

Packaging and Packaging Waste Regulation: Cosmetics Europe's recommendations for the Council's General Approach

Executive summary

In view of the Council adoption of a General Approach on the Packaging and Packaging Waste Regulation proposal (PPWR), Cosmetics Europe – representing the cosmetics and personal care industry in Europe – calls on Member States to consider the following recommendations:

1. Ensure the free movement of goods through the Single Market by aiming to **maximum harmonisation** of packaging performance and labelling requirements under article 4.
2. Under article 7, adopt a calculation methodology for **minimum recycled plastics content of packaging** based on an average of the total number of units placed on the internal market by a producer.
3. Include a **reference to “shape” in article 9(1) to ensure that packaging minimisation** can occur while preserving packaging differentiation, product/brand recognition, and other packaging functions such as product protection.
4. **Avoid disproportionate packaging standardisation measures** not taking into account the complexity and variety of cosmetics packaging, by deleting the second part of article 9(4a).
5. Include a reference to **digital labelling in article 11(4) to improve the practicability of labelling requirements for small products** under the PPWR, aligning with the text adopted by the European Parliament as per AM370.

1. Ensure free movement of goods through Single Market harmonisation

Measures under article 4 in the Council draft compromise text would lead to market fragmentation, against the objectives of the legislative proposal.

The current Council text deletes paragraph 3 in article 4, originally intended by the European Commission to prohibit Member States from prohibiting, restricting or impeding the placing on the market of packaging complying with the labelling requirements of this regulation. Moreover, article 4(4) allows Member States to maintain or introduce national sustainability or information requirements, while paragraph 5 allows for the introduction of further labelling requirements related to Extended Producer Responsibility schemes (EPR) or Deposit and Return Systems (DRS).

The deletion of paragraph 3 and the wording of paragraphs 4 and 5 go against the essence of the regulation as a legislative tool aiming at creating provisions equally applicable across all Member States, and they **contradict the regulation objective** to contribute *“to the efficient functioning of the internal market by harmonising national measures on packaging and packaging waste in order to avoid obstacles to trade, distortion and restriction of competition within the Union, while preventing or reducing the adverse impacts of packaging and packaging waste on the environment and human health.”*

On the contrary, article 4 in this current Council version would **lead to fragmentation of the Single market and spread unpredictability and uncertainty on packaging conformity with labelling rules and sustainability requirements**. Companies would be forced to develop different country-specific packaging for the same products depending on which Member State they will make it available on the market. This would require **costly and potentially continuous adjustments in their supply chains**, also considering that packaging producers would require sufficient time to adapt their operations to update the packaging they produce to the different national requirements. Moreover, considering that products sales may perform differently in various markets, **different national requirements on labelling would make it more difficult to redirect products to different national markets**.

The European Parliament has already partly recognised this issue and agreed on the deletion of paragraph 5. However, such amendment is not sufficient because diverging national rules on labelling and prohibitions would still be allowed under paragraphs 3 and 4. This would lead to packaging rules divergence across national lines, **increasing costs and reducing market flexibilities in redirecting underperforming products in certain markets to other Member States, potentially leading to an increase of waste**.

In view of the abovementioned elements and to avoid these unintended consequences, **Cosmetics Europe calls on Member States to uphold Single Market principles and the smooth placing and flow of products on the EU Single Market by ensuring maximum harmonization under article 4.**

2. Address the challenges of minimum recycled plastics content in packaging for cosmetics

The calculation method of the minimum recycled plastic content in packaging as described in the current Council draft compromise text (article 7) might create excessive administrative burdens and

harm a level playing field among economic operators and between products made in the EU and imported products.

a. Calculation of minimum recycled plastic content in packaging

The Council draft compromise text on article 7 (minimum Recycled Content in Plastic packaging - RPC) suggests calculating the RPC *“per packaging type and format as referred to in Table 1 of Annex II, manufacturing plant and year”*, diverging from both the Commission’s proposal and the Parliament negotiating position.

