

Position statement
of
CONAI — National Packaging Consortium
and
COREPLA - National Consortium for Collection, Recycling and Recovery
of Plastic Packaging
with regard to third party observations presented in the commitments published with
Provision No. 25400 of 1.4.2015

1. PROCEEDINGS NUMBER

A476 — "CONAI — plastic packaging waste"

A476B information request

2. PARTIES TO THE PROCEEDINGS

The reporting party is Aliplast s.p.a.

Businesses regarding which the investigation was initiated and are the Italian National Packaging Consortium (CONAI) and the Italian National Consortium for Collection, Recycling and Recovery of Plastic Packaging (COREPLA).

3. PRESENTATION OF THE COMMITMENTS AND MARKET TEST

As part of the Authority's investigation initiated by resolution of July 17, 2014, CONAI and COREPLA, with communication of February 20, 2015, have submitted commitments pursuant to Article 14-ter of law No. 287/90.

With provision No. 25400 of April 1, 2015, the authority has considered the commitments submitted not manifestly unfounded and ordered their publication on April 7, 2015 (Bulletin No. 11/2015) as well as the presentation of any third party observations by May 7, 2015. Furthermore, the deadline of June 6, 2015 was set for submitting any observations by CONAI and COREPLA.

The right of access to documents was exercised on May 12 and 21, 2015 and rejected by the authority by resolution of May 27, 2015 a petition for extension of the deadline of June 6, 2015; CONAI and COREPLA represent their position with regard to the observations submitted by third parties on the commitments and introduce additional modifications to them, closely linked to the outcome of the market test and constituting further development,

4. CONTENT AND OBJECTIVES OF THE INTERVENTIONS ON THE COMMITMENTS

The main objective of the commitments submitted to the market was to decrease concern about an alleged impediment role of CONAI and COREPLA with regard to the recognition and operation of independent systems, both with regard to the existing systems and, in particular, the complainant Aliplast, or in the future for new systems.

In this document, proposed and changed commitments explain what CONAI and COREPLA have already put into practice: Transparency and certainty of procedures, transparency and legal certainty, hampered by a regulatory text and a complex and simultaneously incomplete approval process, certainly not by the conduct of CONAI and COREPLA.

The comments made and discussed herein, considering that whatever is stated, the outcome of the market test does not, based on a careful and balanced reading, deny the overall suitability of the commitments presented; misunderstandings arise from participant observations, requiring further strengthening of this objective.

As a result, four of the five commitments have been widely modified, incorporating most of the comments from the market, especially from institutional respondents (Italian Ministry for the Environment, ISPRA, ARPAV), making an effort to understand and share their position.

In particular, commitments 1 and 2 have been modified with the aim to dispel any doubt about its provisions and able not only to give full neutrality, transparency and certainty with which CONAI performs the functions conferred on it by law and administrative measures for the recognition of independent systems, but also to go significantly beyond the regulatory requirements to determine the consortium agreements as strictly competitive.

Commitment 1 concerning the role the law assigns to CONAI in recognition of autonomous systems was revised by eliminating every possible doubt as to the jurisdiction of the Italian Ministry for the Environment concerning evaluation of the legal requirements for recognition of an independent system. In addition, the third party selection procedures were made more transparent along with its modus operandi and the outcome of its activities, in any case binding for CONAI and immediately transmitted to MATTM and AGCM.

Commitment 2, which concerns the identification of the amount due from the independent system for packaging waste destined for differentiated disposal, was changed, anticipating the preliminary analysis to the agreement at the time of submission of the independent system plan; reducing the time of the procedure by half (from 180 to 90 days maximum); recognizing, for the purpose of determining the contribution, whether only collecting costs are owed if this is foreseen by the Decree recognizing the independent system, both in the attached guidelines and the calculation method that uses quantitative data macros (alternative method) is based on a formula from the same reporting entity Aliplast, amended pursuant to the market test from ISPRA, thus privileging the system: independent of each other, equally plausible in technical terms.

Even more relevant is the intervention on Commitments 3 and 5, which were greatly strengthened in substantial terms by increasing their scope and effectiveness.

Commitment 3 now provides complete information via internet not only with regard to the existing systems, but also for the establishment of new independent systems, encouraging their creation and dissemination in compliance with environmental objectives. In the current configuration, the commitment demonstrates the lack of any intention by CONAI and COREPLA to obstruct or prevent establishing new stand-alone systems and stresses their desire to facilitate competitive market development.

Commitment 5 describes the limitations set regarding a settlement with Aliplast on administrative litigation relating to further independent negotiation on the economic disputes. The latter includes a waiver by CONAI and COREPLA of most of the previous contribution, reducing the debt by more than 80% — from [omissis] to €[omissis] — and a strong accrual calculation of the remaining amount, so as to eliminate at the root any possible foreclosure related to this litigation and compensate the same inevitable uncertainties resulting from administrative litigation while legitimately owed (otherwise, also desired by Aliplast).

Finally, Commitment 4 — applying Commitment 2 to Aliplast / P.A.R.I. — remained unchanged, but still reflects changes made to Commitment 2. In particular, a so-called alternative method must be applied; the annual amount of the contribution due from Aliplast for its packaging entrusted public service would be reduced, based on the new formula contained in the guidelines, from the current [omissis] euro per year resulting from the application of art. 3, paragraph 2, of the Ministerial Decree on recognition of the independent system No. 5201 of August 4, 2014, to less than half (less than [OMISSIS] thousand euro). This is retroactive from August 5, 2014, i.e., since this contribution became due.

