



## **EXPLANATORY NOTES in relation to the Waste Management (Packaging and Packaging Waste) (Amendment) Regulations, 2022**

### **1. Introduction and background.**

The Legal Notice serves to amend the Waste Management (Packaging and Packaging Waste) Regulations (S.L. 549.43) so as to bring the legal regime in sync with the amended Local Government Act (Chapter 363 of the Laws of Malta) and following the issuing of the regional waste collection tenders.

### **2. Overview and Structure of the Instruments.**

The Legal Notice amends a number of regulations from the principal regulations (S.L. 549.43), and also adds new Schedules therein. S.L. 549.43 governs the management of packaging waste in line with the Extended Producer Responsibility (EPR) principle. Accordingly, producers of packaging are obliged to finance any system set up for the collection and environmentally-sound treatment of the packaging waste arising from the packaging they place on the national market and attain the applicable recycling targets. Producers placing on the market the packaging ending up at consumers are obliged to join an authorised Producer Responsibility Organisation (PRO).

Through these amendments, the PROs will remain responsible for financing the management of municipal packaging waste arising from the packaging placed on the market, however the Regional Councils will be responsible for organising collection, treatment, and attainment of targets. The amendments also introduce the possibility for producers who place refillable gas cylinders on the market to self-comply with their obligations therein, as opposed to joining a PRO.

### **3. Commentary on parts and articles.**

The main changes to S.L. 549.43 that will be brought about through this Legal Notice are:

- The inclusion of a new regulation 3A to reflect the new general minimum requirements on EPR established in the EPR Framework Regulations, (S.L. 549.141) within S.L. 549.43. Such minimum requirements stipulate that:

- (i) packaging producers shall cover the whole costs of waste management;
  - (ii) the fees charged by PROs to their members shall be modulated, as far as feasible, on the basis of the environmental performances of the packaging they place on the market; and
  - (iii) the types of information to be made publicly available by PROs and Regional Councils. In the case of PROs, such information pertains to their ownership and membership, fees paid by their members and the selection procedure for waste operators. In the case of Regional Councils, information is about the selection procedure of waste operators; costs charged to PROs as well as the attainment of the applicable recycling targets.
- Amendments to regulation 8 and related amendments to Schedule 3, which relate to the obligation on Regional Councils to attain the applicable recycling targets on municipal packaging waste and on self-complaint producers and PROs for transport packaging waste and waste gas cylinders. Such amendments also establish an obligation for Regional Councils to report data on their waste management performances to ERA on a half-yearly and annual basis.

Furthermore, the additional fee has been replaced by an administrative penalty that may be imposed by ERA on Regional Councils, self-complaint producers and/or PROs of transport packaging or refillable gas cylinders, for failure to attain the respective targets. This change will allow use of ERA's existing standard procedure for the imposition of administrative penalties in case of non-compliance and would also further allow for the possibility of submissions to be made by the person concerned to the Authority before the fine is imposed, and the possibility to appeal such penalty in line with Cap. 551. The mechanism to calculate such penalty is established in a new schedule that is being added to the principal regulations, i.e. Schedule 17.

- Changes to regulation 13 to enable the Regional Councils to select waste management operators for the regional door-to-door collection of municipal packaging waste, its transport and treatment. With regards to recycling points (bring-in sites), the current system whereby PROs shall make arrangement with LCs for their provision according to the quota stipulated in the Waste Regulations is retained. PROs shall ensure to arrange for the timely collection of such waste from the recycling points and its transport to an authorised waste management establishment or undertaking engaged by the PRO. The packaging waste collected from recycling points that is recycled shall count towards the attainment of the targets by the respective Regional Council.

The payment of the financial contribution by the PROs to the Regional Council, including when such payments are to be made, shall be agreed upon between

Regional Councils and PROs through written agreements, and revisions to established costs are to be notified to PROs in sufficient time. The financial contributions shall not include any administrative penalties that may be imposed on Regional Councils. Notably, the draft stipulates that such financial contributions shall not exceed the costs that are necessary to provide waste management services in a cost-efficient way, which costs shall be established in a transparent way between the Authority, the Regional Councils, the PROs and any other actors concerned.

- Changes to regulation 14, whereby the outcome(s) of the characterisation survey to be periodically carried out by ERA may be used to establish the costs to be covered by PROs as well as the actual recycling rates achieved by the Regional Councils.
- Amendments to regulation 16 to allow producers placing on the market refillable gas cylinders to self-comply, provided they have systems in place to reuse such packaging and manage the related waste in an environmentally sound manner.
- The inclusion of a new schedule (i.e. Schedule 16) establishing the information to be contained in the half-yearly and annual reports to be submitted by the Regional Councils to ERA.
- The inclusion of a new schedule (i.e. Schedule 17) establishing the methodology to calculate the administrative penalty that may be imposed by ERA on Regional Councils, PROs and, or self-compliant producers. Such mechanism also allows ERA to waive the administrative penalty where the interested party provides evidence that the non-attainment of the target is due to exceptional reasons beyond his control.
- The inclusion of a new schedule (i.e. Schedule 18) detailing how the market share of the PROs is to be calculated, which is based on declarations submitted by the PROs or their audited annual reports.

#### **4. Concluding section.**

The Legal Notice shall enter into force on 1<sup>st</sup> January 2023.

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Please also refer to the User Guidelines published concurrently with these Explanatory Notes for further information.

**N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute or legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.**