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Consultation Response on the Draft Amendment to the Environmental Protection Act

Emballageretur has read the draft proposal for the amendment to the Environmental Protection Act with great interest and appreciates the opportunity to submit a consultation response.

Emballageretur is a non-profit PRO that manages the Extended Producer Responsibility for Packaging on behalf of our member companies.

We are part of Retur, a family of non-profit PROs that handle the Extended Producer Responsibility for electronics, batteries, packaging, single-use plastics, fishing gear, and textile products for Danish businesses. Together, we work to increase reuse and recycling, to save as many valuable resources as possible from the waste stream and return them to circulation.

Since 2005, through Elretur, Retur has helped Danish companies manage their producer responsibility. Elretur is Denmark's largest PRO and has nearly 20 years of experience in managing the producer responsibility for our members, which includes producers and importers of electrical and electronic equipment as well as batteries. Emballageretur builds its solutions, services, and knowledge on Elretur's unique experiences in handling producer responsibility for Danish companies.

General Remarks

Increased Bureaucracy and Pricing

The political agreement on the Extended Producer Responsibility for Packaging, etc., states that the complexity of the PRO's cooperation with municipalities should be reduced. We have supported this from the beginning and continue to do so, as it will benefit Danish businesses. However, when we review the draft amendment to the Environmental Protection Act, it is our impression that this political goal has not been fully achieved. On the contrary, it is our view that the Extended Producer Responsibility in many cases has been over-implemented and does not consider regulatory simplification.

We are therefore concerned that the overall purpose of introducing the Extended Producer Responsibility for Packaging - namely to reduce the amount of packaging, ensure efficient collection and handling of packaging waste, and motivate companies to develop better and more environmentally friendly packaging designs - risks being lost in increased bureaucracy and complicated and burdensome processes between the involved parties.

At this point, on behalf of our members, we are seriously concerned that the increased bureaucracy will have a significant and unnecessary impact on the price of packaged products when the Extended Producer

Responsibility for Packaging comes into effect. We find it very difficult to assess the extent of this based on the current draft.

On this basis, we question whether specific economic calculations have been made regarding what the increased administration due to this bureaucracy will cost Danish businesses, in addition to the proposed fees that producers will have to pay.

Lack of Registration and Reporting from Affected Companies

As of August 22nd, 2024, approximately 2,400 companies have registered, either individually or collectively, and reported their expected packaging volumes for 2024 with DPA. In our opinion, this is a critically low number, especially considering that the authorities themselves have estimated that up to 41,000 companies will be subject to the upcoming regulations. This means that potentially many companies will not fulfill their obligations under the producer registration ordinance, which is unfair to the companies that register by August 31st, 2024.

The situation is critical, and we recommend that the authorities seriously consider the course of action after August 31st, 2024, regarding how the remaining companies will be registered and report their packaging volumes. With the current level of registration, we foresee a distortion of competition in the economic basis for companies that are registered compared to those that are not. Emballageretur is ready to engage in dialogue on how to best handle the situation moving forward.

Establishment of a Financial Clearing House

Emballageretur has repeatedly expressed the desire to establish a Financial Clearing House, including in a letter to the Minister of Environment, and we also wish to highlight the necessity of introducing this mechanism in the Extended Producer Responsibility for Packaging. We believe that not establishing a Financial Clearing House will have significant economic consequences and create unequal competition conditions between producers and, ultimately, the PROs.

By Financial Clearing House, we mean a governmental body responsible for handling the financial transactions between the actors in the producer responsibility system. This ensures that the costs of waste management are correctly distributed among producers based on their market share or the volume of products they place on the market. A Financial Clearing House collects and manages payments and disbursements to ensure that all parties fulfill their financial obligations within the producer responsibility system.

Emballageretur generally views the upcoming Extended Producer Responsibility for Packaging positively. We have high expectations that the producer responsibility can contribute positively to waste reduction and promote the use of packaging that is increasingly based on recycled materials in the years to come.

