

Our position

Proposal for a revision of EU legislation on Packaging and Packaging Waste



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The proposed Packaging and Packaging Waste Regulation (PPWR) presents a significant opportunity to improve the Single Market, align EU packaging regulations and decrease market fragmentation. If well designed, this regulation can be a crucial driver for circularity by promoting economies of scale and ensuring a climate-neutral and circular Europe. To this aim, the legislation's main priorities should be to harmonise packaging rules across the EU by simplifying labelling and sorting instructions, improving separate waste collection and promoting large-scale recycling of packaging. A comprehensive and science-based approach is essential when evaluating any proposed solutions, and it is vital for lawmakers to use impact assessments and life cycle assessments for this purpose. The table below highlights key recommendations to strengthen the proposal, which are further outlined in this paper.

Table 1: Key recommendations

Issues	Recommendations
Single Market	<p>The PPWR proposal should support Member States in establishing and upgrading recycling facilities, as well as infrastructure, effective separate collection and sorting of waste. The rules and requirements should be established at the European level and not at the national level to avoid regulatory fragmentation.</p> <p>The unnecessary and disproportionate restrictions on some packaging types in the PPWR could have negative impacts on international trade in products. However, rigorous implementation and enforcement of the Single Market principles would ensure harmonised legal requirements prevail, facilitating economies of scale and long-term investments for innovative products and technologies.</p>
Timeline	<p>A generic transition period of 36 months would increase legal certainty and provide sufficient time for companies to implement the necessary changes.</p>
Waste prevention through reuse and packaging design	<p>Recyclability should be a requirement for placing packaging on the market. However, the proposal should not ban packaging formats that are already collected for recycling. Reuse should be introduced as an additional sustainable packaging solution on an equal footing with recycling. One should not undermine the other. Moreover, reusable packaging should be required only if it is scientifically proven through a life cycle analysis to be more environmentally friendly than single-use packaging.</p> <p>Reuse targets should account for geographical, environmental, economic and infrastructure factors. The regulation should clearly identify the entities responsible for meeting reuse targets and implement comprehensive reuse systems.</p>

	<p>Furthermore, the proposed one-size-fits-all metric and target for the empty space ratio (which has no empirical basis) could inadvertently hinder rather than help achieve the EU’s climate goals. Policymakers should consider exemptions to this requirement and/or incentivising solutions that are better for the environment.</p>
<p>Circularity and packaging waste as a resource</p>	<p>Packaging formats that are today collected for recycling should not be subject to the proposed bans because there is already a viable and effective way to manage the material.</p> <p>The proposed digital marking requirement supports more advanced sorting of waste and sends a positive signal that acknowledges packaging as a resource. It would allow for better identification of packaging in material recycling centres to help drive the integration of post-consumer recycle (PCR) into new packaging. However, imposing mandatory and individual QR codes per packaging item is unrealistic, since insufficient technology exists for all packaging types. Labelling under the PPWR must be technology neutral.</p> <p>The envisaged PCR targets would be more attainable if the percentages were applied at the level of the economic operator/portfolio as a whole rather than per unit of packaging. Consideration should also be given to pre-consumer recycle subject to appropriate safeguards.</p> <p>Packaging should be designed to be as minimal as possible without sacrificing its required functionality. The removal of 'marketing and consumer acceptance' from the packaging performance criteria list is worrying because it may result in packaging standardisation and an increased risk of counterfeiting. Packaging performance criteria should align with the functions listed in the definition of packaging while not compromising intellectual property rights.</p>
<p>Data-driven decisions</p>	<p>Legislators need to consider all the factors that contribute to the environmental impact of packaging and the trade-offs involved. For example, reusable packaging may not always lead to better environmental outcomes when reverse logistics are factored in, especially for products traveling long distances and when imports use packaging intended for further transport in the EU.</p> <p>It is important that legislators rely on impact assessments and life cycle assessments to evaluate proposed solutions with a holistic and science-based approach. Chemical safety is already addressed in existing legislation, and proposed provisions on substances of concern may create legal uncertainty. Regulating the presence of substances affecting recycling should be addressed in the proposal’s Design for Recycling criteria.</p>