5. GENERAL CONSIDERATIONS

This being said, it should be stressed that all the commitments, even as changed, do not constitute recognition of liability regarding the conduct subject to complaint. CONAI and COREPLA reaffirm their conviction that they have not violated *antitrust* laws in any way.

With regard to the market test, its results should be assessed, according to the subscribing consortia, taking into account that a considerable part of the observations were submitted regarding the institutional legal framework within which CONAI and COREPLA operate, and therefore not within their control. In addition, it should be noted that the authority has transmitted individual information requests, many of them addressed to those sharing interests with the complainant Aliplast. For example, Unindustria Treviso, AssoRimap, Carpi and Coripet are associations or consortia in which Aliplast participates; in the case of AssoRimap and Coripet with their corporate officers appointed to administrative bodies. In addition, Confindustria Ceramica associates many of the business customers of Aliplast, who currently pay a reduced environmental contribution. Still, requests were also sent to entities outside the market (for example, Polieco and PV Cycle), while many important actors involved in the market were ignored, such as other producers of plastic packaging, competitors of Aliplast, industrial users outside the P.A.R.I. system and their sector associations.

With regard to the other respondents who do not represent economic positions

similar to the complainant, the most general stakeholder, Confindustria, expressed a "generally positive assessment on the correct direction of the commitments published with regard to the objective of overcoming profiles related to anti-competitive circumstances." Even the only other independent system operating for years in the world of plastic packaging, Conip, expressed a basically positive judgment on the proposed commitments. Among entities performing official duties in the management of waste from plastic packaging, i.e., ISPRA, ARPAV, and MATTM, the first two have expressed an overall positive judgment on the general structure of the commitments, although accompanied by some requests for clarification and amendment substantially transposed into this version of the commitments. MATTM however, expressed its disagreement with those passages of the commitments that, in its opinion, interfere with its institutional role. In the opinion of the writers, these concerns have been quite adequately through changes to the commitments already summarized and better specified below.

All this implies, as indicated, that the outcome of the market test is not considered negative, but is quite useful to clarify the content of commitments and correct them as necessary.

6. CONTENTS OF THE MODIFIED COMMITMENTS RELATED TO THE MARKET TEST

Commitment 1

Neutrality of CONAI during the administrative procedure for recognition of independent systems

I. CONAI, since art. 221, paragraph 5, requires acquisition by the Italian Ministry for the Environment of "necessary information provided by the national packaging Consortium," undertakes, regarding administrative procedures for the recognition of independent secondary and tertiary plastic packaging waste management systems, to provide for a specific procedure as a precautionary measure that significantly increases legal certainty, transparency, and third-party nature under a profile of professionalism and independence in the performance of the task entrusted to it by law.

II. CONAI also undertakes not to interfere on its own initiative in any way in administrative procedures for the recognition of independent systems, according to the interpretation of the legislation of reference. If, during the administrative procedure, the Italian Ministry for the Environment or any other public authority expressly requests data or additional evaluations, CONAI shall guarantee an equivalent level of transparency, honesty, qualification and independence.

III. In this regard, CONAI will assign to a third Party (monitoring trustee) with high-level professional qualifications, experience in the field, independence and avoiding exposure conflicts of interest, the task of formulating the evaluation factors, identifying, within sixty days from the date on which the Authority has, where appropriate, made these commitments mandatory, according to a selection procedure previously published

on its website and based on predetermined and transparent elements. The name chosen shall be subject in each case to the approval of the Authority and, in the event of its rejection, CONAI shall indicate a new one within fifteen days of receipt of notification in compliance with the selection procedure. In case of non-approval of the latter, the Authority shall choose an outsourcer with the characteristics outlined above.

IV. The third party so identified:

1. provides assessment items specifically requested by the Italian Ministry for the Environment; only in the case of an a-specific request by the Ministry shall it operate based on predetermined guidelines (Appendix 1), taking fully into account in any case that CONAI is requested only to provide evaluation elements, while the assessment is exclusively the responsibility of MATTM;
2. shall also provide further information that may be requested from CONAI by the Italian Ministry for the Environment during the recognition process, as indicated in point I;
3. in any case, the evaluation items shall be formulated in time for CONAI to send them to the Italian Ministry for the Environment within the period determined, or, if there is no deadline, no later than thirty days after the request;
4. the information and data used and their sources will be indicated.

V. CONAI:

1. shall support the costs of identification and third party activities without exercising any interference;
2. grant the assignment to the third party for 3 years, being able to confirm it later for an equal period, and hereafter, with the approval of the Authority, without the identification procedure by which CONAI proceeds to identify new subjects with the means indicated in Point III;
3. consider the guidelines for third party assessment as binding on the required evaluation elements, which it shall transmit as soon as received, without any modification, integration or omission, to the Italian Ministry for the Environment and, for its information, to the authority.

VI. COREPLA agrees, in turn, to ensure compliance with the above, in particular with regard to the commitment of non-interference, independence, lack of conflict of interest of the third party, which shall, if required, provide all quantitative, statistical, and economic data and any other relevant information, in each case indicating the source.

Commitment 2

Determination of the contribution for the packaging waste from the independent system entrusted to public service

I. CONAI agrees, taking into account the specificity of each project, to verify with the autonomous system as soon as the project is presented to MATTM, whether part of its packaging waste is or may be entrusted to public waste collection service and if it is necessary, therefore, to define the pertinent contribution in an appropriate conventional agreement and proceed to its determination once the recognition measure is planned or, in any case, if required by the independent system.

II. If the agreement is not concluded within thirty days after transmission of the Ministerial Decree of recognition, CONAI undertakes to entrust such determination within the next three days to the third party referred to in Commitment 1, which shall perform the task within the next 60 days. CONAI shall immediately inform the Italian Ministry for the environment, the authority and the independent system on the agreement or the results of the activities of the third party.

