

Ministry of Environment and Equality
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Høje Taastrup, November 1st, 2024

Consultation Response – Regulation on Certain Requirements for Packaging, Extended Producer Responsibility for Packaging, and Other Waste Collected with Packaging Waste

Emballageretur has read the draft regulation with interest and thanks you for the opportunity to provide input.

Emballageretur is a non-profit Producer Responsibility Organisation (PRO) that manages the Extended Producer Responsibility for Packaging on behalf of our member companies. We are part of the Retur family, which consists of non-profit PROs managing the producer responsibilities for electronics, batteries, packaging, single-use plastics, fishing gear, and textile products on behalf of Danish businesses. Together, we work to increase reuse and recycling, so that as many valuable resources as possible are diverted from the waste stream and re-enter the circular economy.

Retur represents more than 2,000 companies and has, since 2005, through Elretur, 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 include 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 managing the producer responsibility for Danish businesses.

Emballageretur has the following comments.

General Comments

Administrative Costs for Businesses and Increased Bureaucracy

The political agreement regarding the Extended Producer Responsibility for Packaging, among other things, states that the complexity of collaboration between PROs and municipalities should be reduced. Emballageretur has supported this from the outset and continues to do so, as it would benefit Danish businesses. However, when we read the draft regulation, we do not believe that this political goal has been achieved. On the contrary, it is our view that producer responsibility entails significant administrative burdens and a high degree of bureaucracy, whose implications have not been adequately clarified or minimized in the drafting process. Furthermore, we believe there is a strong bias in the proposed framework that solely favors municipalities and not producers.

We are therefore concerned that the primary objective of introducing the producer responsibility - namely, to reduce packaging waste, ensure effective 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 cumbersome, complex processes between the involved parties.

At this time, on behalf of our members, we are seriously concerned that the increased bureaucracy will have a significant and unnecessary impact on the cost of packaged products when the packaging producer responsibility comes into effect. Based on the current draft, we find it challenging to assess

the full extent of this impact. On this basis, we question whether specific economic assessments have been conducted regarding the costs of this increased administration for Danish businesses—beyond the proposed fees that producers must pay.

Emballageretur therefore urges that efforts be made now—and particularly during the evaluation in 2027—to explicitly work toward reducing administrative burdens for Danish businesses.

Establishment of a Financial Clearing House

In Denmark, the Extended Producer Responsibility for Packaging is expected to cover around 15,000 companies, with the total handling costs estimated at 2.3 billion DKK per year. Denmark has chosen the hybrid model, which creates an uneven competitive environment that producers have no control over.

In addition to producers' cost structures, they are also required to cover the costs that municipalities incur for collecting packaging waste from households. The uneven competition arises because municipal costs vary, resulting in the risk that two identical producers may end up paying different prices for the same service.

Municipalities differ in terms of housing stock, demographics, and geography, which means no two municipalities have the same cost structure. Thus, when producers, through their PRO, are required to pay specific municipalities via allocation, this effectively results in 98 different prices for the same service.

The consequence of varying municipal prices for the same service is that the costs producers are obligated to pay as financial compensation to municipalities will depend on whether an individual producer's financial responsibility is based on a payment to a low-cost or high-cost municipality. This responsibility is randomly assigned as part of the allocation process, not based on the producer's own business decisions. Emballageretur has conducted several calculations indicating that the current model results in cost discrepancies of double-digit percentages between two identical producers—for example, some of our calculations show a cost difference of 19%.

An obvious solution is therefore to establish a Financial Clearing House. A Financial Clearing House would mitigate these unintended discrepancies by ensuring that municipalities receive individual payments for their actual expenses while companies are charged a uniform rate for the same packaging management services.

A Financial Clearing House acts as an intermediary between a buyer and seller in a financial market, validating and finalizing the transaction to ensure both parties fulfill their contractual obligations. A Financial Clearing House consists of an ERP system, a calculation engine, and a number of employees, and should be managed by an independent party—such as DPA, for example. The costs of operating the Financial Clearing House would be covered by the PROs.

The Financial Clearing House would receive all (varying) invoices from individual municipalities, calculated based on a baseline model. It would then verify these invoices and allocate the total invoice amount across the PROs according to their market shares. In this way, each PRO receives a uniform price per allocated unit.

A Financial Clearing House ensures that no competitive distortion arises. It allows companies to focus 100% on securing optimal environmental and climate solutions—which is the purpose of the producer responsibility for packaging.

Emballageretur has repeatedly expressed the desire for the establishment of a Financial Clearing House and would like to emphasize the necessity of implementing this mechanism in the Extended Producer Responsibility for Packaging. We believe that significant economic consequences and unequal competitive conditions among producers, and ultimately the PROs, will result if a financial clearing house is not established.

Additionally, Emballageretur believes that essential competitive parameters are disregarded in the proposed hybrid model for the Extended Producer Responsibility for Packaging. This results in larger players having the potential to gain a position where they can exclude small and new PROs from the market.

