

Ministry of the Environment
Attn: Frederikke Marie Pflug
Sent to <mailto:mim@mim.dk> and <mailto:frmap@mim.dk>

Reference number 2023-872

Høje Taastrup, January 31, 2024

Consultation response regarding "Supplementary consultation on revised draft regulation on registration and reporting of packaging"

It is with interest that Emballageretur has read the draft on the revised regulation on registration and reporting of packaging, and we appreciate the opportunity to provide a consultation response.

Emballageretur is a non-profit producer responsibility organisation that handles the Extended Producer Responsibility for packaging on behalf of our member companies.

Emballageretur is part of the Retur family, a group of non-profit producer responsibility organisations that manages the Extended Producer Responsibility for electronics, batteries, packaging, and textiles on behalf of Danish businesses. Together, we work to increase reuse and recycling, ensuring that as many valuable resources as possible are diverted from waste streams and returned to the loop.

Since 2005, Retur has helped Danish companies manage their producer responsibility through Elretur. Elretur, Denmark's largest producer responsibility organisation, has over 18 years of experience managing the Extended Producer Responsibility for our members (producers and importers of electrical and electronic equipment, as well as batteries). Emballageretur's solutions, services, and expertise are based on Elretur's unique experience in managing the Extended Producer Responsibility for Danish companies.

General remarks:

Uniform regulations across different producer responsibilities

Emballageretur generally wishes to emphasize that the regulation should introduce the greatest possible consistency between rules and provisions that already apply to the producer responsibilities that have come into force (e.g., for electronics and batteries). Consistent rules and provisions across different sectors ensure equal conditions for the involved companies and will ease the administrative burden for individual companies and the collective schemes managing producer responsibility on behalf of the companies.

Establishment of a Financial Clearing House

Emballageretur has one particular concern regarding the forthcoming packaging producer responsibility, which will have significant economic consequences for both individual producers and the producer responsibility organisations.

Emballageretur generally view the upcoming Extended Producer Responsibility for packaging positively. We have high expectations that the Extended Producer Responsibility can contribute positively to waste minimization and strengthen the use of packaging based on recycled materials in the years to come.

Emballageretur

Høje Taastrup Boulevard 30, 1.
2630 Taastrup
www.emballageretur.dk

Tlf.: +45 33 36 91 98
CVR-nr.: 44 50 22 75
E-mail: info@emballageretur.dk

Emballageretur supports competition. Competition should be based on each producer's ability to influence their own costs and business choices. We find it unhealthy if competition is based on external unequal costs that undermine the producer's actual competitiveness.

Emballageretur's concern relates to the allocation mechanism and how producers will be affected by how municipalities are financially compensated in the forthcoming Extended Producer Responsibility for packaging.

Currently, a method is proposed where the geographic allocation is skewed relative to unit prices, meaning two identical producers could be subjected to different requirements for financial compensation for a service that is essentially the same. As a result, producers will experience an imbalance in their competitiveness, despite their business activities being the same.

Therefore, Emballageretur recommends a more stable and secure method, ensuring that geographic allocation occurs on equal economic terms. Emballageretur assesses that there are immediately two methods that could ensure this: uniform unit costs and a financial clearing house. Emballageretur is, of course, available for further elaboration and explanation on this matter.

Also, Emballageretur has the following specific remarks:

Section 2: Definition of Producer and Accessibility

Emballageretur generally views the clarification of the producer concept positively, providing further clarity on who incurs producer responsibility.

However, there are still significant uncertainties regarding the understanding of the producer and accessibility concepts. For example, it is unclear who bears the Extended Producer Responsibility when a Danish company imports and receives packaged goods from abroad, unpacks them, and uses the packaging itself, thereby turning the packaging into commercial waste that must be collected in Denmark. Emballageretur firmly believes that it is the company in the example that makes the packaging accessible in Denmark and should therefore bear the Extended Producer Responsibility. This also provides significantly greater certainty for reporting packaging quantities while allowing them to freely demand requirements from the supplier, such as packaging design that can contribute to meeting relevant environmental and climate requirements.

However, after the consultation meeting on February 19, 2024, and reviewing the draft regulation, Emballageretur's perception is that the foreign supplier will now bear the producer responsibility, even though the packaging becomes waste at the recipient's premises in Denmark.

Emballageretur assesses that this will have significant consequences for the forthcoming Extended Producer Responsibility for packaging in terms of a significant number of free-riders, which will further lead to a lack of reporting of packaging quantities accessible on the Danish market and a lack of funding to operate the Extended Producer Responsibility.

