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DIGITALEUROPE position paper on the proposed Packaging and Packaging Waste Regulation

○ ▼ ♜ ◢ Executive summary

DIGITALEUROPE welcomes the revision of the EU Packaging and Packaging Waste Directive 94/62/EC and notes with appreciation the ambition and significant innovative thinking in the proposed revision which sets the direction to minimise the adverse impacts of packaging and packaging waste on the environment and human health.

The revision of the EU Packaging and Packaging Waste Directive 94/62/EC has an important opportunity to address **unintentional preconditions for market fragmentation when implemented**.

Duplication, derogations and Member State interpretation of horizontal rules have led to obstacles for companies to easily comply. This puts unnecessary hurdles for the EU to achieve its green deal and circular economy goals. For example, 15 February 2023 the European Commission issued an infringement notice (INFR(2022) 4028) to France in its failure to address its labelling (Triman) requirements concerning waste sorting instructions. It saw national laws adopted in this field creating unnecessary burdens on internal market trade. The Notice states: 'In this context, the imposition of national-specific labelling requirements risks undermining the principle of free movement of goods and can lead to counterproductive environmental effects. Such measures can also lead to increased material needs for additional labelling and additional waste produced due to larger than necessary sizes of the packaging.' DIGITALEUROPE encourages the revision to adopt the spirit of improving the internal market and reduce the scope for interpretation.

DIGITALEUROPE welcomes provisions clarifying packaging labelling.

DIGITALEUROPE offers concrete recommendations to ensure that the Packaging Regulation allows packaging to perform its core functionalities (protecting, containing and delivering products safely) while offering the best overall environmental performance and adequately informing consumers.

Specifically:

- ▶▶ A less arbitrary definition of packaging which would mitigate the risk of considering products used by consumers to carry or store their products as packaging.

- ▶▶ Measures backed by scientific evidence and impact/lifecycle assessments, both in the Regulation and in secondary legislation

- ▶▶ Clear implementation dates and sufficient time to adapt

- ▶▶ A definition of 'plastic packaging' to clarify the scope of the proposed recycled content targets

- ▶▶ Jointly-developed metrics and calculation methodologies to minimise packaging

Overall, improving packaging environmental performance cannot be detrimental to consumer safety, packaging innovation nor availability and use of high-quality, circular materials.

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Table of contents

Key points of concern

In particular, DIGITALEUROPE points out the below points of concern for ICT manufacturers:

Science-based approach

Measures in the Packaging Regulation shall be based on objective evidence and a holistic approach that takes into consideration the packaging lifecycle and all aspects that have an impact on the environmental footprint and performance of packaging. Reliance on existing and new ad hoc assessments, including impact assessments and lifecycle assessments, is of paramount importance when assessing policy options and measures.

This holistic and science-based approach will be equally important when drafting secondary legislation. Industry and other key stakeholders involvement will be key in that process, specially in cases where technical and practical details of packaging design and related process are essential (e.g. packaging minimisation, recycled plastic content calculation methodology).

Clear implementation timelines and sufficient transition periods

The Packaging Regulation contains an ambitious set of measures that will require industry to plan and implement systemic changes in their packaging innovation strategies and in their sourcing and/or manufacturing strategies. The required changes will require years to implement, and for that implementation to be successful industry needs:

- ▶▶ legal certainty over timelines and requirements
- ▶▶ sufficient time to adapt
- ▶▶ exemptions or special considerations for certain applications

All products packaged before the entry into force of the Regulation should be exempt from the respective requirements in order to prevent the negative impact of re-packaging.

Similarly, the proposal does not specify when should the EU Commission publish its Design for Recycling guidelines (defining whether packaghing is recyclable or not), nor clarify how long will companies have to adapt. Sufficient time should be granted to prove compliance with the recyclability requirements following the adoption of the Design for Recycling criteria and the criteria to assess 'recyclability at scale'.

Durable products have design cycles which may be longer than the currently proposed transition periods. The same challenge applies to spare parts, which

shall be made available for longer periods in order to comply with consumer regulations.

Overall, a generic transition period set to 36 months would increase legal certainty for economic operators while providing sufficient time for companies to implement the necessary changes and/or the creation of new processes. This is relevant both for design-related requirements/restrictions (e.g. Arts. 5, 7) and for operational requirements (e.g. Art. 26 (12-13)).

