Position paper on the Packaging and Packaging Waste Regulation

Ecommerce Europe welcomes the publication of the proposal for a Regulation on Packaging and Packaging Waste. We are supportive of the European Commission's ambition to clarify and harmonise packaging rules across the EU, while proposing to raise ambition to improve the sustainability of packaging and the reduction of packaging waste.

Measures aimed at the reduction of packaging in retail have to take into consideration the multiple trade-offs that take place when defining the most sustainable way to package a product, but also the actual control that companies have over packaging throughout the supply chain (e.g., certain e-commerce business models do not allow stakeholders to control either primary or secondary packaging).

Improving the sustainability of packaging is the responsibility of the whole supply chain, and packaging should be assessed through the net environmental impact over the whole life cycle of the product. The right balance must be found between reducing packaging or new packaging solutions and possible unintended consequences on the environment (e.g., risks of returns of damaged products if there is a lack of adequate protection, the possible challenge brought by reusable packaging and reversed logistics, and so on).

Key Recommendations

1. **Maintain the current level of ambition for the harmonisation of requirements for packaging in the EU.**
2. **Pursue the ambitious objective to develop a simplified, harmonised, digitalised European system for Extended Producer Responsibility to prevent the creation of further barriers to the Single Market**
3. **Carefully assess the existing challenges and limits encountered by companies when trying to reduce packaging and void-space, to focus on the most efficient and feasible approach**
4. **When setting and defining ways to reach the proposed targets for reusable packaging, consider the full life-cycle and the environmental impact of such packaging, the feasibility of its roll-out as well as the role of other waste prevention measures**

Harmonisation of labelling

Ecommerce Europe particularly welcomes the European Commission's efforts to further harmonise packaging and packaging waste rules across the EU. One of merchants' key concerns regarding packaging in the EU remains the diverging rules on issues such as labelling or extended producer responsibility.

The fragmentation of the EU legislative landscape creates a substantial administrative and financial burden on companies, especially when it comes to navigating various requirements or complying with differing registration and reporting procedures across markets. Moreover, variations in labelling rules create challenges for companies operating cross-border and can lead to additional packaging having to be produced just to comply with different requirements from importing countries or preventing economies of scale for certain types of packaging.

The current situation creates significant direct and indirect barriers to companies' sustainable efforts for packaging. Therefore, we strongly encourage policymakers to maintain this level of ambition throughout the discussions.

We strongly welcome the Commission's proposal (*article 11 on labelling of packaging*) to draft secondary legislation (implementing act) to establish a harmonised label and specifications for the labelling requirements and formats for the labelling of packaging (regarding material composition, deposit and return system, reusability, recycled content and the labelling of waste receptacles). This will lift a burden for merchants, while considerably facilitating consumers sorting out domestic waste.

We do however call on policy-makers to accelerate the timeline for the drafting and adopting of the implementing acts to establish a harmonised label and specifications for the labelling requirements (Article 11.5), which is currently set at 18 months after the date of entry into force of the Regulation. We would also like to stress that the transition period for companies to implement new labelling requirements should only start after the publication of secondary legislations, and sufficient time should then be granted. We also, encourage policymakers to clarify provisions that could allow for diverging labelling rules at national level, including articles 4(5) and 11(8) which seem to leave the door open for Member States to provide for further EPR or deposit and return system labelling requirements.

Recommendations:
- **Maintain harmonisation labelling packaging, and accelerate the timeline for the drafting of the implementing act in Article 11.5**
- **Clarify provisions that could allow for diverging EPR and DRS labelling at national level, including articles 4(5) and 11(8)**

Extended Producer Responsibility

The EPR landscape in Europe is extremely fragmented, with a wide variety of systems and rules from one Member State to another, and sometimes within a given Member State with different compliance schemes or procedures and for different product categories. Developments at national level, without sufficient coordination or basis for harmonization, risk reinforcing existing barriers to trade and the contribution to EPR in the EU. The impact of such fragmentation, in particular for small and medium-sized enterprises, has been highlighted repeatedly by the industry over the past years.

We welcome the European Commission's attempt at harmonizing certain aspects of EPR requirements for packaging and facilitating, to some extent, registration and compliance monitoring. The implementing act in Article 39(11) is a crucial first step towards further harmonisation and should be a priority for the Commission. **We however strongly encourage the extension of the scope of the implementing act to other crucial aspects** such as key definitions (e.g the definition of what is an "authorised representative"); the target of the registration requirement, when how and how often should the reporting occur and finally eco-modulation criteria.

