

New EU Packaging Rules Impact Manufacturers

by Ron Moscona and Sam Fitzgerald

The Packaging and Packaging Waste Regulation (Regulation (EU) 2025/40), the European Union's new regulation concerning the packaging of products placed on the European market (**PPWR**), came into force on 11 February 2025.

The PPWR, which will replace the Packaging Directive 94/62/EC, introduces a number of significant changes to how products must be packaged to be sold lawfully in the EU. Another purpose of the new regulations is to consolidate and align regulations and ensure that all packaging is recyclable or reusable across the EU. This supports the plan for a circular economy.

The PPWR as a whole will not come into effect until 12 August 2026 and various provisions will be phased in over a number of years but businesses selling products in the EU should ensure that they are aware of the new requirements. In particular, businesses using fanciful and unique packaging shapes, including those with registered designs and 3D trade marks for their packaging, should be aware of new restrictions in force.

Summary of new requirements introduced by the PPWR

The PPWR covers all packaging placed on the EU market, and all packaging waste in the EU. Packaging is defined as an item, irrespective of the materials from which it is made, that is intended to be used for the containment, protection, handling, delivery or presentation of products, and that can be differentiated by packaging format based on its function, material and design. This includes:

- packaging for unprocessed products for primary production;
- packaging used for products sold to end consumer,
- packaging for transport; and
- takeaway packaging.

There are some limited explicit exclusions such as where the packaging is an integral

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part of the product and necessary to contain or support it throughout its lifetime and intended to be used and disposed of with all elements of the product.

The PPWR will introduce a number of requirements, some of the key ones are summarised below. The requirement of packaging minimisation (on which we expand further below) may have the most significant impact for many manufacturers and suppliers of goods.

Recyclability requirements:

By 1 January 2030, all packaging must be grade C or above recyclable and by 1 January 2038 all packaging must be and grade B or above recyclable. There are a limited number of exemptions. The grades are defined as:

- Grade A: greater than or equal to 95% recyclable (per unit, by weight);
- Grade B greater than or equal to 80% recyclable (per unit, by weight); and
- Grade C as greater than or equal to 70% recyclable (per unit, by weight).

Minimum recycled content:

Any plastic part of packaging placed on the market must contain certain minimum percentage of recycled content recovered from post-consumer plastic waste by 1 January 2030. The minimum percentages increase from 1 January 2040.

Exemptions apply such as for packaging that is in direct contact with medicinal products (and packaging containing such packaging), particular contact sensitive plastic packaging, compostable plastic packaging and packaging for the transport of dangerous goods.

Plastic packaging intended to contact with food is also exempt if the quantity of recycled content may be a risk to health or if the plastic elements amount to less than 5% of the full packaging unit.

Reusability requirements:

Delegated acts will be adopted by the European Commission to set out minimum reusability requirements, including the minimum number of rotations of reusable packaging. Businesses using single use plastics, such as cosmetics, toiletries and fast food will be impacted.

Labelling:

From 12 August 2028, packaging placed on the market must be marked with a harmonised label containing information on its material composition to assist consumer sorting.

From 12 February 2029, packaging placed on the EU market must bear a label informing users that the packaging is reusable.

Further information on reusability, including the availability of a local, national or Union-wide re-use system and information on collection points, must be made available through a QR code or equivalent that enables the packaging to be tracked and the trips and rotations to be calculated, or, if not feasible, an average estimation.

Packaging substances:

Enhancements to the current restrictions of heavy metals in packaging have been made to also cover PFAS. This will likely impact food packaging and takeaway packaging in particular.

Packaging minimisation requirements:

Manufacturers and importers will be required by 1 January 2030 to ensure that packaging placed on the market is designed so that its weight and volume are reduced to the minimum necessary to ensure its functionality, taking account of the shape and material from which the packaging is made.

The regulations provide for specific performance criteria and packaging which does not comply with these (narrow) criteria, and/or packaging with characteristics that aim only to increase the perceived volume of the product, such as double walls, false bottoms and unnecessary layers, must not be placed on the market.