Introduction

A strong EU Single Market is a key enabler of circularity in the EU, creating greater economies of scale and ensuring a circular and climate-neutral Europe. The European Commission proposal to transform the Packaging and Packaging Waste Directive into a regulation provides an opportunity to further enhance the Single Market, better align EU packaging rules and reduce market fragmentation. Streamlining labelling and sorting instructions, enhancing separate waste collection – via mandatory deposit return schemes (DRS) accompanied by corresponding minimum requirements, and driving recycling of packaging, ideally at scale, would harmonise EU packaging rules around packaging at the EU level. This will enable consumers to make informed choices and become active participants in transitioning to circularity. Proposed changes, if adopted, should help turn packaging waste into a valuable resource. The provisions on harmonisation and use of eco-modulation fees in Europe are especially encouraging.

Waste reduction can be tackled with different incentives and regulatory tools, as well as with new technologies. The proposed use of codes and digital marking is a positive step in advancing packaging sorting solutions. However, it is important to keep labelling technology neutral, as digital marking solutions are not always adaptable to all packaging formats. For example, currently it is not possible to apply QR codes to certain packaging formats, such as aluminium packaging.

Improving packaging sustainability should take place in tandem with ensuring consumer safety and acceptance, promoting packaging innovation and improving the availability of high-quality secondary raw materials. When considering bans for selected packaging formats, stakeholders should evaluate whether these packaging materials are collected, sorted and recycled at scale and/or are a source of post-consumer recycle (PCR).

Closing the loop on packaging waste ensures that valuable raw materials come back into the value chain. Reaching the set PCR targets requires not only huge investments in technological solutions, collection and sorting infrastructure but also coordinated and collaborative efforts from all partners along the value chain. Recommendations to consider before the proposal is finalised are below.

1. The Single Market and global trade – key enablers for EU competitiveness and the green transition

It is essential to encourage the development of integrated EU markets for secondary raw materials. A secure Single Market supports the ambitions of the European Green Deal by avoiding legal uncertainty, ensuring the effective enforcement of environmental targets and safeguarding the free movement of packaging and packaged goods.

The shift from a directive to a regulation is an opportunity for the EU to preserve the integrity of the internal market. At present, there is a large discrepancy between extended producer responsibility (EPR) schemes, their connected recycling infrastructure and waste collection across EU Member States, which poses challenges for national authorities and businesses. The PPWR should support Member States in stepping up their efforts to establish and upgrade recycling facilities and infrastructure, as well as effective separate collection and sorting of waste. Only when properly collected is waste given a chance to become a resource.

Some have suggested amending the PPWR proposal to have a mixed legal basis, like the Batteries Regulation. However, this could result in a set of even more complex rules, while not adequately

addressing the risk of further regulatory fragmentation. For the PPWR to succeed, rules and requirements must be established at the European level, not at the national level. This is necessary to permit a single EU circular economy rather than 27 separate circular economies.

While the objective of mitigating the negative environmental impacts of potential waste and littering that stem from the use of single-use packaging products is positive, the PPWR's unnecessary and disproportionate restrictions on some packaging types could have negative impacts on international trade in such products. Rigorous implementation and enforcement of Single Market principles will be key to ensure harmonised legal requirements prevail – those that facilitate economies of scale and long-term investments and strengthen the environment for innovative products and technologies.

2. Adequate transition periods and well-defined timelines for implementation

The proposed regulation includes an ambitious set of measures that require industry to implement systemic changes in their packaging innovation and sourcing strategies. In some cases, these changes will take years to successfully implement. For the legislation to achieve its goals, industry needs clear timelines and requirements, sufficient time to adapt, and exemptions or special considerations for certain applications. To prevent the negative impacts of re-packaging, products packaged before the Regulation's entry into force should be exempt from the respective requirements. Moreover, the proposal does not specify when the European Commission will publish its Design for Recycling guidelines or clarify how long companies will have to adapt. Durable products and spare parts have longer design cycles but will be made available for longer periods, complying with consumer regulations.