III. The agreement or the independent third party locate: (i) the quantity of packaging waste provided the autonomic public waste collection service and withdrawn from COREPLA; (ii) in which converge such waste and collection costs based on the CONAI/ANCI agreement where the Ministerial Decree of recognition does not determine as due only the cost of collection, any positive or negative difference among the other costs of selection and possibly of energy recovery and sales revenue of waste of the same type; and (iii) consequently the contribution due.

IV. As provided in point III:

- a) preferentially apply analytical criteria; if these are not objectively applicable or required analyses are prohibitively expensive, be used an alternative method may be used based on calculation techniques and procedures that are based on quantitative macro data or subject to a flat-rate method based on all data available. During the negotiations for the conclusion of the agreement referred to in clause I, the autonomous system may request the independent third party to evaluate technical and economic feasibility the use of analytical criteria or alternative method CONAI adheres to as indicated by the latter;
- b) predetermined guidelines are applied (Appendix 2).

V. Costs of third party activities are the responsibility of CONAI. The higher costs of analyses and evaluations carried out as provided in points III and IV are borne by the autonomous system.



VI. COREPLA agrees in turn:

1. to cooperate technically with the provisions in this Commitment;
2. adhere to the attached guidelines and cooperate with the verifications to be carried out for the purposes of their application;
3. comply with all other provisions of the Commitment.

Commitment 3

Strengthening the information framework for the creation of new independent systems and for awareness of the existing independent systems

I. CONAI is committed, in order to remove any obstacles to the creation of new information systems and access to those existing, to facilitate access to data and information in its possession, in compliance with the confidentiality of personal and commercial third party data.

Information on establishment of independent systems

II. CONAI is committed in particular to devote one or more pages of its website, accessible from the homepage, to the possibility of creating new independent systems with the following contents:

1. characteristics of the procedures provided in Commitment 1 and adequate information on applicable guidelines and on third parties;
2. information about developing formal definition on any contribution to possible packaging waste entrusted to the public service in accordance with Commitment 2 and anything else appropriate to ensure full information for producers interested in submitting a new independent system proposal;
3. data, information, and elements of general and specific nature useful for the establishment of new independent systems.

Information about existing independent systems

III. CONAI is committed also to devote more pages of its website accessible from the homepage to existing independent systems and include the following content:

- a. list of recognized independent systems with links to their websites and indication of the possibility of joining or participating in consortia;
- b. indication of independent systems in the course of recognition with links to their websites;
- c. with respect to each autonomous system detected:
 - (i) information relating to ministerial decision;



(ii) any other document or information useful to knowledge of the system by users and end users as well as possible access to it.

IV. COREPLA undertakes, in turn, to arrange in the homepage of its website a link to CONAI pages containing the information referred to in the above points.

Commitment 4

Application of Commitment 2 to the P.A.R.I. system

I. CONAI agrees, if requested by Aliplast, to apply the procedure in Commitment 2 for assessment the relative contribution for the amount of P.A.R.I.-branded waste delivered to public service; in the case of entrusting such determination to this third party and immediately identified by CONAI based on the provisions in Commitment 1.

II. If the contribution due for the purpose of the application to the system of Commitment 2 is lower than that paid by Aliplast pursuant to Art. 3, paragraph 2, of Lec. Dec. No. 5201 of August 4, 2014, this is applied retroactively from August 5, 2014, CONAI shall proceed to the consequent refunds or compensation.

III. If ongoing negotiations with the P.A.R.I. autonomous system have led to the conclusion of the agreement before the authority has, where appropriate, made these Commitments mandatory, CONAI undertakes to apply it retroactively from August 5, 2014 and agree as of now, if Aliplast requires it, to renegotiate the agreement based on that stated in Commitment 2 and to apply in each case the above paragraph II.

IV. COREPLA, as much as within its competence, shall undertake to respect and implement that provided above specifically with regard to the P.A.R.I. independent system

Commitment 5

Settlement agreements with Aliplast to define economic and administrative litigations regarding recognition of the P.A.R.I. system

Agreement on economic litigation

I. CONAI and COREPLA undertake henceforth to define a settlement about Conai's previous environmental contribution unpaid by Aliplast due to the P.A.R.I. independent system, so as to eliminate every foreclosure that might be connected to this.



II. The settlement agreement between the parties defines any mutual claim and economic action and provides:

1. the waiver by CONAI and COREPLA to claim for the contribution period July 15, 2009 to June 20, 2013; i.e., following the P.A.R.I system startup after the first final ONR recognition measure of 2009 and until confirmation by the Council of State about cancellation provided by Regional Administrative Court of Lazio on February 2, 2012;
2. the debt amortization of Aliplast contribution for the period June 21, 2013 — August 4, 2014 of up to 60 monthly instalments (5 years), with payment of interests foreseen by the CONAI regulation (Euribor average at 1 month plus 50% with a maximum limit of five points).

Attached are two summary tables of the amounts covered by the waiver of CONAI and COREPLA and those to be paid in instalments by Aliplast divided *ratione temporis* based on administrative and judicial measures (Annex 3).

III. Once these Commitments become compulsory, CONAI and COREPLA suspend for a period of six months, in anticipation of Aliplast determinations regarding the proposed agreement, the start and (or) the continuation of each civil action and recognition and execution of each special procedure about the claim against Aliplast for CAC covering the period July 15, 2009 — June 20, 2013. It is understood that in case of non-acceptance of these Commitments by the Authorities the present proposal does not constitute waiver to credit by CONAI and COREPLA.