Despite the hybrid model's equal treatment of different PROs (both large and small), the difference in volume still creates an unequal starting position, favoring established PROs over smaller players. It is particularly crucial to note that companies subject to producer responsibility operate in a competitive market, where their selling prices are constantly compared. This means that the most expensive option is often deselected.

If such fundamental and critical competitive parameters are removed from the equation, Emballageretur believes there is an obligation to compensate for the lack of competition by setting conditions aimed at protecting both established and smaller/new PROs.

Under the proposed hybrid model, not only are current smaller players disadvantaged in competition, but new players will also face entry barriers that are difficult to overcome. Unless the distortions inherently created by the hybrid model are addressed, there is a significant risk of market consolidation.

Emballageretur generally views the forthcoming producer responsibility for packaging positively. We have high expectations that the producer responsibility can contribute positively to waste minimization and promote the use of packaging based on recycled materials in the coming years.

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

Emballageretur is, of course, available for further clarification and explanation, including calculations related to producers' costs.

Transparency in Municipal Fees

It is crucial that municipalities calculate producer fees uniformly and report their costs consistently. This is particularly important given that no baseline service level for waste collection has been implemented at the municipal level. It is unclear to Emballageretur how a baseline service level can be established by 2027 when no cross-municipality comparison exists. For this reason, Emballageretur recommends that this basis for comparison (common templates) be discussed in the cooperation forum for

Producer Responsibility. It is crucial that all parties in the SAF (Producer Responsibility Collaboration Forum) are involved to ensure that the right elements are being reported.

Uniform Rules Across Different Producer Responsibilities

Emballageretur would like to stress the importance of aligning rules and regulations across the different areas of producer responsibility already in effect (e.g., for electronics and batteries). Uniform rules and regulations ensure fair conditions for the affected companies and reduce the administrative burden on individual companies and the PROs that manage producer responsibility on behalf of these companies.

Lack of Registration and Reporting by Covered Companies – Free Riders

As of the end of October 2024, approximately 5,700 companies have either individually or collectively registered and reported their expected packaging volumes for 2024 with DPA. In our view, this level is far too low, given that authorities themselves estimate that up to 15,000 companies will be subject to the upcoming regulations. This means there could potentially be many companies that will fail to fulfill their obligations under the Producer Responsibility Registration Order, which is unfair to the companies that do register.

The situation is critical, and we recommend that authorities seriously consider how to proceed in ensuring the remaining companies sign up. With the current level of registration, we foresee competitive distortion in the economic foundation for registered companies compared to those that are not. A clear area to target is platform businesses, which significantly contribute to packaging waste in Denmark. We note that most of these companies are currently unregistered.

Emballageretur generally supports the introduction of regulations requiring authorities to supervise producer responsibility areas for electronics, batteries, and packaging. For many years, there has been a lack of oversight in these areas, which has allowed many companies to avoid their producer responsibility. This has resulted in law-abiding companies bearing the costs and meeting obligations while others shirk their responsibilities.

The lack of oversight has also created unequal competition between law-abiding companies and so-called “free riders”—companies that do not fulfill their producer responsibility. Emballageretur’s sister organization, Elretur, has conducted several campaigns against free riders over the years. However, we acknowledge that this is a large-scale task, and it is now crucial that authorities take their responsibility seriously. It is unsustainable for companies to violate the law without consequences.

With the introduction of the Extended Producer Responsibility for Packaging, the number of covered companies will increase significantly, making it necessary for authorities to take this task seriously from the outset and impose strict sanctions on free riders. It is essential that the supervisory efforts include effective methods to identify free riders and ensure that they register and report their packaging volumes to DPA.

At Emballageretur, we believe that the authorities’ supervisory efforts should focus on two key areas: frequency and sanctions. Frequency means conducting a sufficient number of both physical and administrative inspections so that it is evident when a company is not registered with DPA. Sanctions should be of a nature that deters companies from neglecting their producer responsibility.

Additionally, new initiatives should be considered to actively restrict free riders’ ability to operate on an illegal basis. For example, membership in the national producer responsibility registry could be made a

Registration with DPA as a Prerequisite for Responsible Supply Chains

Registration with DPA should be a prerequisite for documenting a responsible supply chain, or public institutions in Denmark could refuse to conduct business with companies that are not registered.

Authorities are generally encouraged to publish a detailed inspection plan, as our members have a strong interest in ensuring effective supervision to prevent free riders. In this regard, Emballageretur suggests that producers, for instance through their PROs, be formally involved in shaping the inspection plan. Emballageretur is willing to participate in developing appropriate solutions and offers its assistance when authorities prepare the inspection plan. It is essential that producers and PROs are involved in this process and have the opportunity to provide feedback.

