time ~~from within on~~ the territory of that Member State ~~and on that same territory~~ transport packaging, service packaging, reusable packaging or primary production packaging; or*

(ii) is established in a Member State and makes available for the first time ~~from within on~~ the territory of that Member State and ~~on that same territory~~ products packaged in packaging other than those listed in paragraph (i); or

(iii) is established in a Member State or in a third country and makes transport packaging, service packaging, reusable packaging or primary production packaging or products packaged in packaging other than those mentioned above available for the first time within the territory of another Member State, directly to end users.

#### Q- Delegations are invited to give their views on these proposals

**T4.** The Presidency notes that there are discrepancies in the wording used in several definitions and provisions relating to compliance with EPR obligations. But, when it comes to waste management and the various obligations that the producer has to fulfil in relation to the packaging waste for which it is responsible, it is essential that the Member State market is taken into account to enable the producer to fulfil all these obligations. This is also the only way to enable Member States to enforce compliance with the EPR obligation and to report properly on the collection and recycling of packaging waste.

On the basis of the various discussions that have already taken place under the Swedish and Spanish Presidencies, the Presidency understands that the following distinction should be made:

- When referring to sustainability requirements, conditions for free movement and overall compliance with European legislation, the terms "making available on the market for the first time" or "placing on the market" should be used (in order to ensure, in particular, an approach consistent with the European acquis);
- For packaging waste and related EPR obligations, reference should be made to the market of the Member State concerned. The required information should indeed be specific and related to the quantity of packaging which has been placed on the national market of that Member State (and which is therefore most likely to become packaging waste in that Member State).

The current text refers only to the concepts of 'making available on the market' (3(6)) and 'placing on the market' (3(7)). These concepts refer only to the European market as a whole and it is not possible to discriminate between the different markets of the Member States.

On this basis and to ensure the appropriate level of granularity, the Presidency proposes to review the following provisions:

(recital 93) "(...) As a general rule, the producer should be the economic operator established in a Member State who makes available from within the territory of that Member State packaged products for the first time on the market of the Member State as a manufacturer, importer or distributor established in the Member State. This includes any offer for distribution, consumption, or use which could result in actual supply.

(recital 94) "In order to monitor that producers meet their obligations relating to their financial and organisational obligations to ensuring the management of the waste from the packaging they make available for the first time on the market of the Member State, it is necessary that a register is established and managed by the competent authority in each Member State and that producers should be obliged to register.

(recital 119) "In order to establish the methodology for assessment of the at scale recyclability, Member States should also report data on amounts of recycled packaging waste per packaging category, amounts of separately collected packaging waste for packaging category, and amounts of packaging made available for the first time on the market of the Member state on the market for the first time on the territory of the Member State per packaging category. Reporting should be done annually.

(3(15)) "'authorised representative for the extended producer responsibility' means a natural or legal person established in a Member State where the producer makes packaged products or packaging available on the market of the Member state for the first time ~~on the market for the first time~~, other than the Member State or a third country where the producer is established, and who is appointed by the producer in accordance with third subparagraph of Article 8a(5) of

Directive 2008/98/EC for fulfilling the obligations of that producer under Chapter VII of this Regulation;

(39(2)) "Producers shall be obliged to register in the register referred to in paragraph 1. They shall, to that end, submit an application for registration in each Member State where they make packaged products or packaging available on the market of the Member state for the first time ~~on the market for the first time~~. Where a producer has entrusted a producer responsibility organisation as referred to in Article 41(1), the obligations set out in this Article shall be met by that organisation, unless otherwise specified by the Member State in which the register is established.

(39(7a)) "Producers who have made available for the first time on the market of the Member state ~~placed on the market within the territory of the Member State~~ an amount of packaged products or packaging lower than 10 tons during one calendar year or, (...)

(39(9)) "The producer, or, where applicable, the producer's authorised representative for the extended producer responsibility or the producer responsibility organisation shall without undue delay notify the competent authority of any changes to the information contained in the registration and of any permanent cessation of the making available on the market ~~within the territory~~ of the Member State of the packaged products or packaging referred to in the registration. A producer shall be excluded from the register three years after the end of the calendar year in which the producer's registration ends if the producer has ceased to exist as a producer.