While we understand that a product-oriented legislation needs to find a high degree of granularity, **targets per unit of packaging are not realistic for cosmetic products** as proposed by the European Commission. Given the high diversity in products’ functions and formats, not all products and packaging types may be able to integrate the same percentage of post-consumer recycled materials. For instance, **recycled plastics cannot be indiscriminately used in cosmetics packaging due to safety and performance related reasons**. As an example, in a mascara, RPC cannot be integrated into the brush as it does not guarantee the same degree of softness to brush eyebrows. Moreover, RPC cannot be incorporated in the applicator (the plastic stick) as over time it may more easily break. Another example is pumps, very common in the cosmetic industry. The inner parts of the pump, which are in direct contact with the product, cannot contain RPC due to safety reasons as impurities or traces could contaminate the product leading to human safety risks. These parts would need chemically recycled RPC.

The current draft compromise text is less granular than the Commission proposal but remains difficult to interpret and implement as **the “per packaging type and format” conditions would substantially increase the administrative burdens companies will have to fulfil to certify the minimum RPC requirements** are met per each packaging type under each packaging format. In this sense, the EP proposal makes a step forward by only referring to “packaging formats”. This would allow some packaging units to integrate RPC content above the minimum targets where technically feasible, to compensate for others where the targets cannot be reached e.g., for safety reasons.

However, another criticality remains unanswered by both the EP and Council. By imposing a **calculation per “manufacturing plant”, the approach might discriminate among economic operators based on their mix of products and packaging formats**. In the cosmetic sector, companies may dedicate a manufacturing plant to the production of a single or several products and packaging. For example, if a plant is mainly dedicated to the manufacture of fragrances, there will be no possibility for a company to compensate for the difficulty to incorporate RPC in the pumps of the fragrance bottles. Moreover, a mode of **calculation based on manufacturing plants might create an uneven level playing field between products manufactured in the EU and products imported from abroad**. Another practical challenge is **the limited and fluctuating availability of recycled plastic material**, especially for contact-sensitive packaging, which requires higher quality recycled material to ensure consumer safety.

In view of the above, **Cosmetics Europe recommends calculating the minimum RPC based on an average of the total number of units placed by a producer on the internal market.**

b. Minimum recycled plastic content based on all or single packaging plastic components

The current Council draft compromise text is problematic for **packaging containing small parts or parts needed to ensure consumer safety, for which it is not possible to achieve the minimum recycled plastic content threshold. It should be allowed to compensate for this issue by using a higher percentage of recycled content in other plastic parts of the same packaging.** For instance, shampoo bottles often have a relatively high recycled content, while the recycled content of their cap is lower. Another example are deodorants in aluminium aerosol cans, where the spray head usually contains a higher recycled content compared to the riser tube within the can. Pumps are an example of small but complex components that can contain more than 10 parts of different materials and different types of plastic, each playing a specific role: for instance, the different plastics (PE/PP/ACETAL pumps components, in addition to the PET bottle) are necessary to avoid friction within the pump during use without compromising its functionality. It would prove extremely challenging for producers to find sufficient recycled material of the sufficient quality to ensure that each individual component can perform its functions.

Therefore, the minimum RPC of a packaging should be calculated taking into account the sum of all of its plastic components, and not for each individual plastic component.

3. Protect the EU competitiveness and consumer safety through product differentiation

The planned new packaging minimisation rules discussed under article 9 might lead to unintended consequences affecting brand identity, product recognisability, competitiveness, consumer health and safety.

Under article 9(1), manufacturers or importers must ensure that *“packaging is designed so that its weight and volume is reduced to the minimum necessary for ensuring its functionality taking account of the material that the packaging is made of”*. While Cosmetics Europe supports the policy objective of packaging minimisation, this wording risks leading to packaging standardisation by linking packaging only to its functionality, without considering the other functions it performs.

The design or presentation of the good is a function of the packaging, as also recognised in the definition of “packaging” in Article 3(1). In fact, **the packaging shape plays an essential role in helping to make the product immediately recognizable and communicate the brands’ identity to the consumer, building trust and a better customer experience.** This may be the case of perfumes enjoying a long-standing history and heritage, as well as shampoos, shower gels, creams and other products benefiting from iconic packaging. Limiting this creative freedom will have a significant impact on these aspects and on the industry competitiveness. Narrowly interpreted, the current wording in the Council could lead any packaging to adopt a round shape, as it is the one using the least surface. Such limitations would have an impact on innovation too, **narrowing companies’ freedom to develop new and inventive packaging by limiting their choice to a small set of predefined packaging options.**

On the contrary, referring to **“the shape and the material a packaging is made of”**, article 9 would still require packaging to adhere to packaging minimisation requirements and at the same time preserve the know-how, inventiveness and the cultural heritage represented by iconic packaging which are intrinsic and inseparable to the identity of a product and its brand, preserving their tangible and intangible added value.