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

Emballageretur's concern relates to the allocation mechanism and how producers will be affected by how municipalities are to be financially compensated under the upcoming Extended Producer Responsibility for Packaging. Currently, there is a proposal for a method where geographical allocation is skewed in relation to unit prices. This means that two identical producers who are members of two different PROs could be subjected to different requirements for financial compensation for a service that is essentially the same. As a result, producers will experience a disruption in their competitive strength, even if their business activities are identical.

Emballageretur therefore recommends a more stable and secure method, ensuring that geographical allocation occurs under equal economic conditions through a financial clearing house. Emballageretur is, of course, available for further elaboration and explanation on this matter.

Uniform Rules Across Different Producer Responsibilities

Emballageretur generally advocates for the introduction of as much alignment as possible between the rules and regulations that already apply to the producer responsibilities that have come into effect (e.g., for electronics and batteries). Consistent rules and regulations across the board ensure a level playing field for the affected companies and will ease the administrative burden for individual businesses and the PROs that manage the producer responsibility on behalf of companies.

Producer Responsibility for Fishing Gear – Lack of Targets and Limitations in Producer Responsibility

It remains unclear what national targets for collection, recycling, etc., apply to fishing gear containing plastic. Emballageretur recommends that the national minimum targets be made public, as this will provide clarity for the producers and PROs regarding the framework. This will ensure that adequate collection and recycling schemes can be implemented as soon as the producer responsibility takes effect.

Emballageretur is part of Retur, which operates several PROs. Through Elretur, we have nearly 20 years of experience with handling producer responsibility in Denmark and therefore have extensive experience in handling the producer responsibility for Danish businesses. However, we find it difficult to see how the collective collection of other fishing gear can be managed in a way that is sustainable both economically and environmentally.

In Emballageretur's assessment, there is a limited annual volume of other discarded fishing gear, which will make it costly to establish a nationwide PRO. Therefore, introducing the producer responsibility on such a small annual tonnage, where most products are likely already being collected via waste collection (residual waste, metal, and plastic) in Danish households or at fishing locations, may seem like a disproportionate measure.

We believe that the described producer responsibility for other fishing gear in the consultation draft will be challenging to make cost-effective unless the national collection target is set very low. For this reason, alternatives should be considered for how an effective producer responsibility for other fishing gear can be established. Retur is happy to offer our expertise in such work.

Producer responsibility for fishing gear containing plastic is likely to impact producers who market other fishing gear heavily. This should be viewed in relation to their general business size and ability to manage the upcoming producer responsibility for fishing gear. Emballageretur therefore urges the authorities to initiate dialogue with the industry as soon as possible on the framework for a well-functioning producer responsibility for fishing gear, possibly by drafting a guide on how to fulfill producer responsibility, to avoid the new regulations being violated or circumvented by smaller companies subject to producer responsibility.

Packaging Not Covered by Producer Responsibility for Packaging

Emballageretur has noted that it is currently intended that packaging made of textiles, porcelain, and ceramics will not be included under the Extended Producer Responsibility for Packaging, as producers of packaging made from textiles, porcelain, and ceramics are not initially expected to bear the costs associated with these types of waste.

We think this is reasonable but would like to draw attention to packaging made from various biomaterials. These packaging types are still small in the grand scheme of things, but their volumes are steadily increasing.

The problem with bio-packaging is that they often should not be sorted and collected with regular packaging waste, as they can negatively impact the recycling process. When sorted as residual waste for incineration, they negatively affect the recycling rate. Depending on how the financing of the producer responsibility is implemented, it could incentivize producers to increase the amount of bio-packaging marketed.

Therefore, Emballageretur recommends that the authorities address this growing problem as soon as possible, and we would like to see it included as part of the evaluation of the Extended Producer Responsibility for Packaging in 2027.

Specific Comments

§ 9p, Subsection 2 – Harmonization of the De Minimis Threshold for Packaging

Emballageretur has noted that the intention is to maintain the de minimis threshold in Denmark at 8 tons. This means that companies placing less than 8 tons of packaging on the market per year will continue to be exempt from certain reporting obligations related to the handling and recycling of packaging waste.