Many products are supplied today with bulky or fanciful packaging which may have various practical and commercial benefits, from adding protection to products in delivery, enhancing the branding and image of the product or simply exaggerating the volume of product actually contained in the packaging. Regardless of the commercial or practical motivation, manufacturers and suppliers will have to revise their approach to packaging and in many cases packaging would need to be redesigned to meet the requirements of the PPWR.

European standardisation organisations are to be directed to prepare or update harmonised standards to clarify the methodology for the calculation and measurement of compliance with the requirements concerning packaging minimisation.

Exceptions to packaging minimisation requirements:

Businesses whose products are packaged and sold in fanciful and unique packaging will likely be particularly affected by packaging minimisation requirements. Perhaps the most prominent example of such products are perfumes and cosmetics which are often sold in fanciful packaging which is often significantly larger in volume than the product it contains. These are often designed in unique ways as a means to attract custom and make the product stand out in a crowded market.

Unless the product or packaging in question falls within the narrow exceptions provided for under the PPWR, the general requirement is that products must not be packaged

purely for distinctive brand-enhancement purposes or to attract custom, if such packaging exceeds the minimum weight and volume necessary to ensure its functionality (i.e., to contain and protect the product). There is however a limited number of exceptions to the packaging requirements, if:

- the packaged product is a protected geographical indication in the EU (an exception designed to protect, in particular, the interests of the European wine industry);
- the packaging design is protected by a Community design or by design rights falling within the scope of the EU design legislation, including designs protected under the Hague Convention, provided that such protection was already effective before 11 February 2025. The exception will apply if the minimisation requirement affects the protected design in a way that alters its novelty or individual character; or
- the shape of the packaging is protected as an EU registered trade mark, or a national registered trade mark in an EU member state including trade marks protected in the EU or in a member state under the international Madrid system, provided, in each case, that the mark has been protected before 11 February 2025. The exception will apply if the application of the minimisation requirement affects the distinctive quality of the protected trade mark.

Accordingly, only those businesses who already secured the protected intellectual property rights in question before 11 February 2025 will be able to rely on the exception to continue to sell their products in unique and fanciful packaging, if that packaging of the product does not comply with the packaging minimisation requirements of the PPWR.

General compliance requirements:

Before placing packaging on the market, manufacturers must carry out a conformity assessment procedure contained in Article 38 and if compliance is demonstrated, draw up an EU declaration of conformity.

Manufacturers must draw up certain technical documentation referred to in Annex VII of the PPWR. Corrective measure must be taken if a manufacturer has reason to believe the packaging is not in conformity (but the obligation to bring into conformity, withdraw or recall packaging such packaging does not apply to reusable packaging placed on the market before 11 February 2025).

Importers and distributors have certain obligations too, in particular, where an importer or a distributor places packaging on the market under its own name or trade mark or modifies packaging already placed on the market resulting in a violation of the requirements of the PPWR, the importer or distributor will be considered to be a manufacturer for the purposes of the PPWR.

What affected businesses should do

All businesses selling packaged products in the EU should review the PPWR and ensure that they can comply with the requirements by the applicable compliance deadline, including of course the packaging minimisation requirements. Businesses will also need to ensure that they keep an eye on relevant standards and guidelines to be introduced

over time by the European Commission.

For those businesses that do have protection for their packaging as a registered designs or trade mark, and that wish to rely on the exceptions to the packaging minimisation requirements as provided under the PPWR, it would be important to ensure that the registrations are maintained and renewed. The owners of relevant registered trade marks who wish to rely on the exception would need to ensure the marks in question are used in trade in the EU (to a sufficient degree) to avoid the registrations becoming vulnerable to revocation for non-use. If such trade mark or design registrations are invalidated or cancelled, or if they are allowed to lapse, even if new registrations are obtained in place of the original ones, they are unlikely to provide grounds to invoke the exceptions to the minimisation requirements under the PPWR.

How Dorsey can help

If you are a business that manufactures packaging for the EU market, or an importer or distributor of packaging or packaged goods, we recommend that you consider the new regulations and how they will affect your business. If you require a more in depth analysis of the requirements on your particular business, please get in touch with a contact at Dorsey & Whitney.