

GRANDFATHERING FOR EXISTING REUSE SYSTEMS

The PPWR grants **grandfathering for existing reuse systems** (Article 26 (1) sentence 2): Accordingly, economic operators who make reusable packaging available for the first time in a Member State as part of an existing reuse system are deemed to already fulfil the requirements of Article 26(1), first sentence. This means that such existing reuse systems in the respective Member States are deemed to fulfil the **incentive** requirements and the conditions of Annex VI. These systems can therefore **continue unchanged after 2030** and do not have to be adapted to Annex VI or demonstrate incentives to participate. Existing reuse systems of individual companies also do not have to create access for other (possibly competing) companies that want to participate in the system (in contrast to the obligation under Annex VI, Part A, 1. (d)). Nor do the costs and benefits of the system have to be shared between the participating companies (see Annex VI, Part A, 1. (j)).

It is currently still unclear to what extent this grandfathering also affects the reporting obligations of participating companies to the national authorities (see Articles 30 and 31). However, it is clear that companies participating in re-use systems with grandfathering will not have to report on collection volumes and the number of re-uses to the system operator from 2030, for example (see Annex VI, Part A, 1. (h)).

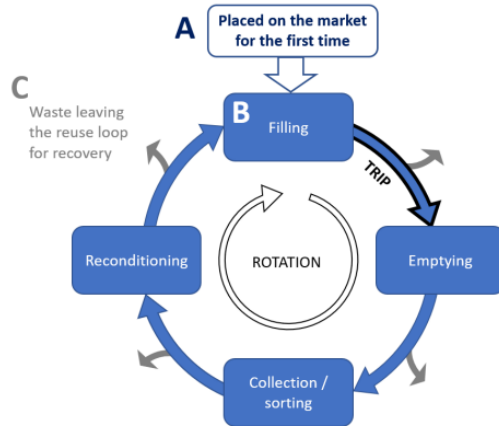
Due to a lack of justification, it is unclear to which date the legal presumption of Article 26 (1) sentence 2 refers. This could be either the date of entry into force of the PPWR (expected mid/end of January 2025) or the effective date of the reusable packaging requirements on 1 January 2030. The date is decisive for answering the question of whether only the currently existing systems can be continued or whether the industry will be able to establish new reuse systems by the end of 2029, especially for packaging formats for which reuse is currently not technically possible, such as pallet wrapping and strapping. Even if the meaning and purpose of the reuse requirements (reduction of packaging waste, not the establishment of EU-wide standardised reuse systems) and the wording of Annex VI Part A No. 1 at the end speak in favour of focusing on the later date, companies should, to be on the safe side, **establish grandfathering for existing reuse systems even before the PPWR comes into force. This stipulation serves to document the existence of the reuse system at the time the PPWR comes into force, but does not guarantee that courts or authorities will actually grant grandfathering in every case.**

The PPWR does not provide any explicit conditions for grandfathering; in particular, existing reuse systems do not have to fulfil the requirements described in the PPWR. This follows from the broad presumption rule in Article 26 (1) sentence 2.

Based on the summary of the requirements of the PPWR applicable to the reuse of packaging, in particular Article 11, and the standards, an existing reuse system for packaging is characterised by the following properties, which must be fulfilled together:

1. The aim of the reuse system is to ensure that the main components of the collected packaging can complete as many cycles (rotations) as possible under normally foreseeable conditions of use (see EN Standard 13429:2004, Section 4.1).
2. The reuse system concerns packaging that
 - are listed in Article 29(1) of the PPWR,
 - are designed, developed and placed on the market with the aim of being reused several times for the same purpose for which they were originally intended (see EN Standard 13429:2004, ISO Standard 18603:2013),
 - can be emptied, unloaded, refilled or reloaded,
 - can be reprocessed under normal conditions of use and
 - do not become waste during the cycle (distinction from "preparing for re-use" in Article 3(1) at the end of the WFD in conjunction with Article 3(16) of the WFD).

3. When emptying/unloading, collecting, processing and reusing the packaging, the requirements relating to food safety and consumer health, safety and hygiene are complied with.
4. The reuse system takes organisational, technical or financial precautions to ensure that packaging *can be* reused, either in closed or open loop systems (see EN 13429:2004).
¹Actual reuse of each individual item of packaging in the system is neither technically possible nor legally required.



Example of an open-loop system in which ownership of the packaging is transferred at one or more points. In contrast, in a so-called closed-loop system, ownership of the packaging remains with the company or a group of companies and is not transferred (source: Eurostat ([link](#)) with reference to EN Standard 13429:2004).

5. The reuse system is available in markets where the packer/filler is responsible for placing the packaged product on the market.
6. The reuse system informs affected economic actors along the value chain.
7. The reuse system has a written governance structure that is laid down as part of the initiative and contains a description of the reuse system.

If existing reuse systems fulfil these characteristics, they are to be understood as *existing reuse systems* within the meaning of Art. 26 para. 1 sentence 2 PPWR and can claim grandfathering for themselves and their participating companies with regard to the reuse requirements.

¹ Also included are systems for packaging that cannot currently be technically reused for the same purpose, but for which the possibility of reuse is to be created with regard to the reuse obligations from 2030 - in the sense of INSPIRE.