Agreement on administrative litigation

IV. CONAI and COREPLA agree to ratify, upon request of Aliplast, another settlement for the full definition of the administrative litigation pending recognition of the P.A.R.I. independent system in which the agreement provides for a third party identified pursuant to Commitment 1, point III, verify the actual achievement of the recovery and recycling under art. 220 of Leg. Dec. No. 152/2006. The third party performs the assessment based on the guidelines drafted by a leading quality certification company, identified through selection procedures agreed to with Aliplast and published on the internal CONAI website. The chosen company performs the assignment within 30 days, with costs to be borne in equal shares by all the participants to the agreement.

V. The Agreement expressly provides that, if the verification by the third party is concluded with a positive rating regarding achievement, at that moment, of the objectives of recovery and recycling pursuant to Art, 220 of Leg. Dec. No. 152/2006, CONAI and COREPLA waive the action for administrative review against the P.A.R.I. system recognition.



VI. In case of failure to settle, CONAI and COREPLA maintain their prerogatives of legal proceedings for the protection of their rights and legitimate interests with regard to the recognition of the P.A.R.I. independent system by the Decree of the Minister for the environment of August 4, 2014, however, waiving any dispute concerning that determined by agreement with the independent entity pursuant to Commitment 2.

7. COMMENTS AND CHANGES TO INDIVIDUAL COMMITMENTS

The main comments are reported regarding individual commitments, replicating them or explaining how each commitment was modified.

7.1. COMMITMENT 1: NEUTRALITY OF CONAI DURING THE ADMINISTRATIVE PROCEDURE FOR THE RECOGNITION OF INDEPENDENT SYSTEMS

For the Italian Ministry for the Environment, the commitment may be shared, even under critical aspects (pursuant to the above), in that *"the attribution to a third party independent from CONAI to provide the "evaluation criteria" referred to in Article 221, paragraph 5, of Decree 152/06, may make CONAI's consultative function transparent and neutral within the recognition procedure for independent systems." To MATTM, however, the attached guidelines cannot be shared, given that "they seem to exceed the role of CONAI attributed by article 221, paragraph 5 of Leg. Dec. No. 152/2006, which is not to develop instructions parallel to those of the Italian Ministry for the environment, but simply to provide data that may be useful to the Administration (e.g.: quantities of packaging placed on the market; membership category of CONAI, producer or user type, etc.), without prejudice to the exclusive competence of the Italian Ministry for the Environment to assess recognition of the independent system."*

The writers believe that such criticisms reflect a misunderstanding of the text of the commitment, which clearly expresses the will of CONAI to provide the information required by law within a strictly factual and technical framework, free of any specific evaluation intent. In any case, in order to eliminate any uncertainty, its commitment and text was further clarified and the attached guidelines were reformulated in order to clarify beyond doubt that third party assessments are not required, especially with regard to the potential of achieving pre-established recovery goals.

More specifically, the Commitment has been amended (section IV) stating that it will provide third party evaluation elements specifically requested by the Italian Ministry for the environment and only if these are not expressly indicated shall operate based on predetermined guidelines, as currently reformulated and simplified.



The guidelines have been lightened and detailed strongly around general evaluation elements, eliminating all the points contested by the respondents and by placing the items suggested by stakeholders.

Other market comments concern guarantees of independence and the third party selection mechanism.

Regarding the structure of the relationship between CONAI, third party and AGCM, this was based on the role of the monitoring trustee of community application in order to refer to the current practice of the European Commission, which has long experience in the identification of antitrust activities of independent actors. In line with that intended, as "*Best Practice Guidelines: The Commission's Model Texts for Divestiture Commitments and Trustee Mandate under the EC Merger Regulation*" of the European Commission of December 5, 2013, it is clear that the monitoring trustee performs its task in the interest of protecting competition, and then of the European Commission, despite being instructed and paid by a party. It seems that there are no real problems of potential distortions in the independence of the third party because this was nominated (with the approval of the AGCM) and remunerated by CONAI. In view of some remarks concerning this, Commitment 6 was finally amended, clarifying that CONAI shall consider the guidelines binding for any effect on the third party assessment items, which shall be sent as soon as received, without any modification, inclusion or omission, to the Italian Ministry for the Environment and, for its information, to the Authority.

7.2 COMMITMENT 2: DETERMINATION OF CONTRIBUTION FOR PACKAGING WASTE FROM INDEPENDENT SYSTEMS ENTRUSTED TO THE PUBLIC SERVICE

According to some comments received, the commitment does not incorporate any new element compared to the statutory provisions. For CONAI and COREPLA, instead, a strong new element inherent in Commitment 2 consists of *ex-ante* definition of a procedure and a method of calculating the contribution due to the confluent waste recycling that ensures certain times and predictability of outcomes for all parties potentially interested in the recognition of a new independent system.

Nevertheless, this Commitment is modified to:

- move at the same time presenting the project to MATTM preparatory analysis at the beginning of the negotiations with it to establish independent system with an appropriate contribution agreement on packaging waste entrusted to public differentiated waste collection service;
- reduce the time of the procedure, intended to expire within 30 days in the event of an agreement, 90 days if a third party intervenes;
- specify that date and immediate information at the Italian Ministry for the Environment, to the authority and at the autonomous system (as) according to the results of activity of the subject.

Some members have also expressed doubts about the appropriateness of CONAI paying for the third party consulting, with funds from the collection of CAC. In this regard, it should be noted that it appears to be a

corollary of the lack of understanding of the role that commitment 1 gives to the monitoring trustee. As mentioned, it was agreed that third party is expected to perform is extremely limited and therefore involves a budget outlay, which obviously cannot have an impact on the CAC, absorbing a small part of the quota already held by CONAI pursuant to art. 224, paragraph 7, last sentence, of Leg. Dec. No. 152/2006.