Future Focus on the Development of Producer Responsibility

The implementation of the Extended Producer Responsibility for Packaging marks a significant regulatory shift in Denmark, making it essential to monitor operations and development closely over the coming years. Emballageretur recommends a keen focus within the SAF framework on cost-effectiveness, administrative burdens, and incentive structures under producer responsibility. Attention should also be given to the quality of recycling and the system's ability to meet EU recycling and reuse targets.

The regulation requires producers to meet targets for actual recycling, which our members fully support. However, it is important to recognize that producers alone cannot impact the recycling rate in Denmark. Municipalities play a crucial role in the collection process, and national regulations for waste collection significantly affect recycling opportunities.

Therefore, Emballageretur recommends that the Ministry of Environment, through the collaboration forum, evaluate the impact of various municipal collection methods on recycling rates and quality. Additionally, when revising producer responsibility regulations after the 2027 evaluation, consideration should be given to whether adjustments to waste collection regulations are necessary.

Specific Comments

§3 – Definitions

Availability: For single-use packaging, the text lacks clarity on whether the packaging must be registered anew if it is used one or more times before becoming waste. For instance, the definition of availability does not clearly specify that it only pertains to new packaging.

Operational Costs: It is not entirely clear which costs should be considered as operational. Emballageretur therefore encourages that the definition be expanded to specify more clearly what should be regarded as operational costs. This could potentially also be done in a guide or manual.

§§6-7 – Requirements for Glass Packaging

It is unclear whether glass packaging that is imported and marketed in Denmark is subject to the requirement for sampling for glass furnaces. Emballageretur requests that this be clarified in the regulation. Competitively, it would not be appropriate for foreign manufacturers to be exempt from these rules.

§25 – Registration in the Producer Register

Emballageretur sees a need for clarification of what is meant by “a producer ceases to make packaging available.” In some cases, producers (e.g., seasonal businesses) temporarily cease to make packaging available during certain parts of the calendar year. Will these producers need to repeatedly register and deregister multiple times throughout the year? This seems impractical, as their cessation is only temporary and cannot be characterized as a complete halt. Emballageretur suggests clarifying the rules to avoid confusion.

§27 – Reporting on Available Packaging

Based on feedback from our members, Emballageretur would like to highlight challenges with the proposed implementation date of 31/12/2024, as well as the requirement that actual amounts of available packaging in 2024 be reported by June 1, 2025. This deadline presents a significant challenge for companies, as they need to understand the reporting requirements and establish a tracking system where needed.

§27, Subsection 2 – Reporting on Available Reusable Packaging

Emballageretur is in close dialogue with our members, and many have expressed uncertainty regarding the requirements for reusable packaging. Our understanding is that registration of reusable packaging primarily relates to beverage packaging. The consequences for items like pallets and internal packaging may, therefore, be unintended. Our comments are structured based on the potential impacts on these two types of packaging.

For pallets, it is our understanding that producers must report pallets when they are placed on the Danish market. This applies even if they are not introduced as a product on their own but in connection with the introduction of other products and materials. This could be an interpretation of the text, even if the producer returns empty pallets to a logistics partner. It would be a complex task for producers to keep track of pallets that circulate multiple times across different jurisdictions, as logistics management is usually outsourced to logistics service providers and tracking tools at the pallet level or monitoring systems are currently not standard practice. At the consultation meeting on October 21, 2024, at DAKOFA, Emballageretur's assessment was that many companies are in the same situation and are very uncertain about how to implement these requirements in practice. Emballageretur therefore recommends that the Ministry of Environment issue specific guidance as soon as possible that explains how to report reusable packaging, etc., in practice as well as describe roles and responsibilities.

Internal packaging for warehouse storage may also be covered by this legislation. Such containers are not placed on the market by the producer, as they are used internally in the manufacturing process until they are sent to another country or become waste. They are transported between locations in different countries with goods, which are then repackaged. Clarification on whether there is a registration obligation when this packaging is introduced into Danish territory or when new internal containers are purchased would therefore be appreciated.

§27, subsection 4 – Reporting on Available Packaging

Emballageretur is unsure whether this provision also applies to a company that, for example, registers 15 years later and has made packaging available throughout the entire period. Should producers be required to account for their available packaging amounts from the past, regardless of how long ago, or will it only apply to a more limited period, such as five years?

§28 – Reporting on Available Reusable Packaging

Emballageretur encourages clarification that any changes in quantities reported to the authorities should be done via their PRO (except for reusable packaging).

§31 – Other Reporting

Emballageretur believes it is a challenge that producers' data reporting only affects the allocation and thus the collection responsibility in the Extended Producer Responsibility for Packaging in the year after they are reported. There is more than a one-year difference, and we know from experience that many changes occur during this period, such as mergers and bankruptcies. Emballageretur believes the allocation period should start on September 1 each year. From our experience with producer responsibility for electronics and batteries, a uniform allocation period works best for businesses. When the allocation period starts on January 1, it is just after the Christmas holidays, which we know causes many practical problems during the transition phase.

