

What New EU Packaging Regulation Will Mean For Companies

By **Marcus Navin-Jones** and **Ward Overlaet** (October 17, 2024, 10:55 AM BST)

The new European Union Packaging and Packaging Waste Regulation^[1] is about to be adopted, replacing the current Packaging and Packaging Waste Directive.^[2]

The packaging and packaging waste regulation will regulate all relevant packaging products, including consumer and industrial packaging products, and aims to regulate the entire life cycle of these products, from design, composition and manufacture to end-of-life waste. The PPWR focuses in particular on packaging waste.

The legal targets and requirements imposed on industry are numerous, extensive, and will be difficult to comply with in practice. For example, the obligations on recyclability, recycled content and substances of concern, etc.

The deadlines to comply will be particularly challenging. Companies should therefore start to prepare and devise and implement compliance strategies now.

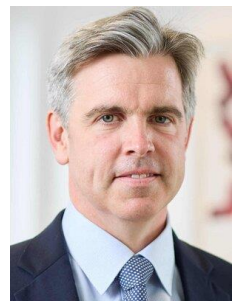
Here we shall discuss what the new packaging and packaging waste regulation will mean for industry, what some of the main challenges posed by the regulation will be, and what industry should be doing now to prepare for the impact it will have.

The EU institutions are currently adding the finishing touches to the new regulation, which is expected to be adopted in the last quarter of 2024 or the first quarter of 2025. While many companies are fully preoccupied with preparing for other EU legislation, e.g. the Deforestation Regulation, companies will ignore the packaging and packaging waste regulation at their peril.

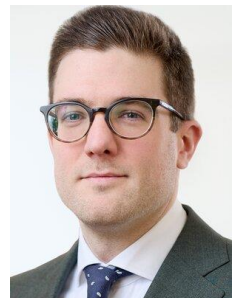
The regulation contains a host of ambitious legal targets and requirements that industry will find difficult to achieve in practice. The deadlines to comply are perhaps even more challenging. Companies need to begin preparing for the regulation now to avoid serious issues, including supply chain disruption, penalties and litigation in the future.

The Packaging and Packaging Waste Regulation

The packaging and packaging waste regulation aims to realize the underlying objectives set out in the European Green Deal, the Circular Economy Action Plan and the Plastics Strategy.



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In essence, it will regulate packaging and certain packaging-related products placed on the EU and European Economic Area market. This includes consumer packaging, as well as transport, industrial and other packaging products such as pallets, pallet wrapping, crates and boxes. At its core, the packaging and packaging waste regulation aims to ensure these products are safe and sustainable.

In principle, it will not be possible to place these products on the EU market, unless they meet the sustainability, labeling and other requirements set out in the regulation. However, the regulation does not merely regulate the placement on the EU market of these products. Instead, it also regulates the full life cycle of these products. This includes, in particular, packaging reduction, reuse and recycling. One of the main differences between the directive and the regulation is the regulation's focus on the prevention of packaging waste.

Core Requirements of the Regulation

The regulation contains a number of new legal requirements and legal targets — not contained in the PPWD. Many of these are highly ambitious, and may stretch industry to the very limits of what is possible in reality. They also come with extremely challenging deadlines and application dates. Some of the core requirements include the following.

Recyclability and Recycled Content Requirements

The packaging and packaging waste regulation requires that all relevant packaging is both capable of being recycled and, in addition, that it contains a certain amount of recycled content. To ensure that packaging is capable of being recycled, the PPWR sets out recyclability requirements.

These include obligations regarding design for recycling, and recycling at scale. In principle, all relevant packaging must comply with the design for recycling requirements by 2030, and the recyclability at scale requirements by 2035.

As regards the recyclability criteria, the commission is required to adopt a delegated act laying down specific design for recyclability criteria, which will form the basis of recyclability performance grades, i.e., A, B and C.

Those grades will dictate and determine which packaging will be allowed to be placed on the EU market in the near future. Regarding the recycled content requirements, the packaging and packaging waste regulation requires that packaging materials, e.g., paper, plastic, wood, etc., contain a certain amount of recycled content by certain deadlines. Again, the recycled content requirements are highly ambitious and set tight deadlines to comply — generally at least 55% recycled content for all materials excluding wood, which is 30%.

Generally speaking, the packaging and packaging waste regulation requires that the recycled content is post-consumer recycled, meaning it is sourced from post-consumer waste. However, there are some possible exceptions. Whether there is enough post-consumer recycled feed stock in the future to achieve these legal targets in reality is one of the issues that is currently unclear.

Packaging Minimization Requirements

The packaging and packaging waste regulation does not merely aim to eliminate packaging waste. In addition, the packaging and packaging waste regulation aims to eliminate certain forms of packaging

itself. In principle, where packaging is unnecessary, it may be regarded as prohibited.

If, for example, the function of the packaging is not to protect or safely store a product, but is merely a means of enticing consumers to buy, it may constitute unnecessary packaging and not be legally permissible.

Packaging would need to be designed so that its weight and volume is reduced to the minimum necessary for ensuring its functionality, considering the shape and material it is made of. Economic operators filling the packaging in grouped packaging, transport packaging or e-commerce packaging will have to ensure that the empty space ratio does not exceed 50%.