Definition of packaging (Article 3):

DIGITALEUROPE believes that the definition of packaging (Art. 3.1) is ambiguous as it can include products which are intended to be used by consumers in order to carry or store their products after purchase. To rectify this ambiguity, we believe that the definition should be revised to specify that packaging designed and/or marketed with a secondary use (e.g. protective case/bag) should be exempt.

Free movement (Article 4):

DIGITALEUROPE welcomes the fact that the Regulation makes clear the fact that Member States shall not prohibit, restrict or impede the placing on the market of packaging that complies with the sustainability requirements and the labelling requirements set out by the Regulation (Art. 4.2 & Art. 4.3). This is sufficiently reiterated by the fact that existing or future national sustainability or information requirements shall not prohibit, restrict or impede the placing on the market of packaging on the basis of non-compliance with the national requirements, as long as it complies with the requirements of the Regulation (Art. 4.4)

DIGITALEUROPE believes that Member States should not be able to provide for labelling requirements for the purpose of indentifying the extended producer responsibility system (Art. 4.5). We believe that the mandatory marking of packaging with the local EPR system logo is already redundant in the EU as there is no benefit for the environment and instead such a requirement on a national level will lead to market fragmentation. Therefore we request for Art. 4.5 to be deleted at its entirety. It is of high importance that the European Commission makes clear here that national labels should only be voluntary and no condition for manufacturers to sell a product in a certain country.

Substances of concern (art. 5):

DIGITALEUROPE welcomes the fact that any further restriction of substances of concern under the Regulation will be addressed exclusively by the recyclability requirements established by delegated acts on Design for Recycling criteria and will only concern substances which affect the re-use and the recyclability of the packaging, respecting the fact that restrictions of substances of concern for chemical safety are governed by REACH. (art. 5.4)

DIGITALEUROPE believes that Delegated Acts which will lower the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium and determine the conditions of exemptions (art. 5.5) as well as that further substance restrictions addressed by the Delegated Acts on Design for Recycling criteria must be based on scientific evidence and an appropriate transitional period must be granted for compliance.

Design for recycling criteria (art. 6):

DIGITALEUROPE welcomes the European Commission 's ambition that all packaging to be placed on the EU market is recyclable with requirements set out in a two stepped-approach, i.e. as of 1/1/2030, packaging to comply with the design for recycling criteria, as set out in the delegated act(s) adopted by the Commission and as of 1/1/2035 packaging to be effectively collected, sorted and recycled to be considered as 'recycled at scale', to be also defined through Commission delegated acts.

The Regulation must explicitly clarify that the aforementioned effective dates refer to date of placing on the EU market, i.e. any packaging placed on the EU market from these dates onwards must meet the respective recyclability requirements and any packaging placed on the EU market before these dates can be commercialized and used until depletion of stocks.

In the absence of timely adoption of Design for Recycling criteria (i.e., by 2030) and where industry rules or standards exist, the latter should apply until a set of legal criteria is in place.

We underline here that packaging industry and manufacturers/producers of packaged goods such as ICT with complex supply chains and long lead times of bringing products on the EU market need time to adapt to the new criteria for packaging. Therefore, a sufficient transition period of at least 36 months following the publication of the aforementioned Delegated Acts is needed to allow for stocks of packaging not complying with the new requirements to be placed on the market, which otherwise will have to be disposed of as waste. Consequently, if the originally intended effective dates of 1/1/2030 and 1/1/2035 must be met, the respective Delegated Acts must be published by 1/1/2027 and 1/1/2032 respectively, otherwise the effective dates must be postponed.

DIGITALEUROPE believes that non-conventional environment-friendly plastic packaging which cannot meet the recyclability requirements (e.g. biodegradable packaging) must be exempted from the recyclability requirement set by article 6.

Recycled content (article 7):

In order for industry to be in a position to comply with the minimum recycled content targets in plastic packaging foreseen in Article 7, the proposal should

introduce the definition of 'plastic packaging' in Article 3. This definition should capture that recycled content targets in Article 7 are applicable to packaging made completely or predominantly of plastic.

Additionally, Article 7 should be revised to ensure that recycled content targets are calculated as an average of all plastic packaging placed on the market. For operational feasibility, recycled content should not be required under any circumstance at packaging part level.

