

Ecommerce Europe's position paper on the revision of the EU Waste Framework Directive

Ecommerce Europe welcomes the opportunity to provide feedback on the revision of the EU Waste Framework Directive. Waste management plays a key role in decreasing waste generation but also represents an important tool for the transition to a circular economy.

The revision of the Waste Framework Directive (WFD) will give an opportunity to align the rules on future pieces of legislation that will be proposed later this year, such as the Ecodesign for Sustainable Products Regulation, the Waste Shipment Directive, the revision of the Packaging and Packaging Waste Directive (PPWD), but also other sector-specific initiatives.

Key Recommendations

We would like to seize this opportunity to present the following priorities for the revision of the WFD:

- Create a real single market for waste intended for reuse, repair and recycling with the harmonisation of legislation and definition in the EU;
- Ensure the alignment of the Waste Framework Directive with the waste hierarchy and upcoming pieces of legislation on sustainable products (as well as sector-specific initiatives) and the promotion of repair and reuse;
- Harmonise waste and EPR legislation to allow companies to operate cross-border and boost compliance;
- Improve waste collection and treatment, through better alignment with the objective of the waste hierarchy
- Re-think the way we communicate and raise awareness about the question of handling of products and waste.

Create a Single Market for “Waste”

The EU needs to create a real single market for waste (intended for reuse, repair or recycling), recycled and secondary (raw) material. This means that the revision of the WFD needs to address the current barriers to the circulation of waste and material from one EU country to another.

Update definition of waste

Firstly, we believe that the definition of “waste” in Article 3(1) of the WFD should be amended to exclude any substance or object meant for preparation for reuse, repair, or recycling. The current definition of “waste” does not allow to differentiate between products or materials able to be reused, repaired, repurposed, or refurbished versus what should actually be recycled or disposed of. This complicates greatly value retention of “waste” which could be repurposed, and also impact the ownership of the good or material.

Harmonise national waste legislation

Secondly, the WFD gives Member States the flexibility to implement their strategy and waste legislation, which is also in turn implemented in various ways within Member States. While we do recognize that national differences can warrant differences in legislation and practices, the EU should have for objective

to harmonise legislation as much as possible to ensure the free movement of different categories of products across borders within the EU Single Market. Companies encounter significant challenges in accessing, understanding and complying with waste legislation across the EU – which is for example very problematic for SMEs seeking to expand the number of EU markets they operate in (more details on this issue in point 3).

Companies can also encounter difficulties when shipping waste between Member States. This is problematic for various cases, such as the free movement of waste intended for recycling within the single market; the supply of quality recycled and secondary raw material to suppliers; the movement of waste/products meant to be repaired or prepared for reuse in another Member State. This creates practical limits to the fulfilment of the EU's ambitions for waste prevention, re-use, recycling and recycled content.

We therefore strongly encourage the European Commission to explore the possibility of harmonising key definitions such as, but not limited to waste, by-products, secondary (raw) material, preparation for reuse, refurbishment and so on. Most of these definitions will have to be clarified already in upcoming legislation this year. Additionally, certain criteria such as by-product or end-of-waste criteria would also benefit from further guidance and harmonisation.

Ensure alignment with the waste hierarchy and upcoming EU legislation on circular economy

The revision of the Waste Framework Directive represents an opportunity to align the directive to the European Commission's objectives in terms of Circular Economy and the waste hierarchy, as well as upcoming pieces of legislation such as the proposal on Ecodesign for sustainable products or the initiative on promoting repair and reuse. We also encourage the European Commission to align this revision with the PPWD and the Waste Shipment Directive, addressing some of the shortcomings of the latter on the classification of materials as waste that are meant for reuse or recycling.

We expect that existing ambitions on waste prevention included in the Waste Framework Directive will be already adjusted through these proposals.¹

We also encourage the European Commission to reflect on how to best promote waste prevention and reuse above recycling as part of the Waste Framework Directive. One of the objectives should be to leverage this revision to lift existing barriers to the exchange and sale of refurbished and second-hand goods. The growth of e-commerce represents a unique opportunity to rethink how to give a second life to secondary (raw) materials and goods, extending the reach of second-use markets, enabling the development of reuse, repair, upcycling, or DIY markets. The e-commerce sector has a key role to play in connecting businesses and consumers to find an outlet for second-hand products or materials². It offers the opportunity to ensure access to a large number and variety of spare parts but also contributes to the growth of intermediary businesses proposing repaired and refurbished products, which are in fast-growing demand in the tech and parts sectors. In a recent survey conducted among small business sellers in Europe, sellers reported that second-hand and refurbished items represented 52 percent of their sales, a figure that was highest, at 57 percent, for sellers that sold goods in the electronics category. Over half of the sellers, 53 percent, responded that second-hand and used goods are important to their business³.

For these markets to continue developing, it is important to ensure legal certainty, and therefore an alignment between EU legislation on the status, rights and requirements associated with these types of goods and materials.

We also encourage the European Commission to explore the possibility of aligning VAT regulation with the circular economy. We believe that amending the EU VAT Directive to allow for VAT-free donations of unsold

¹ See Ecommerce Europe's [position paper on promoting sustainable consumption and repair and reuse](#)

² Learn more about concrete examples of e-commerce contributing to extending the lifespan of products and materials in Ecommerce Europe's Collaborative Report on Sustainability and e-Commerce (page 4), available [here](#).