As both authorities and the business community have expressed a broad desire to harmonize with the EU's upcoming Packaging Regulation, it seems counterproductive that the de minimis threshold has not been harmonized, especially since the threshold in the EU's Packaging Regulation is set at 10 tons.

At Emballageretur, we agree on the need to set a de minimis threshold that can ease the burden on smaller companies that only minimally contribute to overall packaging waste. We also support harmonizing to the greatest extent possible between the EU's upcoming Packaging Regulation and Danish legislation. Therefore, we recommend that the de minimis threshold in Denmark also be set at 10 tons when the Extended Producer Responsibility for Packaging comes into effect.

§ 9p, Subsection 3 – Cost-effective Collection of Packaging in Municipalities

Emballageretur finds it positive that municipalities are required to organize the collection of packaging waste from households in a cost-effective manner, which supports the intentions of the political agreement.

However, there are no specific requirements set for municipalities. The only requirement is that municipalities must annually prepare a report describing their work to ensure cost-effective collection of packaging waste. However, there are no concrete requirements or targets for how municipalities should work cost-effectively. We also note that it is not "intended to use the proposed provision to impose specific measures on the municipal council to achieve cost-effectiveness. The municipal council is assumed to independently determine and implement the relevant measures for cost-effectiveness in the municipality."

Emballageretur sees this as a significant challenge in ensuring real cost-effectiveness. Specific targets should be set for achieving cost-effectiveness in municipalities each year. To ensure consistent documentation, requirements should be established for the development of common templates and reporting formats across municipalities so that the progress and measures can be easily read and assessed by the actors in the producer responsibility, including the authorities during the 2027 evaluation.

Finally, a complaint mechanism should be introduced for other actors within the producer responsibility in cases where municipalities do not meet the set targets or implement the necessary measures.

Section 9p, Subsection 4 - Coverage of Costs for Managing Packaging Waste from Waste-Producing Companies

Emballageretur has noted in the draft bill that, contrary to expectations, there has been a change in how waste-producing companies should be compensated for managing packaging waste. According to the political agreement, producers are to financially compensate waste collectors for the collection, transportation, and treatment of packaging waste from waste-producing companies, meaning that producers alone have financial responsibility.

It is unclear to Emballageretur why it is now necessary to change the arrangement so that producers must compensate the waste-producing companies directly. There is no explanation provided in the draft bill. There are many advantages to allowing producers to compensate waste collectors rather than compensating waste-producing companies directly. Such a change would make the system more cumbersome and costly and would be a significant burden on the PROs. Therefore, we strongly urge that this change be reconsidered.

The administration model for compensation resembles the procedure for the former business waste fee, which faced strong opposition from companies. The fee was eventually abolished for the sake of businesses, following political attention to the administrative burden and lack of societal benefit. We are reluctant to see a reintroduction of past failed bureaucracy for business waste with this legislative change and find it difficult to believe that it was the political intention to impose such a new administrative burden on many Danish companies. Therefore, we strongly urge a return to the original plan, where the PROs compensate the waste collectors directly instead of all the waste-producing companies in the country.

The Ministry has previously estimated that up to 41,000 companies will be covered by the Extended Producer Responsibility for Packaging, underscoring the magnitude of this task, even if costs are distributed according to fixed allocation keys.

If the arrangement is maintained, it will be crucial that compensation is not required to be carried out at short intervals. Emballageretur estimates that compensation amounts will often be relatively small and that the administrative costs per transaction therefore could exceed the compensation amounts. We therefore recommend that compensation requests be made once a year, in the first quarter of the following calendar year. We also suggest that the scope and consequences of companies not applying for the amounts they are entitled to be examined during the 2027 evaluation.

Furthermore, the allocation keys on which the compensation is based should be designed in such a way that business waste collected in municipal schemes is also included so that municipalities receive the correct compensation without the risk of overpayment or underpayment.

Section 9p, Subsection 4 - Establishment of Service Levels for Municipalities' Task Execution

Emballageretur supports the need to establish a service level for municipalities' task execution in relation to waste collection. Therefore, we view the proposal to set the service level after a transition period, where models and data can be qualified, positively. Emballageretur recommends that the establishment of the service level be a central part of the overall evaluation of the Extended Producer Responsibility for Packaging, which is to be conducted in 2027. It is also on this basis that we recommend the development of a standard for the annual reports on cost-effectiveness that municipalities must submit, as this will make it easier to assess the municipalities' service levels across the board.