However, while further harmonisation would simplify the work of companies, it is still far from sufficient to make EPR workable in the EU, especially for SMEs. **This is one of the most important barriers to cross-border trade for companies in the EU today.**

Ecommerce Europe believes that a much wider overhaul of EPR requirements and systems is needed, and this Proposal should set the tone for future reform of EPR. While we welcome the Commission's intention behind the introduction of national registers (Article 39.1), we strongly believe that this is a missed opportunity to create a truly European solution.

We strongly encourage the European Commission and policy-makers to consider a much more ambitious approach, with the creation of a **one-stop-shop solution that could facilitate one single registration and reporting across all Member States** for companies operating across borders (either through a unique EU register and reporting system or through the automatic sharing and mutual recognition of registration and reporting data among national scheme), similar to the system created for VAT in the EU.

Finally, it is important to engage in a discussion on how EPR systems can adapt to digitalisation. On one hand, the reporting systems must function digitally, and the harmonisation process must be accompanied by significant effort in terms of standardisation if systems can ever reach a sufficient level of interoperability to build a one-stop-shop solution. For most EPR systems in the EU, there are no available ways to simply check EPR registrations or producers automatically or digitally. Therefore, we encourage – at a minimum – to clarify Article 39.1 to ensure that the national register should offer a way to monitor compliance that is centralised, easy to use (e.g. by considering allowing sufficient technical possibility to automatically check data through APIs). Concerning Article 40.3, we agree that producers should provide the information on the registration of the producers referred to in Article 39 in the Member State where the consumer is located and the registration number(s) of the producer in that register, as well as a self-certification, to the providers of online platforms,

To conclude, the PPWR, and Article 40, will **have a very severe impact on European SMEs and their capacity to participate in the Single Market if policymakers do not** pursue an ambitious solution and a real simplification of EPR systems through **a one-stop-shop and single registration system, or at the minimum work towards this objective through a European approach and maximum harmonisation in this current proposal, and exploring potential complementary options such as de-minims thresholds.**

Under the current proposal, any company, even a micro-enterprise, sending for example one package each year to 10 different Member States would have to register (in different languages, through different procedures with all the costs and administrative burden that entails), pay all related fees, and provide 10 different registration numbers and 10 self-certifications to each platform that they use. Without that, they would be blocked from selling to any of those countries.

Improving participation and compliance should focus on facilitating the participation of all companies rather than imposing a disproportionate burden on smaller players. The PPWR is a clear opportunity to begin the transition to a simplified, harmonised, digital EPR system in the EU.

> **Recommendations:**
> - **Complement the scope of the implementing act in Article 39.11 to ensure further harmonisation**
> - **Revise the ambition of Article 39 to pursue a European one-stop-shop solution that could facilitate one single registration and reporting across all Member States**

Packaging minimisation (art. 9) and empty space ratio (art. 21)

Retailers are working, with the resources available to them, to limit their use of packaging by looking at options which can range from the packaging itself (from its design, volume, and composition) but also the larger supply chain (optimisation of the original product packaging for transport with "e-commerce-ready" packaging, standardization, multi-order "one-parcel" fulfilment…).

Exploring these options requires significant investments for retailers and requires taking into account a wide variety of considerations including – but not limited to – the e-commerce business model, the characteristics and format of the product and how fragile it is. The requirement on the empty space ratio for e-commerce packaging raises several questions, and some practical concerns that we would like to raise.

We strongly suggest that compliance with the 40% empty space ratio for e-commerce packaging should be met on average of all e-commerce shipments by an economic operator, i.e., at company level and not per unit of packaging. The ability of retailers to reduce void space depends on the products sold, and to some extent the conditions of their shipment and the packaging used and needs to account for product characteristics like dimensions, weight, fragility, form, portability and materials. Compliance based on an average of all e-commerce shipments over a period would address the concerns listed below with the use

of a single metric for empty space ratio at shipment level. This would allow companies to reduce packaging whenever technically possible, while maintaining some flexibility for those products and cases where this target cannot be met.

Moreover, these efforts should be supported by the development, of a proper methodology for the calculation of the empty space ratio, potentially through secondary legislation and consulting industry experts. We also encourage policymakers to propose a clear implementation timeline (e.g. requirement to be applicable as of 2030) to give the industry the necessary time to organize their compliance scheme and reporting mechanism. This is all the more important for smaller companies which have not yet been able to invest, for example, in flexible packaging systems.

In parallel with the clarification detailed above, we would like to suggest the following changes to ensure the feasibility of Article 21.