DIGITALEUROPE believes that the recycled content targets for plastic packaging of EEE, i.e. 35% from 1 January 2030 (art. 7.1.d) and 65% from 1 January 2040 (art. 7.2.c) are very challenging, since the recycled material recovered from post-consumer plastic waste is not available in the amount the regulation assumes. Lower targets would be more realistic and give manufacturers time to change their production and design of packaging.

DIGITALEUROPE believes that the 'post-consumer' plastic waste is not the only waste fraction which should be considered. We believe that pre-consumer (post-industrial) plastic waste should be also accounted in the recycled content ratio calculation.

DIGITALEUROPE welcomes the empowerment of the Commission to adopt implementing act establishing the methodology for the calculation and verification of the percentage of the recycled content by 31 December 2026, i.e. 3 years before the date when the first requirements on recycled content become effective (Art. 7.7-7.8). This time is indeed the minimum necessary for the involved and affected industries, i.e. plastics recyclers, plastic packaging suppliers and manufacturers of packaged products (such as ICT manufacturers) in order to apply the established methodology while working towards meeting the recycled content targets by 1 January 2030.

DIGITALEUROPE acknowledges the European Commission's intention to assess the need of derogations from the minimum percentage of recycled content in plastic packaging (Art. 7.9). This assessment must be done well ahead of the effective date of 1 January 2030 and therefore we suggest that its timeline is aligned with that of the implementing act establishing the methodology for the calculation and verification of recycled content, i.e. the latest by 31 December 2026, instead of by 1 January 2028 provided in the proposed Regulation.

Packaging minimisation/excessive packaging (Arts. 9, 21, Annex IV)

DIGITALEUROPE strongly believes that the introduction of arbitrary packaging minimisation/'empty space ratio' targets should be avoided. While we support the goal of packaging optimization, relevant metrics should be proposed only

after thorough research and understanding of packaging efficiency and functionality requirements.

A single metric (empty space) is too simplistic for a packaging to fulfil its main functionalities including product protection and safe delivery. A one-size-fits-all metric and target does not account for product characteristics (dimensions, weight, fragility, form, portability, materials) and does not allow for exemptions where the size of the packaging cannot be reduced for other reasons than the product characteristics, for instance: the size of the shipping label, the size of legally required information (e.g. battery safety label), and the limits of the sorting machines in logistics to prevent packaging to be lost.

Shipments containing multiple products of different dimensions are very challenging with regards to avoiding empty space, since the combination of volumes creates empty space that cannot be reduced. There is a risk that operators are incentivized to ship items individually in order to meet the proposed targets, resulting in more transport emissions and more packaging waste.

Reusable packaging used within a system of reuse must be exempted from the maximum empty space ratio threshold of 40% respecting the reality that a packaging designed to meet 40% empty space ratio for its original content may not meet the same empty space ratio for its contents during its multiple trips/rotations throughout its lifetime.

For both single and combined shipments (given the amount of possible combinations), DIGITALEUROPE asks the European Commission to work with industry to jointly develop relevant metrics and calculation methodologies. Similarly to our proposal on the recycled content target (art. 6), empty space targets should also be calculated as an average of all packaging concerned placed on the market. This should be the initial setting of the target with the view of moving to target setting on shipment level from 1/1/2030.

Solutions with better environmental outcomes shall be considered for incentives or exemptions, such as where packaging is made of a single material and without adhesives (folding mechanisms instead), or where reusability requirements have been drafted.

Additionally, the regulation should allow for exemptions based on performance criteria as listed in Annex IV, part I. Given the ICT industry experiences fraud and counterfeit of products and in order to ensure legal certainty, we highly recommend to explicitly mention 'fraud' as a requirement under product protection.

Labelling of packaging (article 11):

DIGITALEUROPE welcomes the Commission's intention to introduce a mandatory EU-harmonized material composition label which will serve as a sorting guide for consumers and a harmonized voluntary label to be used for

manufacturers who will choose to inform on the recycled content of their packaging. This will bring the long awaited harmonization which is needed in order to put an end to the current diverging national requirements for packaging sorting instructions and stop more Member States from coming up with their own requirements(Art. 11.1, 11.3).