(40(1)) "Producers shall have extended producer responsibility under the schemes established in accordance with Articles 8 and 8a of Directive 2008/98/EC and with this Section for the packaged products or packaging that they make available for the first time on the market of the Member state ~~on the market for the first time within the territory of a Member State~~.

(41(4)) In addition to the information referred to in Article 8a(3), point (e), of Directive 2008/98/EC, producer responsibility organisations shall publish on their websites, at least every year, information on the amount of packaged products and packaging made available for the first time on the market of the Member state ~~on the market for the first time in the territory of a Member State~~ and on the levels of recovered and recycled materials in relation to the amount of packaging for which they have been performing producer responsibility obligations.

(42(3)(b)) the measures put in place or paid by the producer or producer responsibility organisation are sufficient to allow for the return or collection in accordance with Article 43(1) and (2) and Article 44, and recycling, free of charge for ~~end-users consumers~~, with a frequency proportionate to the area and volume covered, of packaging waste with regard to the amount and types of packaging or packaged products made available for the first time on the market of the Member state ~~on the market for the first time within the territory of a Member State~~ by that producer or producers on whose behalf the producer responsibility organisation acts;

The Presidency notes that consideration should also be given to the following provisions: 26(1), 27(1), 23(2, 3, 4 & 8).

**Q- Delegations are invited to give their views on these proposals**

**T5.** The inclusion of flexibility provisions and the possibility for Member States to maintain existing national measures was a key part of the General Approach. However, the European Parliament has indicated that it would prefer greater harmonisation and a phase-out of national measures. Delegations are therefore invited to indicate which provisions they consider crucial to keep in the text. Delegations' views are sought on the following provisions:

Provisions	Points to react on...
Article 8(2), row 316 – Compostable packaging	Point (i): Delegations are invited to flag if they cannot accept the revised wording included in the 4-column table regarding very lightweight carrier bags.

	Point (iii): Delegations are invited to indicate flexibility on the date.
Article 11(1), row 346; Article 11(1a), row 346a; Article 11(8a), row 354a – Harmonised label for DRS	Delegations are invited to indicate whether they could accept: <ul style="list-style-type: none"> <li>- The mandatory use of the harmonised DRS label in addition to existing labels for existing DRS</li> <li>- A phase-out of existing DRS labels after [X] months.</li> </ul>
Article 22(1a), row 428a – National restriction on packaging	The Presidency considers that keeping the possibility for Member States to maintain existing national restrictions on packaging materials not listed in Annex V is a key element of the General Approach. Nevertheless, delegations are invited to indicate any possible flexibility on this point.
Article 26(15-a), row 486a – Pooling	Delegations are invited to indicate flexibility on extending the pooling provision to other paragraphs besides paragraph 4, and on making it mandatory.
Article 26(15a), row 486b; Article 26(15aa), row 486c – Higher national targets and targets for additional beverage packaging	The Presidency considers that keeping some flexibility for Member States to set higher or additional targets is a key element of the General Approach. However, Member States are invited to indicate which of these provisions they consider the highest priority.
Article 26(15ab), row 486d – Small islands exemption	Delegations are invited to consider the possibility of a horizontal exemption for islands and remote regions.
Article 26(15b), row 486e – Exemption in case of unforeseen circumstances	Delegations are invited to indicate flexibility on this exemption. NB: See also the part of the steering note concerning Article 26.
Article 29(2), row 516 – Agreements between economic sectors and competent authorities	The Presidency considers that the specification regarding the possibility to implement the measures through agreements between economic sectors and competent authorities is not necessary in the Article and has therefore provisionally agreed with the Parliament to keep the text only in recital 74 (row 84). Delegations are invited to flag any objections.
Article 29(3a), row 517a – Possibility to ban other plastic bags	Delegations are invited to indicate any flexibility on this point. Notably, delegations are invited to indicate if they could not accept moving the second sentence regarding monitoring the effects of such bans into the review clause in row 518a.
Article 38(3a), row 569a – Change in base year	Delegations are indicated whether they could accept the following amendments to the provision:

