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Joint statement

Manufacturer definition in relation to branded packaging under PPWR

HOTREC, Independent Retail Europe and Euro Coop are calling for urgent clarification of the definition of “manufacturer” and related “producer” status as regards branded packaging and packaging of packaged products used in supermarkets, shops, hotels, restaurants, bars, and cafés under the Packaging and Packaging Waste Regulation (PPWR).

As currently phrased, the definition of manufacturer¹ would lead to retail and hospitality operators being considered “first time” manufacturers of packaging and packaged products simply because their brand name or logo appears on the packaging. The justification provided by the Commission in the guidelines is that *“it (the retail/hospitality operator) will have the decisive power in the contractual relation with its suppliers and will therefore be able to determine also the packaging characteristics”*. However, in most cases, retail/hospitality operators do not exercise decisive power regarding the design of packaging in the contractual relation with their packaging suppliers.

Hospitality businesses cannot and do not produce or prescribe the design of packaging; neither can or do most retailers other than, in certain cases, the visual appearance (colour & print on packaging). They rely on packaging suppliers for technical expertise, materials, and compliance with packaging regulations. In addition, both the hospitality and retail sectors are largely composed of micro and small enterprises², which lack the administrative, financial, and technical capacity to meet complex manufacturer obligations, especially when they place only limited amounts of packaging on the market. The PPWR only excludes micro enterprises from these obligations.

The Commission’s interpretation therefore imposes disproportionate obligations on these sectors in the form of compliance with extensive requirements on packaging composition and design, documentation, liability, reporting, and manufacturers’ Extended Producer Responsibility (EPR). Moreover, it would result in an unnecessary multiplication of certain administrative burdens, such as publishing EU declarations of conformity and storing technical information for years, whereas the actual manufacturer of the packaging (the supplier) already has this information available for all of the packaging that they design, manufacture and place on the market.

¹ Article 3. 13) “manufacturer” means any natural or legal person that manufactures packaging or a packaged product; however: (a) subject to point (b), where a natural or legal person has packaging or a packaged product designed or manufactured under its own name or trademark, regardless of whether any other trademark is visible on the packaging or on the packaged product, “manufacturer” means that natural or legal person.

² Being high-turnover and high employment sectors, operators in hospitality and retail easily fall out of the micro-enterprise scope meaning that many small enterprises would have to comply with manufacturer obligations.

Applying manufacturer status to hospitality businesses and retailers for packaging for which they have not specified the design will create a multiplication of significant costs and administrative burdens without delivering any environmental benefit. It would, contrary to the EU acquis, also expose these operators to compliance risks for aspects of packaging over which they have no control, whereas there is in any case always an economic operator in the supply chain which determines the composition and design, therefore controlling and ensuring compliance of that packaging with PPWR requirements.

The guidelines to the PPWR³ on this issue are of little help since they are contradictory. They state (page 8) that to qualify as a manufacturer two elements need to be taken into account: (1) the role in the design or manufacturing of packaging criterion *and* (2) the trademark or the branding criterion. Whereby the second part of the clarification limits this to only the name or trademark on the packaging/packaged product by making the (*misguided, in our opinion*) assumption that this operator exercises a decisive power on the contract and thereby on the composition and design of the packaging. This is in contradiction with the summary on page 12 which states that the manufacturer is the operator who “orders *and* decides on the design specifications of the packaging”.

To ensure a proportionate and effective implementation of the PPWR, we call for:

- Clear clarification in the guidelines and the FAQs that hospitality operators and retailers are not considered manufacturers of packaging, including the packaging of packaged products, when using packaging offered by the actual manufacturer as long as they do not modify the packaging, or exercise decisive influence on the design other than the visual appearance (the visual design of the print) of the packaging, even when branded with their brand name or logo.

Several national authorities have already raised concerns and are seeking consistent guidance, highlighting the risk of divergent interpretations across Member States and further fragmentation of the internal market.

We therefore urge the European Commission to provide clear and consistent guidance on the definition of “manufacturer” in relation to branded packaging to ensure proportionality, legal certainty, and a workable framework for our businesses, while maintaining the environmental ambition of the PPWR.

³ A manufacturer is a natural or legal person who manufactures packaging or a packaged product. It is not necessarily the natural or legal person that physically produces the packaging. Two elements need to be considered: (1) the role in the design or manufacturing of packaging criterion *and* (2) the trademark or the branding criterion. If the packaging or packaged product carries a certain name or trademark, it can be assumed that the owner of that name or trademark is the “manufacturer” pursuant to Article 3(1), point (13)(a), as it will have the decisive power in the contractual relation with its suppliers and will therefore be able to determine also the packaging characteristics.