Moreover, **simple packaging shapes are also more prone to counterfeiting**, with all the negative consequences spanning from consumer health and safety to unfair competition, tax evasion.

A reference to “shape” in article 9(1) would ensure that packaging minimisation can occur while preserving packaging differentiation and product/brand recognition. It would guarantee the protection of the abovementioned packaging functions by striking a balance between minimisation and freedom of creativity, preserving aspects of competitiveness that are in the cosmetics industry.

Secondly, the Council draft compromise text considers the protection of design rights under article 9(2) on minimisation requirements. Cosmetics Europe supports the intention behind this change, although design rights only cover a limited share of a wider set of Intellectual Property Rights (IPRs) enjoyed by cosmetics packaging design. In fact, design requirements are more limited (maximum 25 years) in time and applicability (only for new designs) than other IPRs such as trademarks (indefinitely renewable and applicable to existing designs), or patents for packaging providing new technical solutions. IPRs provide an additional layer of protection against counterfeiting and help in preserving the know-how and the cultural heritage represented by iconic packaging. **Therefore, we invite the Council to consider the protection of these IPR categories under article 9(2). In addition, we also highlight the solution provided by the European Parliament, which amended article 9(1) and Annex IV to cover IPRs under AMs 416, 419, and 441.**

4. Avoid packaging standardisation dictated by arbitrary limits

Packaging minimisation criteria currently present in the Council draft text under article 9(4a) will disproportionately restrict packaging design by creating arbitrary standards, resulting in unwanted loss of competitiveness, socio-economic value and consumer safety.

Cosmetics Europe recognises the role that European standardisation bodies may play in developing a harmonised methodology to verify the compliance with packaging minimisation rules, and this is why we support the first half of paragraph 4a. However, the second half of the paragraph calls on the development of standards on **maximum adequate weight and volume limits, wall thickness and maximum empty space for “most common packaging types and formats”**. Cosmetics Europe stresses that this latter provision may lead to packaging standardisation and several related unintended consequences. There are multiple reasons of concern about setting maximum limits on “most common packaging types and formats”.

First of all, there is a matter of **clarity and legal certainty**. The current wording does not define what “most common packaging types and formats” means. This wording presents an **inherent risk of arbitrary decisions**. Moreover, standardisation should focus on product/packaging specifications that could improve its performance in view of the desired objective. On the contrary, by setting volume or weight limits, article 9(4a) would regulate packaging’s inherent characteristics and technical solutions that are not directly related to its performance. Regulating the volume or size of the packaging would be a misuse of standardisation.

Packaging efficiency is a very complex issue to address. As the best combination of packaging-to-product ratio varies from one product to another, **a horizontal standard is unlikely to capture the**

needs and characteristics of the wide diversity of products and their corresponding packaging. For instance, the bottom of a mascara falls within the definition of ‘bottle’, but such a bottle has different characteristics compared to a beverage bottle as it needs to accommodate a brush and applicator. A horizontal standard across formats would fail to take such differences into account.

The **functionality of a packaging format also varies** within the cosmetics sector, depending on how the product is used. For instance, eye products require a higher level of contamination protection and therefore need dedicated types of opaque jars. In addition, given their very small sizes, their jar needs to take into account specific parameters for ensuring an optimal user experience (e.g., the opening needs to be big enough) and for their manufacturing (e.g., the shape may be flatter and wider to ensure effective mechanical handling and filling).

Leaning towards packaging standardisation for most common formats may have a significant socio-economic impact on the European cosmetics industry. Brands and products rely on unique packaging formats to retain and increase their brand identity, product recognisability, customers’ loyalty and enrich user experience. **Standardisation of packaging would bring serious harm to brands’ creativity in packaging design, leading to loss in brand/product differentiation and, ultimately, competitiveness at a broader scale.** The risk applies to a variety of cosmetic products: from luxury products relying on well-known and unique packaging shapes, to more common products sold in iconic packaging like shaving creams, mouthwash, shampoos, and more.