Section 9p, Subsection 6 - Allocation Periods

Emballageretur has noted the Ministry's considerations regarding allocation schemes and the associated allocation periods. We would like to highlight the advantages for both producers and PROs of using a uniform model for all areas of the producer responsibility where applicable, including uniform allocation periods. We hope that this will be considered when determining the specific lengths of the allocation periods.

Based on our organization's nearly 20 years of experience with the Extended Producer Responsibility for Electronics and Batteries, Emballageretur recommends that the allocation periods not be set from January 1st to January 1st. Experience shows that data on the quantities of packaging made available by producers can only be collected at the end of March in the following year. DPA then conducts quality checks on the data, meaning that the allocation period cannot start until July 1st at the earliest. However, this date is problematic concerning the summer holiday period, which is why we recommend that the allocation period be set from September 1st to September 1st.

We therefore propose that the first allocation period be adjusted to these dates and that subsequent allocation periods, regardless of length (24-36 months), be set from September 1st to September 1st.

If the Ministry chooses to set an allocation period from July 1st to July 1st, the allocation periods for WEEE, batteries, etc., should also be adjusted so that they follow the same allocation period. Different allocation periods will have significant administrative and communicative consequences for both producers and PROs and will therefore not align with the political intent to minimize the complexity of cooperation between PROs and municipalities.

We also recommend introducing an approval period for the PROs, where the proposed allocation schemes can be reviewed and commented on, to avoid unintended allocations and errors. Our experience shows that this can be advantageously implemented across all the producer responsibilities.

Based on the above, it may be considered to postpone the implementation date for the Extended Producer Responsibility for Packaging to January 1st, 2026. After that, the first allocation period could be reduced to 12 months. A postponement would also give municipalities, producers, and collective schemes time to meet the currently unclear requirements set for the stakeholders and to carry out the necessary political approval of producer fees in municipalities before they can be charged.

Section 9p, Subsection 17 - Complaint Option for the Calculation of Municipal Fees and Setting of Deadlines

Municipalities must, in many cases, calculate, set, and collect various fees related to the Extended Producer Responsibility for Packaging. These fees cover collection, transportation, administration, information initiatives, etc., as described in the draft bill.

Additionally, there are rules requiring municipalities to document how the fees are calculated and composed. It is stated that there will be a requirement for the municipal council to annually prepare a separate statement of the costs underlying the producer fees, as well as an annual report to ensure transparency in cost calculations.

Emballageretur views this initiative positively and believes that the statement and report will increase transparency around municipalities' costs for waste collection, etc. In the long term, it can also contribute to setting a uniform service level for waste collection across the country.

However, Emballageretur believes that a fixed deadline should be introduced for municipalities' collection of producer fees as well as for the submission of annual reports to the PROs. Consideration should also be

given to the consequences of late submissions by municipalities, as this can have a significant impact on the PROs' finances and quality assurance. Furthermore, Emballageretur recommends the introduction of a complaint option regarding municipalities' fee calculations, so that producers and members of PROs can appeal if they believe that unjust fees have been charged.

§ 9p, paragraph 17 – Use of a Municipal Invoicing Template

In connection with municipalities' collection of fees for collection, transport, administration, educational initiatives, etc., a common municipal invoicing template should be developed, where services are itemized according to a fixed model. This will make it easier for the PROs to ensure the quality of invoicing across municipalities. Such a template should be included in the upcoming regulations regarding the Extended Producer Responsibility for Packaging.

The advantages of a common municipal invoicing template lie in the ability to trace specific services and achieve transparency across municipalities. Uniformity in the method of calculating and documenting producer fees will ease the processing for both municipalities and PROs.

Therefore, we encourage the prompt initiation of a dialogue on developing standards for both the structures behind the producer fee and the reporting of cost-effectiveness. This would also align with the political ambition to reduce the complexity of cooperation between municipalities and PROs. It should also be specified in a regulation which parameters cost-effectiveness should be measured against so that the measurement is consistent across all municipalities.