	<ul style="list-style-type: none"> <li>- A change of deadline to an earlier year than 2028</li> <li>- Limiting the possible base years to be chosen</li> <li>- Clarifying the provision regarding better comparability of data between Member States.</li> </ul>
Article 39(7a), row 581a – Simplified reporting	The Presidency understands that the possibility of lowering the threshold for simplified reporting is important for Member States. Delegations are invited to indicate any flexibility regarding a harmonisation of the lower threshold or further refinement of the criteria for derogation.
Article 39(7c), row 581c – Reporting by public authorities	The Presidency understands that there is no flexibility regarding this provision.
Article 44(1), points (a) and (b), rows 627, 628; Article 44(2), second subparagraph, row 631a – Bottles and cans with a capacity below 0.1l	Delegations are invited to indicate any flexibility on this provision.
Article 44(9), row 640 – Grandfathering clause for existing DRS	Delegations are invited to indicate flexibility to set an obligatory phase-in of the requirements under Annex X for DRS established before the entry into force of the Regulation that achieve the 90% target. Delegations are also invited to indicate flexibility on earlier compliance dates for existing DRS that don't achieve the 90% target.
Article 46(2), row 667 – Postponing of recycling targets	The Presidency understands that there is no flexibility regarding such postponement.
Article 64, second paragraph, point (cb) – Continuation of national restrictions	The Presidency considers that this provision is necessary in order to allow Member States to keep existing national provisions until the restrictions under Article 22 and Annex V enter into application.

## II. Sustainability requirements (art. 5 to 8)

**T6.** During the negotiations at technical level, the European Parliament insisted that the report to be drawn up by the Commission with the support of the ECHA by 31 December 2026 should be aligned with the appropriate follow-up measures envisaged in the Council's amendment, particularly with regard to substances of concern which primarily affect human health of the environment (see row 243a). The European Parliament is also concerned that this report is a one-shot only, and considers that it is up to the Commission to constantly monitor the presence of substances of concern in packaging.

On this point, the Presidency is proposing the following compromise package:

(5(1a)) (row 243a) *"The Commission shall constantly monitor the presence of substances of concern in packaging and in packaging components and shall take, where appropriate, the relevant follow-up measures."*



By 31 December 2026, the Commission, assisted by the European Chemicals Agency, shall prepare a report on the presence of substances of concern in packaging and packaging components, to determine the extent to which they negatively affect the re-use and recycling of materials or impact chemical safety.

(...)

(6(4)(a)(iv)) (row 260a) "as appropriate, impose restrictions on the presence of such substances or groups of such substances, in packaging or packaging components for reasons not relating primarily to chemical safety. Such restrictions may also serve to reduce urgent and unacceptable risks to human health or the environment, without prejudice to restrictions on chemicals set out in Annex XVII of Regulation (EC) No 1907/2006 or, where applicable, the restrictions and specific measures on food contact materials and articles in Regulation (EC) No 1935/2004.

Q- Delegations are invited to indicate whether they can support this compromise text.

**T7.** At the first trialogue, a mandate was given to work at the technical level on a compromise text concerning a restriction on PFAS. Noting the comments of delegations and the political importance of this point for the European Parliament, the Presidency proposes the addition of a restriction on PFAS in Article 5, new paragraph 2a, as follows:

"(5(2a)) From ... [OP: Please insert the date = 18 months from the date of entry into force of this Regulation], food contact packaging shall not be placed on the market if it contains per- and polyfluorinated alkyl substances (PFASs) in a concentration of or above the following limit values to the extent that the placing on the market of this packaging containing this concentration of PFAS is not prohibited pursuant to another Union legal act:

1. 25 ppb for any PFAS as measured with targeted PFAS analysis (polymeric PFASs excluded from quantification);
2. 250 ppb for the sum of PFASs measured as sum of targeted PFAS analysis, optionally with prior degradation of precursors (polymeric PFASs excluded from quantification); and
3. 50 ppm for PFASs (polymeric PFASs included). If total fluorine exceeds 50 mg F/kg the manufacturer, importer or downstream user shall upon request provide to the enforcement authorities a proof for the fluorine measured as content of either PFASs or non-PFASs.

For the purpose of this Regulation, PFAS consist of any substance that contains at least one fully fluorinated methyl (CF<sub>3</sub>-) or methylene (-CF<sub>2</sub>-) carbon atom (without any H/Cl/Br/I attached to it), except substances that only contain the following structural elements: CF<sub>3</sub>-X or X-CF<sub>2</sub>-X',

where X = -OR or -NRR' and X' = methyl (-CH<sub>3</sub>), methylene (-CH<sub>2</sub>-), an aromatic group, a carbonyl group (-C(O)-), -OR'', -SR'' or -NR''R''';

and where R/R'/R''/R''' is a hydrogen (-H), methyl (-CH<sub>3</sub>), methylene (-CH<sub>2</sub>-), an aromatic group or a carbonyl group (-C(O)-).