§31, subsection 2 – Other Reporting

Emballageretur believes the text should clarify that the information reported under subsection 1 should also be submitted per P-number (in addition to by municipality and kg per waste fraction). It is crucial that each producer can be easily identified when the PROs manage their members' responsibility and finances.

§38 – Other Provisions on Allocation of Municipally Collected Waste

Emballageretur would like to highlight the benefits for both producers and PROs of using a uniform model for all relevant producer responsibility areas concerning uniform allocation periods.

Based on the nearly 20 years of experience of our sister organizations with producer responsibility for electronics and batteries, Emballageretur recommends that allocation periods should not be set from January 1 to January 1. Experience shows that data on available packaging amounts from producers can only be collected by the end of March in the following year. After that, the DPA conducts quality checks, which means the allocation period can start no earlier than July 1. However, this date is problematic due to the summer holiday period, so we recommend setting the allocation period from September 1 to September 1.

Therefore, we 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 1 to September 1. If the Ministry of Environment chooses to set an allocation period from July 1 to July 1, the allocation periods

for WEEE, batteries, etc., should also be adjusted to follow the same allocation period. Different allocation periods have significant administrative and communication consequences for both producers and PROs, and therefore would not align with the political intent to minimize complexity in the cooperation between the PROs and municipalities.

§40 – Other Provisions on the Allocation of Municipally Collected Waste

Emballageretur recommends clarifying that DPA can only make an adjustment to the established allocation in cases of significant changes. This should be understood in the context that later changes in the allocation have major practical, administrative, and financial consequences for the PROs, such as through the purchase and deployment/retrieval of equipment, communication, etc. If there is the possibility for multiple adjustments, it could ultimately, and in the worst case, mean that the PROs are unable to honor the contracts they have made, which would lead to contract breaches.

§40, subsection 3 – Other Provisions on the Allocation of Municipally Collected Waste

Emballageretur wishes to highlight that it will not be possible for a PRO to obtain new security within four weeks if a decision on allocation is changed. Therefore, consideration should be given to this, and additional flexibility should be built in for the PROs.

§43 – The Municipality's Duty to Transfer Municipally Collected Waste and Transitional Arrangements

Emballageretur believes that reducing both competition and efficiency occurs when municipalities must themselves designate the places where waste should be transferred. Instead of each municipality choosing its own transfer point, we strongly recommend that this choice be left to the PROs. The PROs will, of course, be willing to engage in dialogue about the specific conditions for transferring waste at these locations, so that it works as efficiently as possible for the daily operations on both the collection side and the disposal side. It is our assessment that within a few years, the PROs will no longer continue using the equipment and facilities that municipalities currently use at their designated locations.

A lighter alternative would be to change the text to say, "The municipal council may designate a place...". It does not always make sense for a municipality to designate a transfer point, especially if there are challenges in meeting the guidelines in Appendix 13. It should also be considered to change the text so that the municipality must always engage in dialogue with the PROs for consultation, ensuring that the transfer occurs at a coordinated level and fits within the operations of the PROs.

Fundamentally, municipal designation of transfer points increases the risk of unnecessary additional logistics with more transshipments within a short geographic area, which costs money and reduces the recycling potential for the fractions. It also creates additional challenges in defining and controlling the activities that occur at the municipally designated transfer points. According to the rules, rough sorting of completely extraordinarily mis-sorted items can be done manually. The municipal sector previously highlighted toilet seats in organic waste as an example. A clear demarcation is sought in the regulation, so each actor has a clear understanding of the scope of legal rough sorting. It should similarly be clarified that sorting into fractions or removal of commonly occurring mis-sorted items and impurities is not considered rough sorting.

The major challenge concerns the baling of waste prior to transfer. When plastic is baled, it changes character, such as soft plastic being mashed into hard plates, which cannot be sorted to the same quality at a plastic sorting facility. Therefore, it is crucial that the PROs are given the opportunity to refuse the transfer of waste if it is identified that, for example, mis-sorting, baling, or transshipment could impair the recycling possibilities of the fractions or increase the overall treatment costs.

It is also important to note that it both costs money to bale the materials and attempt to split the bales and separate the waste afterwards. If it does not contribute positively to the treatment in the specific logistics, it should be avoided.

In the case where it is maintained that municipalities designate the transfer points – despite the many disadvantages – a complaint option should be introduced at the very least regarding the municipalities' choice of transfer points. It is crucial that the PROs are given the freedom to ensure high recycling rates and optimize operations to avoid unnecessary additional costs and reduce inefficiency. With a complaint option, the PROs would be able to present reasons why the selected municipal locations are not suitably designed or arranged in relation to the PROs' operational conditions. An independent body could then assess whether the municipality meets the necessary requirements.