DIGITALEUROPE would like to ask the European Commission to consider the preferred usage of digital solutions for mandatory packaging material composition as well as for voluntary information on the recycled content instead of physical printing on the packaging, , such as the usage of QR codes, same as it is foreseen for information on packaging reusability under Art. 11.2. The QR code may then be placed on the outer box of a packaged product and provide information on the material composition and potentially recycled plastic content (the latter at the discretion of the manufacturer) of each of the packaging items of the productConformity assessment and technical documentation (article 13, Annex VII):

DIGITALEUROPE believes that some of the information required to be included in a EU declaration of conformity can be burdensome for the packaging producers and the users of packaging, such as ICT manufacturers without any added value for the environment. Therefore the information required should be kept to the minimum necessary to demonstrate the compliance of the packaging with the sustainability requirements set out in articles 5 to 11.

DIGITALEUROPE also questions the need to keep the technical documentation of the packaging for ten years. Such a long period is reasonable and useful for longer lasting products, but packaging is normally expected to be recycled shortly after the commercialization of the contained product, with the exemption of re-use and refill packaging.

It must be clear that packaging requirements may never adversely impact the safety or performance of the medical device. Any application of new packaging requirements to medical devices requires thorough assessment and evidence to ensure continuous patient safety. This impacts as well sufficient transitional period which would be required for the rigorous certification process.

Reuse systems (Art. 26):

DIGITALEUROPE would like to express its concerns on the implementation of re-use systems foreseen in the Regulation for several kinds of packaging. For the ICT sector the focus is set on transport packaging (Art. 26.7-13).

Comprehensive reuse systems must be implemented, as the reuse of packaging does not depend solely on the nature of the packaging. Indeed, transport packaging such as pallets or plastic crates are by nature reusable, however the number of different economic operators is such that makes putting in place an effective reuse system quite challenging. Considering that the entity deemed responsible to meet the reuse targets is the "economic operator using

transport packaging" shows that there is no clear responsibility for attaining the reuse targets as there are several economic operators involved in the supply chain of packaged products, e.g. manufacturers, importers, distributors, retailers. Thus, resource-intensive techniques would be needed to monitor these processes, resulting in a disproportionate burden especially for Europe's small and medium enterprises.

Another important aspect on the topic of re-use is the environmental footprint. Reusable packaging does not necessarily deliver better environmental performances across all use nor logistics scenarios. The gap becomes very evident when packaged products need to travel long distances and cross-border to their final destination, as in e-commerce packaging, or when importers use packaging which is destined to further move products within the EU territory.

Hence, reusable packaging should only be required when there is scientific evidence that it outperforms single-use packaging from an environmental performance perspective.

Recyclable packaging based on renewable materials, including Forest Stewardship Council (FSC), FSC Mix and Programme for the Endorsement of Forest Certification (PEFC)-certified fiber-based packaging should be exempt from reusability requirements.

Extended producer responsibility (art. 40):

DIGITALEUROPE welcomes the new responsibilities for online marketplaces with regards to EPR envisaged in the Regulation. However, checking vendor compliance with EPR requirements should not lead to prohibition of selling products on the marketplace from vendors for whom evidence of compliance with EPR requirements has been requested and which have not yet been provided.

This could be achieved by adopting a "pay-on-behalf" model, i.e., online marketplaces should be allowed to submit EPR reports and pay on behalf of non-registered producers collectively. This should be possible for marketplaces without becoming an authorized representative.

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About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract, and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies, as well as international policies that have an impact on Europe's digital economy. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes 102 corporations which are global leaders in their field of activity, as well as 41 national trade associations from across Europe.

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National Trade Associations

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Belgium: AGORIA
Croatia: Croatian Chamber of Economy
Cyprus: CITEA
Czech Republic: AAVIT
Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv
Estonia: ITL
Finland: TIF
France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI
Greece: SEPE
Hungary: IVSZ
Ireland: Technology Ireland
Italy: Anitec-Assinform
Lithuania: Infobalt
Luxembourg: APSI
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Netherlands: NLdigital, FIAR
Norway: Abelia
Poland: KIGEIT, PIIT, ZIPSEE
Portugal: AGEFE

Romania: ANIS
Slovakia: ITAS
Slovenia: ICT Association of Slovenia at CCIS
Spain: Adigital, AMETIC
Sweden: TechSverige, Teknikföretagen
Switzerland: SWICO
Turkey: Digital Turkey Platform, ECID
Ukraine: IT Ukraine
United Kingdom: techUK