A large group of considerations regarding Commitment 2 concerns the methodology for calculating the contribution from a new autonomous system for its packaging recycling and merged to specific aspects of such a quantification.

Regarding the views expressed by participants in the market with regard to the test method to be adopted (in particular, the analytical method and the alternative method), we agree fully on the superiority of the analytical method, as noted by ISPRA, and also on its frequent impracticability due to the possibility that its costs are too high for some categories of materials, as noted by MATTM. That is why the alternate method is applied only where the analytical method cannot be used. Moreover, waiving in advance the application of an analytical method under guidelines would not be proper as costs for some materials of the analytical method are contained enough to allow easy application.

In the formula for the so-called alternative method some useful indications were accepted from the market test, in particular those advanced by the complainant and ISPRA. The denominator of the percentage factor used to estimate the proportion of waste from the independent system not recovered by it and intercepted by separate collection was amended to allow a broader interpretation of possible destinations of non-recovered waste streams from the independent system, which includes, as suggested by Aliplast, besides the quantity of waste recovered from independent recyclers also the differentiated portion (i.e. landfill/dump). The formula proposed by Aliplast was amended by subtracting the denominator of waste already recovered from the autonomous system, as suggested by ISPRA in order to make a percentage factor the appropriate proxy in presence of different size systems. The specification of the formula proposed by the complainant, in fact, implies that the percentage of autonomic packaging intercepted by the Consortium system is a fixed amount independent of the size of the system compared with similar packaging entered for consumption and therefore not acceptable without adequate corrective measures. In any case, the final formula that takes account of these changes, in annex 2, is much more favourable for autonomous systems than the previous version.

Product packaging similar to packaging of the independent system means packaging of the same material, with the same physical characteristics and the same channels for use and then formation of the pertinent waste.



For example, if a manufacturer of large bags in polypropylene raffia implemented an autonomous system branding their big-bag, similar packaging would be the big-bags in raffia of other polypropylene producers.

Wanting to incorporate the comments received by the authority and, in particular, the suggestions on this matter offered by ISPRA, while considering that a similar commercial packaging concept has not escaped the attention of the operators in the industry, CONAI and COREPLA include Commitment No.2 and guidelines with an additional appendix establishing the types of plastic packaging. Reference may be made to this annex to identify similar packaging of independent systems.

Observations were made that CONAI and COREPLA cannot disregard primary and secondary rules, such as the Ministerial Decree of recognition of Aliplast for which are due the collection costs alone.

Therefore, the Commitment is modified in the sense that as only a Ministerial Decree for recognition, it does not provide that the costs of collection are due exclusively considering also any positive or negative difference between the other costs of selection and energy recovery (undoubtedly costs incurred by COREPLA and then by consortium members who pay the CAC) and revenues from sales of waste of the same type.

Ultimately, the collection of proposed constraints moves to a clearly pro-competitive territory, the role of CONAI, unlike the law requiring only a neutral and professional commitment.

7.3 COMMITMENT 3: ENHANCEMENT OF INFORMATIONAL FRAMEWORK FOR THE ESTABLISHMENT OF NEW AND INDEPENDENT SYSTEMS FOR RECOGNITION OF EXISTING INDEPENDENT SYSTEMS

For the vast majority of respondents, this Commitment, in general terms, is to be evaluated positively.

To ISPRA, in particular "the commitments made by CONAI and COREPLA regarding the obligations of transparency and publicity are considered appropriate and acceptable, along with the proposals for the completion of these commitments." While for MATTM "the proposal, if accepted, could have positive effects in terms of transparency and awareness of procedures and a considerable value for systems that are about to start the recognition procedure for it."

The main precautions suggested by stakeholders relate to the need to respect the privacy Act (MATTM) and opportunities that no information is given regarding procedural stages that could harm the interests of the independent member systems (ISPRA).

As pointed out in paragraph 4, the commitment was deeply reinforced not only to collect the evaluation of respondents, but also to give extra value to the observation of MATTM on the capacity of information to positively orient the potential new independent systems.

In particular, the scope of the commitment was implemented, providing for CONAI and COREPLA to perform a dual role, one aiming to improve the information available to the market about the existence of independent systems, more specifically dedicated to facilitating access to data elements useful for the establishment of new independent systems. In both cases, the goal is to remove any obstacles to market development while respecting, as requested by the Italian Ministry, the rules on confidentiality of personal and commercial data of third parties.

With regard to the existing systems and in particular adopting the ISPRA request not to disclose the information of the third party transmitted to the Italian Ministry and the AGCM as expected, as requested by Aliplast and Unindustria Treviso, that the Conai site may also

contain links to the websites of independent systems and being recognized.

Regarding new systems, CONAI undertakes to include on its website pages, accessible from the homepage, indicating the possibility of creating new autonomous systems and the characteristics of the procedure laid down in the Commitment 1, the definition information via any conventional packaging waste contribution granted to the public service in accordance with Commitment 2 and all other data, information and useful elements for the creation of new autonomous systems.

7.4.COMMITMENT 4: IMPLEMENTATION OF COMMITMENT 2, P.A.R.I. SYSTEM.

In its response to the market test, Aliplast welcomed this commitment which ensures the possibility to benefit from the process of determining the contribution payable for waste merged into the public collection system regulated by 2 Commitment to the new autonomous systems and, in particular, shared the proposed retroactive application of improvement of conditions on the agreement reached between eventuated parties or as a result of this procedure. It was pointed out that the comments made regarding Commitment 2 should also be considered in the implementation of this commitment.