§43, subsection 2 – The Municipality's Duty to Transfer Municipally Collected Waste and Transitional Arrangements

Emballageretur points out that it is not possible to obtain a new export notification from the relevant authorities in under 7 months, which should be taken into consideration in the regulations. The risk in this case would be that waste cannot be collected, and who would then be responsible for providing the necessary storage capacity?

§47 – The Producer's Duty to Take Over Municipally Collected Waste

Documentation for transferred quantities and their actual recycling is highly relevant. However, it is not relevant to have to document which facilities the individual municipality's fractions were delivered to throughout the entire treatment chain. It is impossible to secure this information through possibly five treatment stages, where the PROs typically only have a contract with the first stage. Just ensuring valid data on the average actual recycling through multiple stages is a major challenge but ensuring valid data on which of several facilities received which parts of the individual municipality's waste is impossible.

It is somewhat less impossible to gather average valid data for which facilities probably received which amounts of the increasingly sorted fractions/materials, but doing this solely to get an accurate total number of kilometers driven (and what about shipping) in relation to the use of the compensation formula for transferred waste does not justify the costs and challenges. Even if one tried to do this, it would not be possible to provide reasonable documentation that would not be questioned.

It is strongly recommended to find an alternative solution for calculating transport costs, possibly by setting a theoretical associated number of kilometers for the different fractions, at least after they have left Denmark. This would provide a safer number and eliminate both the massive challenges and costs of obtaining a concrete figure for all quantities.

The division between transport, treatment, and administration in contracts is not currently standard practice, but it is likely feasible.

Whether the waste is handed over to relevant actors should solely be a matter for the waste inspection/oversight of the PROs.

§59 – Other Provisions on the Allocation of Payment Obligations for Commercial Packaging Waste
Refer to the response regarding §40.

§61 – Payment for the Collection, Transport, and Treatment of Commercial Packaging Waste

It appears from the draft of the regulation that waste-producing companies can request payment from producers to cover the costs of collecting, transporting, and treating commercial packaging waste that has been treated by the company itself or transferred to a waste collection company.

The political agreement states that the waste-producing company can transfer this responsibility to a private waste collector.

This is a significant change, as it shifts from a very limited number of actors (waste collectors) who need to seek compensation, to about 300,000 companies needing to do this. This will result in high administrative costs for both waste-producing companies and the PROs. In practice, the administrative costs in many cases will exceed the compensation that the waste-producing companies can claim for their packaging waste. This could lead to waste-producing companies, contrary to the intentions of producer responsibility, avoiding applying for compensation for their packaging waste management costs.

At the consultation meeting on October 21, 2024, held by DAKOFA, the Ministry of the Environment informed that the scheme will be implemented in practice by the PROs and waste collectors finding their own suitable solutions so that compensation can be paid to the waste-producing companies.

It is therefore strongly recommended that a possibility be introduced for the PRO to set differing documentation requirements. These deviations could, for example, involve the PRO accepting a customer list and total quantities within the relevant categories from the collectors on behalf of the original waste producers. The collectors could then offer their customers either to take over the administrative work of the requests or completely take over the waste producer's compensation claim and apply in their own name, but with the original waste producer's CVR number and P-number attached, so that the PROs can ensure that there are no overlapping requests.

If the Ministry of the Environment does not consider the above to be included in the regulation, it should at least be described in more detail in both a guideline and a consultation memorandum. We also suggest that the evaluation in 2027 look at the scope and consequences if companies fail to apply for the amounts they are entitled to.

It would be very unfortunate if the refund model described in the consultation draft were pursued only to be discarded after the 2027 evaluation. If this happens, the PROs will be left with stranded costs for, e.g., IT solutions, which we would expect to be compensated for.

Additionally, a deadline for the application for compensation is missing.

§61, subsection 3 – Payment for the Collection, Transport, and Treatment of Commercial Packaging Waste

Emballageretur is not aware of any municipalities collecting commercial waste where this waste is not mixed with household waste. Emballageretur does not have a complete overview of the municipal collection schemes, but based on this provision, it is expected that very few municipalities, if any, will be able to take over the right to receive payment from the waste-producing companies.

§62 – Payment for the Collection, Transport, and Treatment of Commercial Packaging Waste

Emballageretur recommends that the waste-producing companies also provide the P-number when applying for compensation.

This ensures that each company can be identified at the address level.

Additionally, Emballageretur recommends that the compensation should not be made with short intervals. Emballageretur assesses that in many cases, the compensation amounts will be relatively small, and therefore, the administrative costs per transaction could exceed the compensation amounts. Therefore, we recommend that compensation requests be made once a year in the first quarter of the following calendar year.

§64 – Environmental Agency's Key Figures for Commercial Packaging Waste

The provision states that the Environmental Agency shall establish key figures by October 1, 2025. Emballageretur and other PROs must use these key figures to set pricing for our members and therefore cannot wait until October 1, 2025. We recommend that these key figures be established as soon as possible, and no later than April 1, 2025, and then on an annual basis thereafter.