Setting an initial general transition period of 36 months would increase legal certainty for economic operators while providing sufficient time for companies to implement necessary changes and/or create new processes. This is relevant for design-related requirements and restrictions as well as operational requirements.

3. Addressing waste – waste prevention through reuse and packaging design

Recyclability will determine how packaging will be designed in the future. Along with further harmonisation, a strong technical debate is necessary to implement solutions that are practical and conducive to innovation. Industry is willing and able to use its technical expertise to contribute to the Design for Recycling guidance to ensure it represents a holistic and science-based approach.

Additionally, single-use packaging products that are already covered by consumption reduction measures under the Single-Use Plastics Directive (SUPD) should not be further restricted. The EU has already clearly established that 'suitable and more sustainable alternatives are not yet readily

available' for such products. Furthermore, a full review of the SUPD is due to take place in 2027, creating an opportunity to revisit these measures if deemed needed.

Reuse

Reusable formats are part of the solution to reduce plastic waste and greenhouse gas emissions and should be included in the EU's proposal. Reuse is an important option which nonetheless depends on environmental, geographic, economic and infrastructural factors. For this reason, reuse targets should be set with these parameters in mind to ensure that they effectively advance the PPWR's primary objective ie, reducing the environmental impact of packaging. The option of reuse should therefore be assessed on the scientific evidence provided by a life-cycle analysis.

The proposed measures for reusing packaging at the economic operator level for manufacturing sites are not adapted to industrial and commercial packaging. This is especially apparent when products are packaged and transported long distances, such as in e-commerce, or when importers use packaging that will be used again to move products within the EU.

Because reusing packaging depends on more than just the type of packaging, the proposal should implement comprehensive reuse systems. While transport packaging such as pallets or plastic crates are inherently reusable, there are many different economic operators involved in the supply chain, which makes it difficult to establish an effective reuse system. Additionally, the entity responsible for meeting reuse targets is the 'economic operator using transport packaging,' which means that no single entity is clearly responsible for achieving the targets amongst the manufacturers, importers, distributors and retailers. Therefore, resource-intensive techniques would be necessary to monitor the process, creating a disproportionate burden, particularly for small and medium-sized enterprises in Europe.

Bans

While making recyclability a requisite for placing packaging on the market, the PPWR also proposes bans on some packaging. Packaging formats that are today collected for recycling should not be subject to these bans because there is already a viable and effective way to manage the material. To align with the European Commission's Better Regulation approach and support the proportionality principle, the Commission should ensure that no measures go beyond what is needed to address the problem at hand.

Packaging minimisation

While the industry supports the PPWR's goal of avoiding unnecessary packaging, policymakers must consider additional factors and characteristics to ensure packaging efficiency and functionality. For instance, in shipments that contain multiple products of different dimensions, the combination of volumes creates empty space that cannot be reduced. To meet the proposed targets and use less packaging, operators might be incentivised to ship items individually instead of combining items into one shipment even if it has a higher empty space ratio. This would generate more transport emissions and potentially more waste, which conflicts with the regulation's objectives.

A one-size-fits-all metric and target for the empty space ratio can pose challenges because they do not consider important product characteristics such as dimensions, weight, fragility, form, portability or legally required information like battery safety labels. These factors can significantly affect

packaging dimensions and may conflict with the 40% empty space ratio target. Moreover, solutions that are better for the environment should be incentivised or exempted. For example, if reusable packaging is used in a reuse system, it should be exempt from the 40% maximum empty space ratio. This exemption would acknowledge that a package designed for 40% empty space ratio for its original contents may not meet the same target when it is used for multiple trips/rotations over its lifetime.