Substances of Concern Requirements

The new packaging and packaging waste regulation includes the prohibitions currently set out in the directive, e.g., as regards heavy metals, hexavalent chromium, etc. In addition, the regulation includes new prohibitions such as on the use or presence of per- and polyfluoroalkyl substances above certain thresholds in food contact materials.

The substances ban under the packaging and packaging waste regulation is of concern to some in the industry as it would likely apply before the proposal to restrict substances in Europe under the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation, known as REACH — and therefore industry would have less time to comply with the packaging and packaging waste regulation ban.[3]

The packaging and packaging waste regulation also establishes a legal system whereby the commission is able to adopt new prohibitions on substances of concern under the regulation, via delegated acts, etc., in the future.

It should be noted that the definition of "substances of concern" under the REACH, the Ecodesign for Sustainable Products Regulation and the Packaging and Packaging Waste Regulation is not aligned, and therefore substances may be regarded as substances of concern under the packaging and packaging waste regulation where they are not, per se, regarded as substances of concern under other EU legislation.

In general, all packaging will be required to be manufactured in such a way as to minimize the presence and concentration of substances of concern as constituents of the packaging material or of any of the packaging components, including with regard to their presence in emissions and any outcomes of waste management, with limited exceptions.

Prohibitions on Packaging

The packaging and packaging waste regulation shall prohibit the placing on the EU market of certain types of single-use packaging, e.g., certain plastic packaging. The prohibitions on certain plastic packaging under the packaging and packaging waste regulation would generally apply in addition and on top of the bans on single-use plastics under the Single-Use Plastics Directive.[4]

The packaging and packaging waste regulation shall also prohibit packaging that groups or binds products together, not to facilitate the transportation or handling of those products, but to entice consumers to buy more. Certain overpackaging would also be prohibited.

Other Requirements

The packaging and packaging waste regulation contains a number of other legal requirements companies will need to understand and prepare for. These include:

- Reuse targets: The reuse targets depend on the type of packaging used by operators, e.g., alcoholic and nonalcoholic beverages, etc., transport and sales packaging, excluding packaging for dangerous goods or large-scale equipment, and flexible packaging in direct contact with food, plus grouped packaging. Companies in the hotel, restaurant and catering industry offering cold or hot beverages filled into a container at the point of sale for takeaway, or ready-prepared food intended for immediate consumption, will be required to provide a reuse and refill system.
- Labeling requirements: A harmonized labeling system will be introduced, aimed at providing information to consumers about material composition and reusability of packaging in order to facilitate consumer sorting.
- Conformity assessment requirements: Packaging manufacturers will be required to perform a compliance assessment and issue a declaration of conformity before placing packaging on the EU market.
- Other requirements: e.g., extended producer responsibility schemes, deposit return systems, etc.

What Companies Should Do Now

Companies need to start preparing for the packaging and packaging waste regulation now. More specifically companies should identify which products they as a company produce or use that fall within the scope of the packaging and packaging waste regulation. They should also identify which products in their supply chains are of critical importance to continued supply of their raw materials, and fall within the scope of the packaging and packaging waste regulation.

Organizations should set out strategic plans on how each product will comply with the packaging and packaging waste regulation by the relevant deadlines — or will be replaced by products that comply with the packaging and packaging waste regulation by relevant deadlines. This is particularly important as companies will likely need to have contingency plans in place, if initial plans prove impossible in reality.

If, for example, companies cannot access enough post-consumer recycled material to satisfy recycled-content requirements, they may need to determine what other measures they can take to comply with the packaging and packaging waste regulation.

In some EU member states there may be simply an absence of infrastructure to obtain recycled feed stock in order to satisfy the recycled-content requirements on time, and companies will need to consider what can be done to comply with the packaging and packaging waste regulation.

If organizations cannot ensure all substances of concern are removed from recycled feed stock and are not present in materials, e.g., because suppliers of the recycled-content feed stock cannot guarantee the absence of substances of concern — they will need to understand how else they will comply with the

packaging and packaging waste regulation.

Companies should engage with the supply chain and minimize the risk of any disruption of continued supply, including obtaining guarantees, warranties, and indemnities from suppliers, as well as imposing requirements to notify companies downstream for unintended supply of materials containing substances of concern, etc.

They should also monitor other related legislation, including: EU legislation, such as legislation that may affect the identification of substances of concern, e.g., REACH, the Biocidal Products Regulation, food contact materials legislation, cosmetics, etc., but also how other EU law, such as the Single-Use Plastics Directive and the ecodesign for sustainable products regulation, may interact with the packaging and packaging waste regulation, as well as other law, e.g., the incoming United Nations Plastic Pollution Treaty.[5]

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[1] EU Institutional File 2022/0396(COD). https://www.europarl.europa.eu/doceo/document/TA-9-2024-0318_EN.html;
[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0396\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0396(COD)&l=en).

[2] Packaging and Packaging Waste Directive 94/62/EC.

[3] i.e. The EU Regulation on the registration, evaluation, authorisation and restriction of chemicals (REACH) – Regulation 1907/2006. See:
<https://www.echa.europa.eu/-/next-steps-for-pfas-restriction-proposal>;
<https://echa.europa.eu/documents/10162/f605d4b5-7c17-7414-8823-b49b9fd43aea>.

[4] Single-Use Plastics Directive (EU) 2019/904.

[5] <https://wedocs.unep.org/handle/20.500.11822/40597>.