§66 – Producer's Own Take-back Systems

It is unclear to Emballageretur what should happen with reusable packaging that ends up as mis-sorted waste in the single-use packaging (household) waste stream, which the PROs are responsible for collecting. Therefore, Emballageretur would like this clarified.

Beyond the practical perspective, a decision should also be made about who will bear the costs when reusable packaging ends up as mis-sorted waste in other waste streams.

§§68-70 – Security Deposit

Emballageretur is deeply concerned about the proposed provisions regarding security deposits. Fundamentally, we understand that security must be provided for the financing of packaging waste and that the PROs must provide security on behalf of the registered producers, but as it stands now, the requirements being imposed are disproportionate.

Producers are required to prepay municipalities starting October 1, 2025, while they themselves only receive payment from the municipalities afterward, which adds further financial pressure. The consequence is that the financial burden becomes unreasonably large.

Since membership in a PRO is mandatory, the risk of individual member bankruptcies threatening the entire system is significantly reduced. Furthermore, as stated in §100 of the regulation, municipalities are to receive quarterly advance payments for collection tasks, which further reduces any risk.

It is Emballageretur's clear assessment that a more balanced solution is necessary. In our opinion, a more balanced solution would be a collective security arrangement. For example, one could look at how the Danish banking sector has approached this issue. The advantages of a collective security system include setting common rules for how member transfers should occur, allowing for smooth and quick transitions. Specifically, member transfers, treatment capacity, logistics agreements, historical treatment data, etc., could be transferred over a weekend, with a business transfer of members from one PRO to another. This collective solution also has the clear benefit of achieving cheaper security, which would benefit all parties involved. The costs of the collective security would be distributed according to the respective market shares of the PROs.

Emballageretur is, of course, available for further clarification and explanation regarding a collective security arrangement, as well as participation in any ongoing discussions in the collaboration forum.

§73 – Release of Security

Emballageretur requests that the provision specifies what is meant by "after a reasonable number of reminders." It is impossible for a PRO to handle this vague description.

§76, para. 3 – Waste Treatment

Emballageretur recommends that a requirement be introduced to ensure that, if a municipality is unable to guarantee that the waste collected and transferred is done in a way that supports real high recycling rates, the producers or the PROs should be able to cover the necessary costs for transshipment, sorting, transport, and treatment.

§81 – General Provisions for Collective Systems

Producers often do not necessarily understand the established division of responsibilities between DPA (Danish Producer Responsibility) and the PROs. This can lead to situations where both DPA and the PROs are in an unfortunate position because it has not been clear where the producer should turn to or take specific actions. This lack of clarity should be addressed, and authorities should consider conducting a more detailed analysis of where these ambiguous situations arise. Emballageretur is keen to provide our members with the best service and is available if you would like our feedback. It could, for example, be considered to delegate more tasks to the PROs, as we have the largest contact base with our respective members and are in the best position to assess what information and assistance our members require.

§82 – General Provisions for PROs

Emballageretur recommends that PROs should, at a minimum, always be able to provide a Danish platform (office address) and contact details when they are to be registered in the producer register. It is a significant advantage for both authorities and producers that a PRO can easily be contacted and reached on Danish soil in the event of major crises or challenges.

§85 – General Provisions for Collective Systems

Emballageretur assumes that this provision will first apply from 01.10.2025, as all the required information cannot be provided before this date. Emballageretur assumes that, as with producer responsibility for electronics and batteries, it will be sufficient to simply refer to the producer responsibility register regarding information about producers in the PRO. There will never be complete alignment between the PROs own member lists and the producer register itself, so it makes sense to let the producer responsibility register be the defining source if anyone wants insight into the PROs' membership base.

§99 – Fees to the Municipal Council

According to § 99, the municipal council sets the fees (for the first time no later than 1 April 2025 and thereafter no later than 1 October). Based on this wording, our clear expectation is that it is the approved producer fees that the municipalities report to DPA by these deadlines, and that the fees cannot change later. This is crucial for the PROs, as we need to base our annual budget and our members' contributions on the fees reported.

We also note that there is no requirement for producer fees to be broken down by fraction level. The consequence of this will be that the PROs cannot see which part of the producer fee covers which fraction. This means that we will not be able to fairly allocate the costs of collection to producers based on packaging type.

In the authorized chart of accounts, account 1.38.63 is for "Schemes for food, paper, cardboard, glass, metal, plastic, and food and drink carton waste," but no requirement is made to subdivide the expenses by fraction level. As a result, a producer fee could consist of expenses for this account, minus the costs for food waste, without a breakdown of expenses by the individual fractions.

It may also be difficult to allocate the cost of, for example, emptying a two-chamber bin for paper and plastic/MDK. Should each chamber bear half the cost? If the bin is divided 60/40, should the cost of emptying be distributed based on volume? Or if paper weighs four times as much as MDK, should paper bear 80% of the cost of emptying? There are no guidelines for such distribution in the draft law, so municipal cost allocations for emptying could vary widely. This could lead to a significant difference, as the cost of emptying will likely be the largest expense for packaging waste.