Moreover, the **recognisability of products has indirect economic effects on neighbouring economic sectors such as travel retail, tourism shopping, selective distribution.** For instance, it is estimated that the selective distribution of cosmetics in 2022 amounted to 1,9 billion EUR just in Spain – a sector employing 1.3 million people across the EU and counting over 15 European companies among the global Top-25.¹

Standardisation in weight and volume may also have impact on innovation too, **narrowing companies’ freedom to develop new and inventive packaging by limiting their choice to a small set of predefined packaging options.** On top of that, limitations to other packaging features such as wall thickness would be a particularly challenging task, considering that such packaging characteristics may depend on the filling technology used and are meant to protect the product, facilitate its distribution as well as prolong its shelf life. Such limitations to product innovation may have serious socio-economic repercussion, from limiting innovative SMEs to enter the market, to slowing down advances in consumer health and safety.

Finally, **standardised packaging bears the risk of easier product counterfeiting,** with potential harmful consequences for consumer health and safety. Counterfeits wishing place on the market illicit and dangerous products would have an easier task in an environment of more standardised packaging.

To avoid disproportionate standardisation measures not taking into account the complexity and variety of packaging, we call on Members States to adopt clear and proportionate measures on packaging minimisation by **deleting the second part of article 9(4a).**

¹ [Overview of the cosmetics and perfumery sector in Spain. Stanpa. 2022](#)

5. Improve labelling rules to address the clash between packaging minimisation and increasing product information requirements

The current draft compromise text presented by the Council presidency does not allow companies to resort to digital labelling for small products, opening the door to unintended consequences in opposition to the objectives of the proposal.

The text currently discussed in the Council establishes that labels shall be placed on the packaging of a product. This provision raises several practical issues affecting cosmetics and potentially a much broader set of goods. Packaging of small cosmetic products (e.g., lipsticks, mascaras, pencils) provides little surface where information can be displayed and would require additional packaging material to contain all the mandatory information for consumers. In fact, **while the PPWR aims at minimising packaging to reduce the use of virgin material and the production of waste, there is a clear trend in the EU legislation to increase the amount of information to be provided to consumers.** Different EU legislations require companies to inform consumers about products' ingredients, functions, use precautions, allergenic substances,² instructions for disposal,³ environmental claims,^{4,5} sustainability information,⁶ and more. On top of that, national legislation in some Member States requires additional information to be displayed on-pack, such as material composition of the packaging, disposal instructions, reusability conditions.⁷ **These two trends of packaging minimisation and increasing information requirements clash against each other, making it difficult for companies to satisfy them both unless additional material (which in turn will become waste) is used** to produce markings, fold-out labels, tie-on tags, or other information carriers.

This need was acknowledged and reflected in the **national legislation in some Member States, allowing the use of digital labelling under certain circumstances.** For instance, under the "Loi AGECE" in France, an implementing decree allows the dematerialisation of information for packaging with a surface below 10cm². Similarly, the Italian legislation on environmental labelling allows the use of labelling to product packaging of any size.⁸

Digital labelling is the most efficient solution to address these issues, allowing companies to use the information carriers that better fit their products, and consumers to be duly informed on various aspects of the products they purchase. Digital labelling would enable manufacturers to update or adapt information in a manner which is always accessible to the vast majority of consumers⁹ without having to manufacture new packaging.

² Regulation (EC) No 1223/2009 on cosmetic products.

³ Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

⁴ Proposal for a directive as regards empowering consumers for the green transition (ECGTD).

⁵ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims (Green Claims Directive).

⁶ Proposal for a regulation establishing a framework for setting ecodesign requirements for sustainable products (ESPR).

⁷ Examples are Bulgaria, France, Italy, Portugal, Spain.

⁸ Decreto legislativo 3 settembre 2020, n.116 che recepisce la direttiva UE 2018/851 sui rifiuti, e la direttiva (UE) 2018/852 relativa agli imballaggi e ai rifiuti di imballaggio.

⁹ The percentage of individuals using the internet increased considerably in the last 10 years, going from 74% of the EU27 population in 2012 to 90% in 2021, according to the Commission's impact assessment accompanying the proposal for a regulation on detergents and surfactant (SWD(2023) 114).

In light of these considerations, Cosmetics Europe believes that it is paramount to include a reference to digital labelling in article 11(4) to **improve the practicability of labelling requirements for small products under the PPWR**. Therefore, we call on Members States to **align with the second part of article 11(4) adopted by the European Parliament** (as per AM370), allowing the possibility to use digital means in cases where the product packaging is too small and/or additional mandatory requirements deriving from other legislation apply to the product.