CONAI and COREPLA, therefore, do not consider it necessary to make any changes to Commitment 4 that does not result automatically from changes in Commitment 2.

As pointed out in paragraph 4, the reflections concerned are of great importance for Aliplast.

7.5. COMMITMENT 5: AGREEMENTS SETTLEMENT WITH ALIPLAST TO DEFINE ECONOMIC AND ADMINISTRATIVE DISPUTES RELATED TO RECOGNITION OF THE P.A.R.I. SYSTEM

Commitment 5 contains an important innovation compared to the formulation preceding the market test. Its scope is significantly expanded with the introduction of a new proposal by CONAI and COPREPLA on economic disputes with Aliplast. Furthermore, also with regard to the administrative dispute, changes were made because of some remarks received from institutional stakeholders.

In particular, the major comments received during the market test phase are as follows:

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- (i) the inconsistency of the commitment with the current regulatory system, in particular with regard to the submission of P.A.R.I. system to a new verification for the achievement of the environmental objectives (MATTM, ARPAV, Aliplast);
- (ii) the excessive scope of the verification in accordance with the attached guidelines, which are not up-to-date (MATTM);
- (iii) the risk that the high costs of third-party intervention occur at the level of environmental contribution (MATTM).

According to CONAI and COREPLA, the criticisms above are the result of an insufficient appreciation of the contractual and settlement nature that may be defined in administrative litigation. Adherence to the commitment falls within the full autonomy of Aliplast, which, in its sphere of private self-determination, may accept the predetermined and transparent content of a proposed agreement binding its participants unilaterally. It promotes, on the other hand, a plan entirely different from the administrative procedure for recognition and the checks that are performed by the Italian Ministry in this realm.

This being said, the proposed agreement on administrative litigation was amended by clarifying that the third party verification concerns only the achievement of recovery and recycling at the time of verification and that the guidelines shall be drawn up by a leading quality certification company identified by a selection procedure agreed to with Aliplast, without therefore using MATTM guidelines, which it considers excessive and obsolete. Regarding the effects of the costs of the activities of the third on CAC please refer to the clarifications in paragraph 7.2.

In any case, also for fear that what Aliplast observed can call the validity of Commitment 5 into question. CONAI and COREPLA have, as has been said, further strengthened it by introducing later, independent settlement of fundamental importance for the issuer and extremely onerous for consortium members [omissis] is intended to resolve economic litigation regarding the past due contribution by Aliplast.

This further agreement, we repeat, not attached to the one on administrative litigation, allows Aliplast almost complete liquidation of its debt and payment of the remainder in installments, equal to about one-fifth of the total (see parag. 4).

The framework of possible compromises offered presents, with this integration, exceptional convenience and relief for those reporting, without requiring Aliplast to do more than subscribe to a settlement agreement that incorporates the commitments (one or both) by consortia representatives. For maximum clarity, it is stressed that the new formulation of the commitment allows the issuing party to obtain immediate economic benefit without having to join the transaction also on the administrative litigation.

The current wording of Commitment 5 confirms that CONAI and COREPLA lack any desire to transmit an adverse signalling message for the establishment of new independent systems or exclusion will related to current operators on the market.

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8. POSSIBLE PERIOD OF VALIDITY

The validity of Commitments 1, 2, 4 and 5 shall run from the date of communication to CONAI and COREPLA of any decision by the Authority of acceptance of undertakings consequent to termination without proof of infringement.

The validity of Commitment 3, for technical reasons, begins the third month following that date.

The validity of all commitments is permanent and is not subject to termination.

CONAI and COREPLA reserves the right to refer to instances of Authority review of commitments in the presence of significant changes in regulatory disciplines, including recognition of independent systems, or the situation of the relevant market.

9. CONCLUSIONS

In calling for parts not modified by this Act and forming an integral part hereof, as noted in the commitment document submitted on February 20, this year, and finally notice to CONAI and COREPLA of the various observations contained in responses to market tests indicate a misunderstanding or an underestimation of the commitments presented. Some indications of participants have identified important areas for improvement of the text published by the Authority can enhance their competitive scope.

The modified commitments appear therefore fully eligible to eliminate any doubts about anti-competitive profiles described by AGCM in the launch of measure A476.

PRIVACY

Proceedings are filed for confidentiality and stopping access to private information content and that included in paragraph 4, limited to the amounts indicated on p. 3 and 15, sub “Commitment 5” and “Annex 3” of this document.

The aforementioned information, as well as complying with the terms of a dispute by definition limited between the parties (and, in particular, the quantification of the environmental contribution unpaid by Aliplast and associated partial surrender to such amounts), in fact present for CONAI and COREPLA privacy profiles from a strategic, financial and industrial perspective. Their disclosure could therefore expose members to harmful consequences.

Rome/Milan, June 6, 2015

For COREPLA

Atty. Sabrina Borocci

For CONAI

Atty. Gian Domenico Mosco



GUIDELINES

EVALUATION ELEMENTS PURSUANT TO ART. 221, PARAGRAPH 5, LEG DEC. No. 156/2006

The intervention of third parties in the context of Commitment 1 to identify and deliver all elements of interest to the Italian Ministry for the Environment for the evaluation of the proposal for the independent system (art. 221, co. 3, letter a) or c), d. lgs. n. 156/2006) based on data and information, specific and in context, held by CONAI and COREPLA, made available by an independent system or traceable to them.