We are puzzled that the PROs are required to graduate contributions from members by material categories, when the largest cost to producers—the producer fee—is structured in such a way that it cannot be fairly allocated across material categories.

In the Danish Environmental Protection Agency's Guidelines for Determining and Calculating Graduated Contributions under the Packaging and Packaging Waste Regulation (1st edition), it states: "... the economy for waste treatment [should] balance under each material subcategory." So, only the balance of producers' expenses for waste treatment has been considered, not the balance of expenses for collecting packaging waste.

It is expected that different types of packaging will place different financial burdens on the collection process. For example, plastic and cardboard are not very heavy but take up relatively much space in volume, which will influence the frequency of emptying and result in a higher cost per kilogram than other fractions.

If the producer fee does not allocate costs across the individual fractions or chambers, we as a PRO cannot see which part of the producer fee belongs to which material category. This does not align with the ambitions for transparency in the waste management sector and the need to avoid cross-subsidization.

Therefore, we urge that municipalities be required to either allocate the expenses in the producer fee across fractions or that a key figure be developed by April 1, 2025, to guide how PROs should allocate the expenses from the producer fee across material subcategories when collecting environmentally graduated contributions from producers.

§107 – Supervision, Monitoring, and Complaints

According to this provision, municipalities are responsible for overseeing themselves in relation to §§42, 43, 55, and 97-102. This seems inappropriate and is subject to criticism. Emballageretur therefore wishes to see a requirement for municipal decisions to be subject to appeal and for clear guidelines to be provided on how this process should take place.

Annex 6 – Material Categories Not Covered by Producer Responsibility for Packaging

Emballageretur has noted that packaging made of textiles, porcelain, cork, and ceramics are currently not expected to be financially covered by the Extended Producer Responsibility for Packaging, as producers of these types of packaging are not expected to be required to cover the costs associated with these waste types in the first instance.

We believe this is reasonable but would like to draw attention to packaging made from various biomaterials. While these packaging quantities are still small in the grand scheme, the amounts are steadily increasing. The problem with these bio-packagings is that they often should not be sorted and collected with regular packaging waste, as they can negatively affect the recycling process. When they are sorted as residual waste for incineration, they will also negatively impact the recycling rate.

Depending on how the financing of producer responsibility is implemented, this could incentivize producers to increase the amount of bio-packaging marketed.

Therefore, Emballageretur recommends that the authorities address this growing issue as soon as possible, and we would like to see it included as part of the evaluation of producer responsibility for packaging in 2027.

Annex 8, Table 3 – Allocation Keys for Municipally Collected Waste

Emballageretur is not familiar with the waste fraction "indoor wood" in the context of the Producer Responsibility for Packaging, only with the material category "Wood." In this context, Emballageretur recommends that the waste fraction "indoor wood" be clearly defined, or that a clear definition be referenced.

Annex 11 – Calculation of Distance in Kilometres

In Annex 11, producers and thereby the PROs are required to use www.krak.dk to calculate the number of kilometres per load along the fastest route. Emballageretur views this as highly problematic, as actual transportation rarely reflects the fastest route on www.krak.dk. Transportation is often done with route operations that vary from week to week. Additionally, planning must consider sensitive roads, such as school roads, etc. Finally, especially in larger urban areas, the current traffic situation must be considered, which will affect the transport distance.

Emballageretur therefore recommends establishing a new method for calculating kilometres that will be more accurate.

Annex 12 – Guidelines for Calculating Compensation for Handling Commercial Packaging Waste, Including Key Figures

Annex 12 outlines the guidelines for calculating compensation for commercial packaging waste. The guidelines appear to follow the recommended model from the working group under the cooperation forum. However, it seems there are no guidelines on how to calculate costs when a waste producer sorts a waste fraction into packaging waste and non-packaging waste. In these cases, an allocation key should be avoided, as this would result in the waste producer not receiving full compensation for a clean packaging waste fraction.

Finally, it is crucial to ensure that ongoing efficiency improvements in collection and disposal are reflected in the calculations. In the working group for commercial waste under the cooperation forum, there was talk of an efficiency factor, which we cannot see in the proposed model. Specific targets should be set for achieving cost efficiency in municipalities each year.

To ensure consistent documentation, there should be a requirement for the development of common templates and reporting formats across municipalities so that developments and initiatives can be easily read and assessed by the producer responsibility actors, including authorities in connection with the 2027 evaluation.

Annex 13 – Guidelines for Transferring Municipally Collected Waste

Emballageretur has previously submitted its comments on these guidelines and supports the ambition for simple guidelines, where local conditions can be agreed upon separately or locally. However, we believe the guidelines in the annex are one-sided and do not sufficiently consider the needs of the PROs.

We refer to previously submitted comments and summarize below the key points.