It is unclear to Emballageretur how the authorities will enforce and supervise compliance with the Extended Producer Responsibility by foreign suppliers or their authorized representatives, which is crucial to ensure the necessary revenue to manage the total amount of packaging waste in Denmark.

Emballageretur's clear recommendation is that the Extended Producer Responsibility in the example above should be placed with the Danish company. If this does not happen, significant amounts of packaging will not be reported and therefore will not contribute to financing the forthcoming Extended Producer Responsibility

Emballageretur

Høje Taastrup Boulevard 30, 1.

2630 Taastrup

www.emballageretur.dk

Tlf.: +45 33 36 91 98

CVR-nr.: 44 50 22 75

E-mail: info@emballageretur.dk

for packaging.

As mentioned on previous occasions, there will continue to be a significant need for further explanation and communication to the affected companies, so that the rules are explained in practice through the review of specific cases, hopefully avoiding uncertainties. Additionally, Emballageretur assesses that many companies are still unaware that they are subject to the forthcoming Extended Producer Responsibility for Packaging. Therefore, a larger nationwide communication campaign from the authorities' side would be beneficial, clarifying both the responsibility of the companies affected and including a review of specific product cases.

Section 5: Registry for Producers and Their Representatives

Upon registration, producers must provide the information listed in Annex 1.

In this context, Emballageretur recommends that the requirement to provide information on sales methods used (no. 6 in Annex 1) be deleted as a requirement in the 2024 registration.

At present, producers will, in the vast majority of cases, not be able to provide the required information, which is why it is recommended that the obligation to provide information regarding this matter be included in the upcoming revision of the regulation, where requirements and rules for 2025 and onwards are established.

If the requirement is maintained, it is recommended that producers only be required to indicate whether they engage in remote sales (yes or no) and not be required to provide information on countries and authorized representatives.

Section 10: Reporting Obligations to Dansk Producentansvar

According to Section 10(3), packaging consisting of multiple materials must be reported for the material that the packaging primarily consists of. Emballageretur strongly urges further clarification of this wording, as it does not clearly describe how producers should proceed, thus creating uncertainty and ambiguity. It should therefore be described in which cases producers should address this situation.

For example, it can be clarified that if different packages contain different types of materials (e.g., jam jars with metal lids), they should generally be separated and reported separately. Furthermore, it should be clarified whether the total weight of the packaging should be reported or only the weight of the material that the packaging primarily consists of.

According to Section 10(3), producers must report quantities according to the categories of packaging specified in Annex 2. If the packaging is to be sorted as hazardous waste or residual waste, this must also be indicated.

Emballageretur believes that hazardous waste and residual waste should appear in Annex 2 as separate sub-categories for each category of packaging. If a producer or producer responsibility organisation is to report quantities of packaging that meet the sorting criteria in the waste regulation for hazardous waste and residual waste respectively, these packages should not be classified as one of the packaging categories listed in Annex 2, such as cardboard, plastic, paper, etc.

Based on this, Emballageretur urges that hazardous waste and residual waste be added to the list as sub-categories for each of the relevant packaging categories listed in Annex 2, so that reporting of quantities can be done accurately and effectively.

Emballageretur

Høje Taastrup Boulevard 30, 1.
2630 Taastrup
www.emballageretur.dk

Tlf.: +45 33 36 91 98
CVR-nr.: 44 50 22 75
E-mail: info@emballageretur.dk

Based on our dialogue with our members, Emballageretur's position is that the list of packaging categories in Annex 2 should generally be more comprehensive and detailed. Specifically, the list should either include subcategories for each packaging category or provide descriptions of definitions for each packaging category.

§16 Public Disclosure of Ownership Information and Membership Overview in Collective Scheme

According to §16, the producer responsibility organisations must publish information about ownership and producers on its website.

Emballageretur recommends that when producer responsibility organisations publicize which producers are members on their website, it should be done via a link to the Dansk Producentansvar's website.

The reason for this is that this information is already available in the database of Dansk Producentansvar, which is publicly accessible. If two different membership overviews are established, the membership overviews will never be 100% identical, as there will always be a time lag in updating these lists. This may create doubt about which producers are actually members of the respective producer responsibility organisations.

Alternatively, it is recommended that the regulation refers to the Dansk Producentansvar to ensure that the status of member companies is continuously updated, and that this information is only available in one place. This also limits administrative burden. Emballageretur also refers to previous consultation responses on the same issue from Elretur regarding the Regulation on Placing Electrical and Electronic Equipment on the Market and Handling Waste from Such Equipment.

Emballageretur is, of course, available for any questions or clarifications.

Best regards,
Emballageretur
Morten Harboe-Jepsen, CEO