- It should be clarified how this measure would apply to multiple products being shipped in the same parcel;
- In line with the packaging minimization criteria under Annex IV, packaging should not be further reduced if its packaging functionality is endangered; the same rationale should apply to the 40% empty space ratio for small packaging that for logistic or information provision reasons, cannot be further reduced in size and weight.
- The text should provide for an exemption for **parcels that would fall below the minimum requirements for the size of a shipment** as set out by service providers, otherwise, parcels risk not being processed. It should also be noted that parcels must be of a minimum size so that the necessary information (sender, addressee, barcodes) can be indicated. This is to ensure that the shipping label is still clearly legible, as is other mandatory information, e.g. hazardous goods labelling.
- We are concerned about how this requirement would apply to **bulky products or products with unusual dimensions** (which can create empty space, e.g. houseplants, sport balls, buckets…). These types of products are often shipped without sales packaging, directly in e-commerce packaging. This means that the empty space ratio would be calculated based on the product itself, and not sales packaging. For items that could create a lot of void space, beyond 40%, this means that economic operators would potentially have to add sales packaging to a product just to comply with the requirements.
- We also support for cold packs, dry ice or other similar components (e.g. in case of medicine or food delivery) to be exempted from the definition of "filling material" (Article 21.2), as they cannot be removed.
- **Finally, we strongly advocate for reusable packaging to be exempted from Article 21.** Especially for online merchants selling various types of products, it is expected that reusable packaging will be re-used for products of different sizes and characteristics. Whether online players rely on built-in company solutions or third-party providers of reusable packaging, sufficient flexibility should be granted to ensure that these solutions can work for all. The objective of reusable packaging should be to maximise rotation and use, and therefore not necessitate the production of new packaging just for the sake of compliance.

> **Recommendations**
> - **Compliance with the 40% empty space ratio for e-commerce packaging should be met on average of all e-commerce shipments by an economic operator, i.e., at company level and not per unit of packaging**
> - **Thoroughly re-assessed to ensure the rules are clear and feasible**
> - **Reusable packaging should be exempted from Article 21**

Reuse

Ecommerce Europe welcomes the introduction of reuse targets for e-commerce packaging. Considering the large-scale investment required to set-up efficient waste prevention and reuse systems, targets could play a role in incentivising this evolution. However, the impact of reusable packaging needs to consider the whole life-cycle of such packaging, from production, delivery and return to the right economic operator (and what it means for transport emissions), as well as maintenance, repair and other steps necessary for the packaging to start a new rotation. This is not yet sufficiently reflected in the discussion and targets set for reusable packaging. Without a full life-cycle approach, we take the risk of promoting reusable packaging in cases where single-use packaging would be less environmentally impactful.

Concerning the targets themselves, we would like to highlight some key considerations.

First, we encourage the European Commission to provide further guidance on the definition of reuse and reuse systems. This guidance must take into account essential aspects like recyclability requirements, logistic pools, local distribution, minimum rotations, and product safety/hygiene protocols with enforceable conditions. This guidance is crucial to ensure that pilot projects, which will continue to develop to meet the first target in 2030 are viable. Reuse systems can represent huge investment costs, not only initially but also to ensure maintenance over time, and therefore we need to provide clarity and stable framework early on.

Secondly, we are concerned by the proposal of the Commission to already set a target of 50% reusable packaging for e-commerce packaging by 2040. Considering the lack of data, and unknown factors such as consumer involvement (see below), it is particularly difficult to assess the feasibility of such a target. We strongly advise policymakers to consider mandating a feasibility assessment to set a realistic target based on data gathered since the entry into force of this Regulation.

In addition, mandating transport packaging to be reusable in the cases foreseen under paragraphs 12 and 13 of Article 26 as soon as the PPWR enters into force is unrealistic. The relevant targets should apply to specifically enumerated types of transport packaging and, to allow time for a transition towards full transport packaging reusability, we would support lowering the target to 80% if applicable from PPWR entry into force or mandate 100% reusability of transport packaging as of 2030.

There are also other potential challenges that we identified in meeting reuse targets:

- **Consumer involvement**

An important factor in the growth of reusable packaging in e-commerce is the contribution of consumers to reusable systems. Pilot projects across Europe are still testing the practicability of e-commerce reusable packaging, and one important caveat continues to be the low participation (in this case, return of the packaging) by consumers. Existing successful reusable systems, rely almost entirely on the ability of companies of maintaining a closed loop and a steady number of reusable packages. Considering the important investment reusable packaging represents, losing assets throughout the supply chain is a serious threat to the viability of these systems.

