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**To: The President of the European Parliament  
The European Parliament Rapporteur and Shadow Rapporteurs**  
**Cc: The Council Presidency  
The Commission**

**RE: considerations of the representatives of the fresh produce and food packaging value chain to the interinstitutional negotiations on proposal 2022/0396 (COD), the Regulation on Packaging and Packaging Waste**

**Milano, 23 February 2024**

Dear Honourable President and Members of the European Parliament,

The fresh produce and food packaging value chain is committed to the promotion of a sustainable development model and has been working for years on the development of the circular economy to improve the use, reuse and recycling of packaging.

The undersigned organisations, in view of the interinstitutional negotiations on the Packaging and Packaging Waste Regulation, would like to express deep concerns with the outcome of the Council's General Approach which is considered to be overreaching and burdensome for the above-mentioned value chain stakeholders.

All together, we request that the negotiating Parties consider the economic realities of the sectors, take in account the food waste impact, respect consumer safety and avoid arbitrary restrictions that would have a devastating impact on agriculture, food processing, food availability, packaging industry and also distribution, while having no demonstrable benefit to the environment. We consider the position voted by the Parliament already a good compromise having pragmatically listened all the stakeholders.

Regarding specific provisions, we note that the Council has chosen to reintroduce single-use packaging restrictions for fruit and vegetables and the HORECA sector in Annex V, Rows 2, 3 and 4 which were dropped by the EU Parliament. We fear that such restrictions would harm these sectors and relevant stakeholders, and the ability of single use packaging to adequately supply the EU market and add value to products. We know that these provisions would inevitably lead to an increase in food waste with negative environmental impacts, cost increase as well as food safety risks for the consumers.

Furthermore, the introduction of the new paragraph 1.a in Article 22, allows for existing national restrictions to remain in place. This provision is contrary to the internal market legal basis of this Regulation, which is intended to harmonise packaging and packaging waste management and we foresee the risk of a fragmentation of the internal market, that leads to market distortion, unnecessary cost overruns and competitive disadvantages of companies in one Member State versus others.

With reference to the ban only on single use plastic packaging for fruit&vegetable, in order to outline the topic at hand, first of all we want to point out that packaging for fresh produce is only 1,5% of all food packaging used in the EU today and around 50%, with some national variations, of fresh fruits and vegetables are already sold in bulk in the EU. Secondly, this provision very likely violates the principle of equal treatment enshrined in EU law. Under the principle of equal treatment, comparable circumstances must be treated equally (and different circumstances must not be treated in the same way), unless there is an objective justification for differential treatment. In this regard, the EU legislature has discretion, however, with certain limits. In particular, the objective justification for differential treatment must be *“appropriate to the aim pursued by the legislation in question, taking into account all the available facts and scientific data available”*. This is highly questionable in the case at hand.

In addition, under the EU principle of proper legislative procedure, the EU legislature must factually exercise its discretion, which presupposes the *“taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate”* and to that end, as a rule, the preparation of Impact Assessments. Again, this has not been done in this very case.

The preliminary Impact Assessment, which has been subjected to numerous comments and criticisms, including from bodies and Authorities within the European legislative system itself, shows numerous limitations and shortcomings, as:

- it refers to multiple models of analysis for environmental, economic and social assessments, with little consistency and possibility to check and replicate the impact assessment results;
- it is generally not clear about the data sources used and calculation methods;
- it limits, omits or hastily resolves the analysis of entire key environmental, economic and social impact categories.

The Impact Assessment estimates that attainable environmental benefits will be less than 1% of Europe's annual CO<sub>2</sub> emissions; a derisory result and moreover overestimated, as it does not consider at all the environmental impact caused by increased food waste.

Multiple studies show that 'food waste' due to the non-use of packaging, generates 5 times more CO<sub>2</sub> emissions than the production and use of the packaging itself.

The assessment does not even consider, in terms of social and economic sustainability, the potential hygiene and consumer safety risks of eliminating single-use food and beverage packaging.

This Impact Assessment does not use robust methodologies that ensure transparency of calculations and comparability of results and that are based on the integrated life cycle approach, such as LCA (life cycle assessment), LCC (life cycle costing) and S-LCA (social life cycle assessment): these three tools would instead allow effective 'parallel' analyses of environmental, economic and social sustainability.

Measure 7 (M7) of the Impact Assessment on the elimination of so-called unnecessary packaging, a prerequisite and rationale for Articles 22 (and its Annex V, rows 2, 3 and 4)

and 26 of the PPWR, find no real justification neither in the Impact Assessment, nor in the introduction or opening "recitals" of the proposal, nor even less in the "material neutrality" claimed in Article 2 of the PPWR.

The assessment does not define packaging as "unnecessary/avoidable", nor does it prove that the increase in packaging and packaging waste is only/mainly due to single-use plastic packaging: the application of the limitation to plastic packaging alone is based on a bias against such packaging, and contradicts the principle expressed in Article 2 of the proposal.

The assessment overlooks the fact that -according to a study made by Eunomia and mentioned in the impact assessment itself - from 1999 to 2015 the products to be banned have been the most virtuous in terms of reducing the material used to produce them, and therefore the related waste generated, whilst maintaining the same performance: plastic cups and containers have seen their average weight reduced by 35% (compared to 10% for paper ones) and plastic trays by 40% (compared to about 13% for cellulose fibre and paper ones).

In the evaluation of these plastic packages, moreover, no value has been given to their recyclability, with direct and immediate reuse of post-consumer recyclate (unlike paper and cardboard packages, for which this is not possible): many primary fruit and vegetable packages already contain 70% recycled plastic by weight, thus well beyond the targets set for 2040 by other articles of the same PPWR.

Even the assessment of the expected economic impacts raises many doubts: it is not clear with which tools the assessments were made and what their level of uncertainty is: certainly, a loss of turnover of 15,380 mln Euro and 133,000 jobs for companies affected by the restrictions and bans (often LDCs) is not neglectable.

For all these reasons, we call on the negotiators to seriously consider the position of the EU Parliament to reject single-use packaging restrictions as clearly indicated by the vote in the Plenary session and to consider the objective weakness of the foundations on which the PPWR is based.

The undersigned organizations need a supporting regulatory framework that is fair, realistic and affordable, which means it does not compromise the products' safety and considers the specificities of the different products. The Negotiators must also keep in mind the purpose of this Regulation, which is to harmonize packaging and packaging waste management. This is essential to ensure the achievement of the circular economy, regulatory predictability and the functioning of the internal market.