By ... [4 years from the date of application of this Regulation], the Commission shall carry out an evaluation to assess the need to amend or repeal Article 5(2a) in order to avoid overlaps with restrictions or prohibitions of the use of PFAS set out in accordance with Regulation (EC) No 1907/2006 or Regulation (EC) No 1935/2004."

Q- Delegations are invited to indicate whether they can support this compromise text.

**T8.** At the first trialogue, it was decided to work on Article 6 on the basis of the Council's mandate and to incorporate, where appropriate, certain aspects of the European Parliament's mandate.

One of the European Parliament's priorities is to ensure that the sector continues to work towards improving the recyclability of packaging placed on the market. The Presidency notes that this is an aspect that is not included in its negotiating mandate, although it considers that it could be relevant to include it.

Based on the European Parliament's amendment (see rows 262a), we propose the following compromise text:

(6(3, in fine)) (row 259) "Without prejudice to paragraph 9, by 1 January 2040, packaging shall not be placed on the market unless it is recyclable within grades A or B.

Q- Delegations are invited to indicate whether they can support this compromise text.

**T9.** The European Parliament sees eco-modulation as a relevant lever for encouraging the inclusion of recycled content in packaging. In this respect, the Presidency notes that the Council preferred to refer only this point to a recital (see row 106b). In view of this recital, the Presidency suggests reflecting it in the operative part of the text with a 'may' clause. The paragraph 6 should be read as follows:

(7(6)) (row 304) ~~"By 1 January 2030,~~ The financial contributions paid by producers to comply with their extended producer responsibility obligations as laid down in Article 40 ~~shall~~ **may** be modulated based on the percentage of recycled content used in the packaging.

Q- Delegations are invited to indicate whether they can support this compromise text.

**T10.** The inclusion of a reference to home composting is proving to be an important political point for the European Parliament. The Presidency therefore suggests an approach whereby home composting should be included in Article 8 without, however, preventing industrial compostability. The following compromise package is therefore proposed:

(8(1)) (row 315) ~~"By 10P: please insert the date – 24 way of derogation from Article 6(1), by [36 months from the date of entry into force of this Regulation], packaging placed on the market referred to in Article 3(1), points 3 (1), point 1 (f) and (g); sticky labels attached to fruit and vegetables and very lightweight plastic carrier bags shall be compostable in industrially controlled conditions in bio-waste treatment facilities shall be compostable. In case harmonised standards for home composting pursuant to paragraph 5a of this Article are available for the packaging in the subparagraph above, those packaging can undergo home composting according to those specifications.~~

(8(5a, in fine)) (row 319a) "By 12 months from the date of entry into force of this Regulation, the Commission shall request the European standardisation organisations to prepare or update harmonised standards laying down the detailed technical specifications of the requirements on compostable packaging. (...)

By 12 months from the date of entry into force of this Regulation, if necessary, the Commission shall also may request the European standardisation organisations to prepare harmonised standard laying down, if necessary by packaging format, the detailed technical specifications of the requirements on home compostable packaging: compostability of packaging referred to in Article 8(1).

Q- Delegations are invited to indicate whether they can support this compromise text.

### III. Waste prevention measures

**T11.** The European Parliament is proposing to include a new Article 22a on restriction on the use of certain very lightweight plastic bags packaging. The Presidency notes that Article 29(3a) of the Council's mandate allows Member States to take specific measures on certain plastic bags, in particular very lightweight plastic carrier bags, in order to achieve their reduction targets (see line 517a).

Moreover, the European Parliament included an exemption for industrially compostable very lightweight plastic bags "required for loose food for hygiene reasons or provided as primary packaging for loose food when this helps to prevent food wastage" (see row 315a). The Presidency notes that this exemption can be found in Article 29(4) as part of its mandate (see row 518).

Q- Delegations are invited to indicate whether they could accept to supplement Article 29 by introducing an EU-wide restrictions for very lightweight plastic bags and its exemption.



**T12.** The European Parliament has been open to introducing a correction factor linked to tourism in Article 38 (see row 567a), but considers that this correction factor could have a direct impact on the targets and therefore requires that this correction factor be adopted by delegated act in order to be accepted.