Furthermore, we are concerned by the complete removal of ‘marketing and consumer acceptance’ in the packaging performance criteria list. Such a blanket exemption does not fit the PPWR proposal’s objectives, and there are several risks associated with the text’s wording as it stands (eg the risk of packaging standardisation, limitation of brands’ flexibility in packaging design and a risk for maintaining companies’ competitiveness on the global stage). Indeed, marketing and consumer acceptance should not be considered as conflicting with environmental targets. As long as packaging items respect the PPWR’s environmental requirements, marketing features have no environmental impact. Marketing allows for brand independence and plays a role in modelling consumer acceptance, progressively promoting sustainable packaging solutions. As packaging represents the product it contains, it is essential that consumer acceptance of products remains an essential performance criterion under the PPWR. Dismissing marketing and consumer acceptance altogether could lead to consumers rejecting all new sustainable packaging solutions.

Similarly, packaging minimisation criteria should not infringe on intellectual property rights, such as trademarks, design rights and geographical indications, which are recognised and protected under EU laws. Packaging should be designed so that its weight and volume are reduced to the minimum necessary for ensuring its functionality for a given material and shape.

4. Circularity and packaging waste as a resource

Packaging and its materials are not only a source of waste but a resource for the circular economy. With its ambitious targets for recycled content in plastic packaging and reusable targets for certain sectors, the Commission is paving the way for better material flows and valuable secondary raw material production.

Meeting these targets will require further investment in additional recycling infrastructure to ensure the availability of high-quality secondary materials for high-quality recycled material. However, technical barriers exist, including the fact that many EU countries lack separate waste collection and recycling infrastructure.

For example, in the case of plastic packaging, obtaining high-quality material on a large scale requires innovative recycling technologies, including chemical recycling. The PPWR targets cannot be achieved solely via mechanical recycling. Chemical and other forms of innovative recycling offer opportunities to increase the available feedstock. This potential therefore requires explicit acknowledgement and recognition.

The proposed digital marking requirement supports more advanced sorting of waste and sends a positive signal, acknowledging packaging as a resource. It would allow better identification of packaging in material recycling centres to help drive both the quality and quantity of recyclate and better permit the integration of PCR into new packaging.

Given some of the challenges described above, the envisaged PCR targets would be more attainable if the percentages were applied at the level of the economic operator/portfolio as a whole rather than per unit of packaging. These targets would also incentivise companies at the global level to accelerate the uptake of PCR materials where possible without compromising packaging quality or safety.

5. Data-driven decisions

Legislators must consider the full range of elements that contribute to the environmental profile and footprint of packaging as well as existing trade-offs. For example, reusable packaging may not lead to better environmental outcomes for all use cases and logistics scenarios. This is especially true when products require reverse logistics over long distances and when imports make use of packaging that is intended to further move goods along to their final destination in the EU (ie from their port of origin to destination, where these countries differ). It is essential that legislators rely on new and existing impact assessments and life cycle assessments that take a holistic and science-based approach to evaluating proposed solutions, along with all the other available scientific evidence.

Environmental and human health aspects of chemical safety are well addressed in legislation such as the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation and food-contact materials legislation. The proposed provisions on substances of concern would create an additional layer of legislation leading to legal uncertainty about which tool would regulate chemical safety. Regulating the presence of substances that might affect recycling should be addressed in the Design for Recycling criteria foreseen in the proposal.

Conclusion

The PPWR's revision is an opportunity for the EU to transform packaging and packaging materials into pillars of Single Market cohesion and a future circular economy. The PPWR's policy interventions should be proportionate and well-informed by robust and independent science and applicable across EU Member States. During the ordinary legislative process, EU co-legislators should engage with industry stakeholders to avoid negative outcomes for European competitiveness, international trade and consumer choice for sustainable product offers, as well as the ambition to reduce, reuse and recycle materials.