The elements in question are those identified by the Italian Ministry for the environment in the request sent to CONAI. Only if the request is limited to requesting CONAI to provide evaluation items without indicating them specifically; these include:

1. the quantity of packaging placed on the market by a manufacturer participating in the autonomous system; the CONAI registration category ; the type of such packaging and their users;
2. The updated framework of the industry of plastic packaging and the specific packaging type object of the independent system, and the analysis of its market dynamics and use;
3. the inclusion of the project in the context of policies and actions in place regarding management of packaging waste, including plastic and, specifically, of the type covered by the autonomous system with data on quantities of packaging waste that the independent system declares wishing to recycle and those recycled by COREPLA;
4. any positive or negative impacts that the system may have on the management of packaging waste in general and with specific reference to plastic;
5. The coordination with CONAI, having particular regard to the development and transmission of the autonomous system of specific plan for prevention and management and of the management report.



GUIDELINES

DETERMINATION OF THE CONTRIBUTION FOR THE QUANTITY OF WASTE OF THE INDEPENDENT SYSTEM ENTRUSTED TO PUBLIC SERVICE

The guidelines indicate the procedural method and criteria applicable for the purposes of identification of:

1. the quantity of secondary and tertiary plastic packaging waste in the independent system entrusted to the public service of differentiated collection and withdrawn from COREPLA (hereinafter, Quantity);
2. the flow in which converge such waste and related costs of the collection based on the ANCI/CONAI agreement and, in case of authorization in which the Decree authorizing the independent system does not provide for the payment and recognition of collection costs alone, other industrial costs, net of sales of goods of the same type of waste (hereinafter Flows/Costs);
3. the contribution due from producers belonging to the independent system (hereinafter contribution).

1. Identification of Quantity

1.1 Analytical Method

The elective method for determining the Quantity, which should be used by preference as it offers the greatest level of assurance and punctuality of the calculation is based on analytical criteria and provides a timely measurement on the entire national territory of packaging waste of the independent system in differentiated collection from the public service. To this end we proceed through:

A. Commercial analysis, in contrast with the independent system that can be present any time considered appropriate and in sufficient number to ensure an adequate degree of confidence, performed on the occasion of those already carried out by COREPLA:

- a. on incoming collection at differentiation plants within the meaning of the Anci/Conai framework agreement. The analyses are carried out according to the annex to the Anci/Conai framework agreement (AQ14 Method);
- b. on fractions of outbound waste from the selection plants having product characteristics homogeneous with the packaging of the independent system. The analyses are carried out in accordance with the method used by COREPLA for quality control analysis of selected outgoing waste available on the website of the Consortium (RP015 Method);

i.e.



B. Accurate quantification of packaging of the independent system where, blending the characteristics of recognition and significant mass, a selection of such packaging is economically viable (e.g. boxes for fruit and vegetables).

1.1.2 For the use of the method based on analytical criteria, the following are required:

- (i) immediately identifiable characteristics of the independent packing system by size, type, structure, and provision of brand acknowledging recognition;
- (ii) significance of the amount of packaging of the independent system to be determined compared with the total collection (significant mass compared with total collection);
- (iii) without excessive burden, it being understood that any determination about "excessive burdens" shall be left to the independent system.

1.1.3 COREPLA undertakes to ensure maximum transparency, to establish a dedicated on-line link to the independent system through which that entity can know in advance the time, date and place of scheduled analysis of incoming collection on all national territory in order to participate.

1.2. *Alternative method*

If it is not applicable analytical method for the above reasons or because, however, it considers that autonomous system does not rely on, you use an alternative method based on calculation techniques and procedures that are based on analysis of quantitative macro data.

1.2.1 This method identifies all the data necessary for the determination of the quantity of packaging waste of the independent system entrusted to public collection service, or¹:

1. the amount entered for total consumption of packaging similar, in terms of merchandise, to that of the independent system, including the share belonging to the same independent system ("IS")²;
2. the amount entered for consumption of the independent system ("IA")³;
3. the quantity of product packaging waste similar to packaging of the autonomous system found in various streams of incoming diversified collection centres ("QS")⁴;
4. the quantity of packaging waste recovered from the independent system for the entered in consumption ("QRA")⁵.

¹ CONAI submits to validation of certification bodies recognised by ACCREDIA the determination procedures of relevant data for the purposes of sections) 1 and 4).

²Source: Plastic Consult; other persons can be identified and instructed similarly

³Source: independent system.

⁴Sources: trade analysis on incoming collection performed at the selection in accordance with the Anci/Conai framework agreement pursuant to the method attached to this Agreement (AQ14 Method). If applicable, the CSS input analysis can be supplemented with additional parameters, the costs of which, if these are ad hoc parameters for packaging similar to those of the independent system will be borne by the latter.

⁵ Source: independent system.



5. for the purposes of this clause (clause 2.1 and (ii) below) for correct identification of "similar range of product packaging," please refer to the table in ANNEX A to these guidelines.
6. all the data that will be used for the determination of the aforementioned factors will be made public, as soon as available, by CONAI and COREPLA on their respective websites.

1.2.2 The Quantity (Q) is determined through a calculation procedure based on the above elements or summary of the following formula:

$$\frac{QS}{IS - QRA} \times (IA - QRA) = Q$$

1.3. Flat-rate method

If an alternative to the method cannot be applied due to lack of data regarding one or more elements of the above formula, a flat-rate method applied based on data available and any additional data, information or useful items obtainable from third-party sources (e.g. Ispra, Minister for the environment, ISTAT, European Commission, etc.).

2. Identification of Costs/Flows

In the case that the authorization Decree of the independent system does not provide for the payment of collection costs alone, in which case the independent system to pay only such costs as identified in paragraph 2.1 below, the identification of management costs takes place as referred to in paragraph 2.2. and, as a result, the determination of the total net costs.