**Q- Delegations are invited to give their views on this counter-offer.**

**T13.** Identifying the need to act actively and with all useful tools on plastic pollution, the European Parliament is pressing for the introduction of specific reduction measures for plastic waste (see row 567c). The Presidency stresses that this is an important political point for the Parliament.

The Presidency suggests incorporating this provision, but suggests that delegations indicate how flexible they would like to be with regard to the following parameters: the pivot date, the timetable and the targets.

**Q- Delegations are invited to give their views on this suggestion.**

#### IV. Return, collection, deposit return system

**T14.** The issue of the interoperability of DRS was highlighted by the European Parliament as an important point in the proposal and it cannot resign itself to deleting it. The Presidency has noted the opposition of several delegations and agrees with them that the notion of "interoperability" is neither clear nor defined, nor is the notion of "regions with high transboundary business" (see row 1085).

It should be noted that the European Parliament is refusing to include a grandfathering clause (see row 640) on the grounds that these systems need to be fully harmonised as quickly as possible.

**Q- Delegations are invited to identify the interoperable attributes of the DRS that they would be inclined to accept and those that might be a red line.**

#### V. Restriction of certain packaging formats

**T15.** The European Parliament has indicated its limited room for manoeuvre on this provision (Article 22 and Annex V). It will most certainly be a point on which final agreement will be reached, depending on the overall ambition of the text. The main criticism of this provision is that there is too little national experience to go as far as marketing bans, and that the unintended consequences could be manifold.

The Presidency invites the delegations to indicate the points on which they would be open and flexible, as well as the red lines.

**Q- Delegations are invited to indicate the points on which they would be open and flexible, as well as the red lines.**

#### VI. Reuse obligations

**T16.** This is a crucial point in the negotiations; the European Parliament has already expressed its very limited room for manoeuvre on this provision (as has the Presidency). With a view to identifying avenues for compromise and a potential positive outcome, the Presidency invites the delegations to indicate the points on which they could show flexibility in the corresponding articles, and more particularly on article 26.

It is highly likely that we will have to find a horizontal derogation clause allowing certain economic operators to be exempted from the re-use and recharging obligations. The Presidency is aware that this is a sensitive point, but proposes to consider the options, criteria and parameters on which to base this potential horizontal derogation.

**Q- Delegations are invited to identify the options, criteria and parameters for a horizontal derogation that they would be inclined to accept and those that might be a red line.**

## VI. Other provisions

**T17.** The European Parliament suggests including a provision providing for a right for request for action (see row 838d) and ensuring access to justice (see row 838b).

Noting the opposition of the majority of delegations to introduce a specific provision to provide for a right for request for action, the Presidency suggested drawing on agreements already reached in other legislation (in particular the CLP Regulation) and including the following new paragraph 1a in Article 52:

*(new 52(1a)) "For the purpose of paragraph 1, the authorities responsible for enforcement of this Regulation shall follow up on complaints or reports related to presumed non-compliance of packaging with this Regulation, and verify that the appropriate corrective action has been taken;"*

As far as access to justice is concerned, it seems to us that this instrument is not the right place to regulate the aspect linked to the interest in taking legal action. If this nevertheless proves to be a blocking point in the negotiations, the Presidency suggests incorporating the following new recital:

*(new recital) "According to settled case law of the Court of Justice of the European Union, it is for the courts of the Member States to ensure judicial protection of a person's rights under Union law. Furthermore, Article 19(1) of the Treaty on European Union (TEU) requires Member States to provide remedies that are sufficient to ensure effective judicial protection in the fields covered by Union law. In this respect, Member States should ensure that the public, including natural or legal persons having complained or reported a presumed non-compliance of packaging in accordance with this Regulation, has access to justice in line with the obligations that Member States have agreed to as parties to the UN Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the 'Aarhus Convention')."*

**Q- Delegations are invited to give their views on these suggestions.**

**T18.** The debate on the form of secondary legislative acts is still open and will most certainly be the subject of a general discussion.

**Q- Delegations are invited to identify in which provisions they would NOT accept to have a delegated act.**

## VII. Provisional agreed rows + Presidency compromise text

In the adapted version of the 4-column document, you will also find compromise texts proposed by the Presidency. Delegations are invited to indicate as soon as possible the points **they cannot support** and to put forward suggestions for compromise texts where appropriate.