Merchants would have to further explore how to nudge or incentivise consumers into choosing reusable options, but also actually into returning the packaging. Experiences of members who already offer reusable solutions show that a deposit system is, for example, a well-functioning way to get reusable packaging back from consumers. However, the shipment of goods in packaging subject to a deposit is only possible with the explicit consent of the consumer (because of the additional financial burden).

We believe communication towards consumers on these future requirements and the importance of reuse and their participation in reuse systems is crucial and should be a joint public-private effort.

We would also like to add that "consumer-facing" reusable packaging should allow for easy removal of previous indications of personal data (such as name and address, any other parcel or previous recipient identifier) in order to comply with GDPR requirements.

- **Cross-border sales**

It is important to consider possible limits to reusable e-commerce packaging in cross-border sales. This could raise the issue of the limits of reuse systems, if those systems lead for example to a reusable box with 100% empty space having to be shipped back to its origin country, because of the lack of sorting/ repair facilities, or fulfilment centre in the destination country. We therefore ask policymakers to consider, even temporarily, limiting the provision in Art. 26. 8 to domestic shipments only.

This would allow more time to harmonise shipping label requirements and develop minimum standards on sizes across countries as it ultimately leads to higher efficiencies and less environmental impact.

Waste prevention

Following the EU waste hierarchy, practices aiming at preventing the use of packaging should be prioritised. This means for example that the absence of (e-commerce) packaging should be preferred over reusable packaging.

In Ecommerce Europe's opinion, this means that practices such as using sales packaging as e-commerce packaging, or packaging designed for e-commerce, should be able to count toward the reusable target for e-commerce packaging.

Packaging designed for e-commerce is packaging specifically tailored to the needs of online trade and e-commerce, where sellers supply their products with packaging that is already robust enough to withstand logistics and transport and does not require any secondary packaging. All that is needed from logistics operators in the supply chain is a delivery label and the product can be shipped as-is, with no additional (secondary) packaging materials.

These practices should be incentivised by contributing to reaching companies' reuse target. We also believe an effective way to do this would be for Member States to consider packaging 'designed for e-commerce' by producers of packaged goods to count towards packaging prevention measures they could take to meet the new 5% packaging waste reduction target by 2030, as laid down in Article 38.

Other good practices on waste prevention could be encouraged by allowing such waste prevention measures to count towards reuse targets. For example, the complete removal of pallet wrappings and straps for stabilisation and protection of products put on pallets during transport should count towards meeting reuse targets. Allowing the reuse targets to be met through waste prevention techniques will incentivise companies to innovate and find solutions that remove completely the wraps or straps, reducing material use and potential waste.

Recommendations:
- **Propose clear requirements for reuse and reuse systems**
- **Re-assess the reuse targets, taking into account the full-life cycle and impact of such packaging, and the data that will be increasingly available, as well as other key unknown factors (e.g. consumer involvement), rather than pre-emptively setting targets for 2040**
- **Consider the role of other waste prevention measures in meeting reuse targets**

Packaging design requirement

Ecommerce Europe supports the introduction of obligations on recycled content for plastic packaging (35% by 2030, 65% by 2040 in art. 7) and recyclability (art. 6). We do however believe that future design-for-recycling (DfR) criteria will be essential to comply with the requirement that all packaging sold in the EU from 2030 are recyclable, and therefore encourage the European Commission to move swiftly. As the detailed criteria for recyclability and recycled content will be developed in delegated acts, we suggest

closely consulting packaging experts in the development of highly technical secondary legislation, as well as clear timelines for their adoption.

It is also crucial for these requirements to be accompanied by an ambitious system capable of triggering investments in the collection, sorting, recycling and reuse infrastructure across Europe. We therefore strongly recommend the introduction in the legislative proposal of mandatory collection requirements and targets, as well as obligations for Member States to significantly invest in sorting and recycling infrastructures. To ensure companies, in particular small and medium-sized enterprises, have enough time to transform their packaging, it is crucial that the European Commission adopts these criteria in good time. Would that not be the case, and to ensure legal certainty, the European Commission should temporarily recognise the industry DfR guidelines to demonstrate compliance.

We would also suggest that the recycled content targets be met on average of all plastic packaging sold in the EU by economic operators. This will offer the necessary flexibility to ensure it is used in the right packaging applications.

Documentation obligation

Article 20 on the identification of economic operators specifies that economic operators must keep information on the identity of the operator to which they supply packaging or from which they have been supplied packaging for a period of 10 years. This would create a disproportionate administrative burden for companies, which is also not justified in the proposal. We, therefore, advocate for the added value of this measure to be clarified, and for the documentation obligation to be shortened to a more proportionate period of time.