2.1 Collection flows and costs

In light of the ANCI-CONAI agreement currently in force:

- (i) identify if possible (e.g. crates for fruit and vegetables), the quantity of packaging waste of the independent system present in each collection flow based on analytical data detected in commodity analysis on collection entering selection centres. Thus is determined the cost for overall combined weight (average monthly-€t) supported by COREPLA related to that type of packaging;
- (ii) If it is not possible to proceed to the quantification according to point (i), and identify the quantity of packaging waste from products similar to those in each independent system present in the collection flow based on analytical data detected in commodity analysis entering diversified collection centres and other analytical data available. The costs are determined by composite combined weight (average monthly-€t) supported by COREPLA pertinent to that type of packaging⁶;

⁶ For example, if the packaging subject to the independent system falls into the category of so-called Tracers disciplined by the Framework Agreement, the product analysis of incoming waste measures, flow by flow, the percentage presence of tracers. Based on additional analytical evidence, the weight percentage is available.

(iii) If the above methods cannot be used because of the impossibility of quantifying pro rata, for each collection flow, packaging in the independent system, similar to those in the independent system, it applies the total average cost to municipalities or their delegates, based on analytical accounting of COREPLA,

2.2 Industrial management cost

The industrial management cost includes diversified selection and, in the case of packaging not able for recycling, startup costs for energy recovery. This does not include management costs generated. Costs (monthly average-€t) are determined based on the COREPLA analytical accounting sum.

Costs are deducted from the proceeds from the sale of selected waste of the same type of packaging as that of the independent system (monthly average-€t) resulting from COREPLA analytical accounting.

2.3 Total net cost

The net cost and result of the sum of the costs of collection and the net industrial management.

If, according to the market for selling of recyclables, the proceeds from the sale of selected waste of the same type of packaging as that of the independent system should be higher than the costs of selection; the collection costs borne by the autonomous system will suffer a corresponding reduction equal to the difference between sale proceeds and cost of selection.

2.4 Cost Verification

The cost of collection, industrial management cost and revenues from sales, as resulting from COREPLA analytical accounting, may be subject to verification by a top audit company certified by the independent system and the costs are its responsibility.

3. Identification of the Contribution

Only in the case that the authorization Decree of the individual independent system provides for the payment and acknowledgment of collection costs alone, the contribution is determined by multiplying the cost of collection referred to in paragraph 2.1. that comes from the quantity in tonnes of packaging constituting the Quantity identified in point 1 above.

In all other cases, the contribution is determined by multiplying the total cost compared to net unit weight (€t) identified in point 2 for the quantity in tonnes of packaging constituting the Quantity identified in point 1 above.

of each type of tracer on the total number of tracers. Based on this information, it is possible to establish for every tracer type its quantity in each collection stream type.

ANNEX A
GUIDELINES 2

<i>FLEXIBLE PACKAGING</i>	1	Thermal shrink and stretch film
	2	Industrial sacks
	3	Big Bags
	4	Bubble wrap and similar
	5	Other
<i>RIGID PACKAGING</i>	1	Box
	2	Foam boxes
	3	Agricultural/industrial crates and bins
	4	Cases
	5	Tanks-capacity over 5 litres
	6	Buckets-capacity of more than 5 litres
	7	Tanks (IBC) or parts thereof
	8	Pallet
	9	Layer pads
	10	Rolls, tubes and cylinders on which flexible material is
	11	Strapping
	12	Elements of foam protection
	13	Other

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Table 1 indicates the environmental contribution value net of VAT that CONAI and COREPLA would waive in favour of Aliplast according to Commitment 5, paragraph II, and related to the period after launching the P.A.R.I. system as a result of the 2009 ONR recognition until its final cancellation by the State Council on June 20, 2013.

TABLE 1: C.A.C ESTIMATION* DUE BY ALIPLAST S.P.A. FROM JULY 15, 2009 TO JUNE 20, 2013

Period°	Quantity inserted (tons)	c.a.c per unit weighted to *** (Euro/ton.)	c.a.c. estimated (EUR)
Jul, 15/ Dec 31, 2009		195	
2010	OMISSIS	177.50	OMISSIS
2011		150.00	
2012		117.50	
Jan, 1/ June 20, 2013		110.00	
Total			-

* Based on the data in the Management reports of AliPlast, as "entered in consumption managed by PARI" and "cost of PARI management billed."

**Start date of the independent system.

*** For the years 2010/2012, c.a.c. was determined by weighted average unit values:

2010: 1st semester €195/ II° semester €160;

2011: 1st semester. €160/ II° semester €140;

2012: January-September €120/ October-December €10.

Table 2 indicates the environmental contribution value net of VAT owed by Aliplast from June 21, 2013, the day following the judgment of the State Council that permanently nullified the ONR (TN: i.e. Italian waste monitoring unit) provision of 2009 on August 4, 2014, the date of the new measure of recognition of the P.A.R.I. system

TABLE 2: C.A.C ESTIMATION* DUE BY ALIPLAST S.P.A. FROM JUNE 21, 2013 TO AUGUST 4, 2014

Period	Quantity entered (tons)	c.a.c (Euro/ton.)	c.a.c. estimated (Euro)
June, 21/December, 31, 2013**	OMISSIS	110.00	OMISSIS
Jan, 1/Aug, 4, 2014 ***	OMISSIS	140.00	OMISSIS
Total	OMISSIS		OMISSIS

* Based on data collected in connection with Aliplast Management, as “entered into PARI managed consumption.”

** Estimation based on the entire year 2013 [OMISSIS] and covering the period June, 21/ December, 31.

*** Estimation based on data for the entire year, 2014 [OMISSIS],and covering the period January, 1/August, 4.