§ 9 æ, paragraph 5 – Increased Supervision to Reduce the Number of Free Riders

Emballageretur generally welcomes the introduction of rules that impose supervision on the areas of the producer responsibility for electronics, batteries, and packaging. For many years, there has been a lack of supervision in these areas, leading many companies to neglect their producer responsibility. As a result, law-abiding companies have had to fulfill obligations and bear the costs, while others shirk their responsibilities.

Lack of supervision has also created unequal conditions in the competition between law-abiding companies and so-called "free riders." By "free riders," we refer to companies that do not fulfill their producer responsibility. In Emballageretur's sister organization, Elretur, we have conducted several campaigns against "free riders" over the years. However, we must acknowledge that the task is extensive and that it is now crucial for the authorities to take their responsibility seriously. It is unsustainable that companies can break the law without consequences.

With the introduction of the Extended Producer Responsibility for Packaging, the number of companies covered will increase significantly, making it necessary for the authorities to take the task seriously from the start and severely sanction "free riders." The supervision effort must include effective methods for identifying "free riders" and ensuring that they register and report their packaging volumes to the DPA.

At Emballageretur, we believe that the authorities should focus on two key areas in their supervision efforts: frequency and sanctions. Frequency involves conducting enough of both physical and administrative inspections to notice when a company is not registered with the DPA. Sanctions should be such that they deter companies from failing to fulfill their producer responsibility.

Additionally, new initiatives should be considered that actively limit "free riders" ability to conduct business illegally. For example, membership in the National Producer Responsibility Register with the DPA could be made a prerequisite for documenting a responsible supply chain, or the public authorities of Denmark could refuse to do business with companies that are not registered.

Emballageretur is happy to participate in developing the right solutions. We are at your disposal when the authorities' supervision plan is to be developed, as producers and PROs must be involved in this work and have the opportunity to provide feedback.

A strengthened supervision effort and, thereby, a reduction in the number of "free riders" are particularly relevant for companies covered by the Producer Responsibility for Single-use Plastic. As this producer responsibility is solely a financial cleanup responsibility, it may be more difficult for PROs to get responsible companies to sign up, as there is no requirement for physical collection, sorting, transport, and treatment of waste. Emballageretur, therefore, urges the authorities to have a particular focus on this area, for example, through the municipal waste inspections that will be implemented in 2025.

§ 45, paragraph 8 – Transfer of Waste

At Emballageretur, we believe that it reduces both competition and efficiency when municipalities themselves designate the places where waste is to be transferred. Instead of each municipality choosing its transfer site, we strongly recommend that this choice be left to the PROs. The PROs would, of course, be willing to engage in dialogue about the specific terms of waste transfer at these sites so that it can function optimally for daily operations on both the collection and sales sides. We assess that the PROs will, within a few years, no longer continue to use the equipment that municipalities currently use at their sites.

As the rules are described now, it will only lead to an overall increase in cost levels.

If the rules are maintained, it is important to emphasize that all municipalities should carefully consider their choice of site for waste transfer. The guidelines for waste transfer between municipalities and PROs should be specified in an upcoming regulation. Here, the specific conditions should be established, considering both parties' actual operating conditions concerning waste transfer.

There should, therefore, be a requirement that municipalities ensure the designated site meets the new requirements set out in upcoming regulations. If a municipality cannot provide a site that meets these requirements, the municipality should be obligated to confer with the assigned PRO, which will then determine the site for waste transfer.

Based on the above, Emballageretur recommends that an appeal option be introduced regarding the municipalities' choice of transfer site. PROs must have the freedom to ensure high recycling rates and optimize operations to avoid unnecessary additional costs and reduce efficiency. With an appeal option, the PROs could argue why the selected municipal sites are not appropriately designed or set up concerning the PROs' operational conditions. An independent body would then be able to assess whether the municipality meets the requirements.

Emballageretur is, of course, at your disposal for any questions or clarifications.

Yours sincerely,
Emballageretur
Morten Harboe-Jepsen, CEO