

Comments on the Draft Ordinance on packaging and packaging waste, single-use plastics, and fishing gear containing plastic

Zagreb, March 2022



American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

Contents

Introduction 3

Issues 4

AmCham’s proposal 6

Introduction

The circular economy is not only an environmental but also an economic concept. New waste management models should be built on the principles of the free market and competition, while the legislative solutions should be directed to make waste management a growing and profitable industry with the aim of recovering valuable secondary raw materials that are extremely useful for the Croatian economy.

With the *Waste Management Act* (WMA) entering into force in July 2021, its Articles 95 and 96 created an opportunity for demonopolizing the market for waste management services and letting the companies themselves determine the quality of the services for which they are paying. The Act provides that, alongside the Environmental Protection and Energy Efficiency Fund (the Fund), an "Organization" can be established for organizing the collection and disposal of packaging waste in the whole country. This means that there is finally a possibility to manage packaging waste in accordance with market principles with clear regulation and state control. The "Organization" is required to contribute to the fulfillment of national targets for efficient waste management on behalf of producers. The legal position of the organization in the waste management system is based on Article 7 of Directive 2018/852 amending Directive 94/62/EC on packaging and packaging waste stating that, in order to achieve the targets, the necessary measures are being taken in the Member States with the purpose of ensuring the establishment of the packaging waste return, collection and recovery systems **that may be private or public**. However, it is clearly stated that the systems **shall operate under non-discriminatory conditions** in order to avoid barriers to trade or distortions of market competition.

The drafting of the new Ordinance on packaging and packaging waste is an opportunity for Croatia to catch up with the other EU countries and reverse the trend of decreasing packaging waste collection and recycling rates in Croatia.

Issues

The results of the packaging waste management system that has been in force in Croatia since 2005 are significantly lower than the aims set out under the Directives. What is even more concerning is the downward trend, as it points to a plausibility that Croatia will continue to move further away from the set goals if the current system is kept and a packaging waste market is not established in accordance with EU standards. A statement from the Waste Management Plan of the Republic of Croatia for the period 2017–2022 favors this argument: “the goals set out under Directive 94/62/EC on packaging and packaging waste have not been accomplished and without opening the market in accordance with Directive 2008/98/EC on waste (by forming Organizations), as one of the ways to improve the system, there is a risk that they will not be accomplished in the future either.”

The European Commission expressed their concern on not accomplishing the goals by issuing *The early warning report for Croatia on the Implementation of EU Waste Legislation, including the Early Warning report for the Member States at Risk of Missing the 2020 Preparation for Re-use/Recycling Target on Municipal Waste*, in which the necessity for “restructuring the existing approach by making producers set up their own not-for-profit PRO, which would be tasked with collecting the fees from producers and distributing them to LSGUs while ensuring these fees are not higher than is necessary for the service” is stated as a suggestion to improve performance in the extended responsibility scheme.

In addition, the OECD’s (Croatia is a candidate country) stringent rules on the relations between the private and the public sector, i.e., on what can be under the authority of the government sector without affecting or being involved in commercial activities and thus disrupting the free market, should also be brought to attention. This is one of the main reasons that the majority of OECD members leave the commercial part of waste management to the “Organizations”, whereas the public sector plays a regulatory and monitoring role, making sure that the activities of the “Organizations” contribute towards achieving national targets.

According to EUROSTAT data, Croatia ranks significantly below the EU average in achieving the targets of packaging waste recovery. This lag is mostly notable in comparison with the countries where the achieving of the targets is under the authority of the “Organizations”, i.e., the countries where the state is a strong regulatory body, but not responsible for the commercial business.

Whereas Article 34 of the Draft Ordinance significantly narrows down and limits the scope of the “Organization” to only hazardous packaging waste management, AmCham believes that such limitations can lead to significant disruptions in the functioning of the free market and market competition, which will eventually result in further difficulties in achieving the targets set out under Directive 2018/852 amending Directive 94/62/EC on packaging and packaging waste.

Such a solution is not in accordance with the Waste Management Act, wherein Articles 95 and 96 do not limit the scope of the "Organization" to one specific category of packaging waste in any way. Thus, the Draft Ordinance introduces significant discrimination and limitation of the scope of the "Organization". As a state body, the Fund will remain a market actor as a monopolist for non-hazardous packaging, whereas an opportunity for the "Organization" to take over the responsibility for the packaging that is hazardous waste, the disposal of which has until now been the obligation of the producers, merely opens up. Packaging that is hazardous waste amounts to 1.5% of total packaging collected in 2020 (<http://roo.azo.hr/rpt.html#>).

Therefore, handing over only this part of the packaging waste market will not solve the problem of the insufficient and decreasing rates of packaging waste collection and recycling, nor will it improve the overall system. Hazardous packaging waste management is the most sensitive segment of packaging waste management in terms of the environment. Therefore, in the context of the discriminatory and limiting terms of the Draft Ordinance, it remains unclear why the state is handing over the activity of general health and environmental concern to the market and at the same time preventing non-hazardous packaging waste from being managed within the frame of free competition and the market. According to the provisions of the Act, the Fund and the "Organization" can simultaneously act and develop their services, while the fee-paying companies should be able to choose, based on their interests, whether their packaging waste will be managed through the Fund or the "Organization".

AmCham's proposal

AmCham's proposal for improving the packaging waste management system is based on the WMA terms, according to which the Fund and the "Organization" are treated equally, and on Article 8a(1) and 8a(5) of Directive 2008/98/EC¹, which sets out clearly that the "Organizations" take over the responsibility from the producer in line with the extended producer responsibility, whereas the state bodies (such as the Fund and the Ministry) fulfill their role of regulating and monitoring the Organizations. Economic activities being conducted by the state bodies that also have public authority is considered highly problematic in the context of protecting free market competition as a fundamental European value.

Limiting the "Organization's" scope to managing only hazardous packaging waste is discriminatory in the context of protecting the free market and counterproductive in the context of achieving targets. AmCham proposes that the scope of the "Organization" should not be limited, given the fact that the Waste Management Act does not provide for such a possibility in any of its articles.

AmCham proposes that the Ordinance should enable:

1. Restructuring the existing approach, opening the market of all packaging waste and enabling the producers to actively participate in fulfilling their obligations in line with the extended producer's responsibility and free competition, as it is set out in the countries that are achieving their targets – allowing for the establishment of "Organizations" for all categories of packaging waste;
2. Equalizing packaging waste management systems in the public and the private sectors, according to the WMA and the EU Regulation.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20180705&qid=1646989075038>

For additional information, please contact:
American Chamber of Commerce in Croatia
Andrea Doko Jelušić,
Executive Director
T: +385 1 4836 777
E: andrea.doko@amcham.hr