First and foremost, it is crucial that municipalities consider whether they can designate a location that meets the needs of the PRO when transferring waste. Emballageretur assesses that municipalities will likely designate already existing municipal sites, which are not necessarily designed to ensure a smooth transfer of waste in connection with the Extended Producer Responsibility for Packaging. Therefore, it is important that infrastructure, access conditions, turning areas, opening hours, etc., are reconsidered to avoid bottlenecks and ensure appropriate equipment for collection, other vehicles, etc.

Emballageretur recommends that there should always be a dialogue between the municipality and the PROs before a location is designated. Additionally, the PROs should have the possibility to appeal if the designated site is deemed unsuitable for the transfer.

The municipality should provide an emergency contact number, as our experience shows that there are times when it is necessary to contact the municipality outside of regular working hours to resolve unexpected and sudden challenges.

It is essential that the PROs have unobstructed access to the site so that efficient operations can be planned and carried out. A limited time frame would be a major inconvenience for the PROs. Much can be solved by setting up a key box or similar arrangements.

It is Emballageretur's assessment that the PROs need at least 48 hours' notice for collection after a request.

Emballageretur recommends that the four-hour deadline for missed collections be changed to eight hours on weekdays. Four hours is simply too short a response time. Furthermore, the municipality's option for emergency collection should only apply in the case of repeated missed collections. It is important that the guidelines are generally balanced, so they are consistent for both the PROs and municipalities, avoiding one-sided requirements favouring the municipalities.

Emballageretur considers it a good solution that municipalities should sort out grossly incorrect sorting before the waste is transferred. To ensure that the waste is collected in a way that supports high and effective recycling, it should be a requirement for municipalities to monitor the citizen and waste collector and address poor sorting quality at specific household addresses. Additionally, we recommend that quality issues be discussed regularly between the PRO and the municipality (e.g., at semi-annual meetings) so that any problems can be addressed. In cases of obvious failures, the PRO or its supplier should be able to point out the issues and refuse collection.

Annex 14 – Criteria, Method, and Proportions for Gradual Contributions for Packaging

In section 3.5 regarding the established criteria for an integrated component, there is a need for clarity on the interpretation of the criteria for the green level. It would be beneficial to make the description more user-friendly to avoid misinterpretations. As the text is currently written, it appears that the green level can be achieved if no label/sleeve is applied or if a sleeve is applied that meets certain conditions. Finally, a condition is given if a label is applied. Shouldn't this criterion be moved up and become an

option in a similar way as a full-body sleeve (or option)? This way, the logic in the criteria would be clearer, as otherwise, it is difficult to understand the logic.

In section 3.6, criteria are set regarding additives that can make the paper difficult to dissolve. However, the criterion is not described, and instead, reference is made to the ISO standard 5263. Should it be understood that all producers and PROs must purchase this standard to fully understand the criterion? Emballageretur recommends that the criterion be described in Annex 14, so that it is accessible to all affected parties who need to address the criterion.

It is noted that in the draft of the regulation's Annex 14, section 3.6, "*Design Criteria for the Paper Material Subcategory*," and section 3.7, "*Design Criteria for the Paper Material Subcategory*," a threshold is used for >95% (green category) fiber content by weight and <95% (red category) fiber content by weight.

To achieve a real grading, it is crucial to clarify that the thresholds for fiber content should be assessed based on the packaging product and not the materials used for paper and cardboard. This could be clarified, for example, by adding "(packaging product)" in parentheses after "material." Paper and cardboard consist, among other things, of binders, fillers, coatings, and water content. When it comes to water content alone, it often makes up more than five percent of the total weight. If the specified percentage thresholds are intended as a limit for fiber content in the actual packaging product, this should be clarified, and the percentage thresholds in the text should be adjusted in line with the above explanation of the composition of typical paper and cardboard materials. If, on the other hand, the percentage thresholds are meant to apply to the paper and cardboard raw materials used, the thresholds should be changed to relate to the specific packaging product.

In Annex 14 of the regulation, sections 3.1, 3.2, 3.3, 3.4, and 3.8 for the material categories plastic, food and beverage cartons, a model for environmentally graduated contributions divided into three categories – red, yellow, and green – has been used. This division is omitted for paper and cardboard, which are only divided into two categories – green and red. Emballageretur believes that this will limit the possibility for a real environmental grading, considering the intent of the legislation, and will result in a misleading picture of the recycling potential of packaging. For example, the threshold for fiber content in cardboard could result in two almost identical packaging products being graded as "High recyclability" and "Low recyclability" simply due to a very small difference in fiber content.

We propose that the following model be inserted into Annex 14, sections 3.6 and 3.7 for fiber content in packaging:

- Green: >94% fiber content in material (product)
- Yellow: >75% fiber content in material (product)
- Red: <75% fiber content in material (product)

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

Best regards,
Emballageretur
Morten Harboe-Jepsen, CEO