³ eBay and the Circular Economy, November 2021, available [here](#).

goods to charitable organizations could have a positive effect on reducing waste. Moreover, we encourage Member States to follow recent examples of tax-based incentives for repair services. Certain countries, most recently Sweden for example, have decided to reduce the VAT rate for repair services for certain product categories to boost repairs.

Beyond retail, Ecommerce Europe supports the development of tools and methods to measure the benefits and viability of circular business models and align definitions at the EU level. This would also help identify where investment in technology and skills might be most needed.

Harmonise waste and EPR legislation to improve understanding and compliance

Fragmentation of the EPR landscape in the EU

Accessing information on, understanding and complying with existing national waste and EPR legislation in the EU represents a barrier for companies operating cross-border. Because of the lack of harmonisation or any sort of coordinated and updated EU overview of existing requirements, a business wanting to expand its activities to another EU country has to go through time-consuming and costly processes to understand the rules they have to comply with and how to comply with them. That makes it particularly complicated for companies who do not have the means to outsource these activities to third parties, and therefore creates barriers for small businesses trying to expand in the EU⁴.

This is particularly relevant in the case of EPR where the costs of multiple registrations add up to the cost of understanding the rules and procedures. 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. Ongoing developments show further risks of fragmentation in the EU, as Governments take new initiatives in this field (e.g. new reporting and compliance rules; differences in eco-modulation fees; differences between waste streams and extension to new waste categories...). These 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. One recent example of such fragmentation can be found in the Anti-waste and circular economy law adopted in France in 2020 ("loi AGECE") which created an obligation for online marketplaces to attest to the EPR compliance of all their sellers. Due to the law, hundreds of thousands of very small non-French companies (including European ones) are now forced to shoulder massive costs in order to register, report and comply with French EPR schemes, in 13 different product categories. This applies even if they would sell a negligible to null quantity of items to France, because the marketplace has to block the seller before any sale has taken place, in order to verify their compliance. In a majority of cases, the law will therefore result in non-French sellers being blocked, or just giving up from offering items to French buyers, upfront.

The reasons behind the lack of contribution and compliance with EPR are diverse, and it is, therefore, crucial to approach the issue from a broad perspective, not only addressing intentional free-riding but also the challenges behind SMEs not being aware or able to contribute. While we acknowledge that measures can be taken to tackle free-riding, whether intentional or not, we would like to stress that the benefits of simplifying and harmonising EPR in the EU carry much greater benefits than tackling this single issue. It also represents an opportunity to facilitate all companies' contributions and the overall successful contribution of EPR to the transition to a circular economy:

- These measures would considerably alleviate the burden on companies (in terms of costs and time) and would facilitate implementation and enforcement. This has been consistently highlighted by industry representatives.
- Fragmentation affects the ability of companies operating cross-border to develop European sustainability agendas and fails to reach the objective of encouraging sustainable production. In the case of eco-modulation, fragmentation creates situations where one country sanctions what

⁴ **Directorate-General for Internal Policies**, Legal obstacles in Member States to Single Market rules, page 41, November 2020, available online [here](#) and **Ecommerce Europe**, Extended producer responsibility policies that work for SMEs in Europe, July 2020, available online [here](#).

another country encourages. The objective of eco-modulation to incentivise financially sustainable products in Europe is rendered inefficient by the fact that the criteria for “circular” products are not harmonised, creating significant costs and complications for companies proposing these products in several EU markets.

Simplification and harmonisation of EPR systems in the EU

Discussions around the future of EPR should focus on simplification, for fee calculation, compliance fee payment procedures and easier product information reporting obligations. This will become increasingly important as EPR is extended to new waste categories as well, and therefore impact a wider range of companies in the EU. Simplification should also entail ensuring information is available and accessible, notably by means of translation of compliance resources to ensure broader compliance with local rules.

The focus should also be on further harmonisation across Member States. Harmonisation should cover at least the scope of EPR systems; scheme registration, EPR fee calculation; who should comply with the reporting; when, how and how often should the reporting occur and finally eco-modulation criteria. Harmonisation of definition – in line with ISO standards - is also important to reduce complexity, including the scope in the respective EPR area e.g. what items and/or materials are concerned (they could be identified by custom tariff codes for example).

Building on harmonisation efforts, which remain a priority and a necessary intermediate step, companies across the EU would in the long term greatly benefit **from an ambitious 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).

It is also important to engage in a discussion on how EPR systems can adapt to digitalisation. On one hand, the reporting infrastructure 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. On the other hand, digitalisation and the platform economy have led to the development of new and various business models which challenge the way EPR systems are designed to work. There cannot be one-size-fits-all solutions to address this new reality, considering the different models, and how these shape the roles and responsibility of actors on the value-chain, the type of data being shared and accessible regarding products and so on.

Finally, we do acknowledge the role of Authorised Representatives across EPR categories, noting that this measure should not get in the way or delay simplification and harmonisation of the system. Relying on ARs is costly and is not necessarily accessible to smaller companies

Align waste collection and treatment with the objective of circular economy

The revision of the Waste Framework Directive also represents an opportunity to improve waste collection and treatment in the EU.

Firstly, the EU could play a role in defining and harmonising end-of-waste criteria for more product categories. This would clarify how to manage diverse and complex waste streams. Secondly, the EU should play a role in issuing guidance and promoting best practices on the collection, handling and treatment of waste to ensure better alignment with the waste hierarchy. There is an opportunity to encourage EPR systems to focus more heavily on reuse rather than recycling. Taking the example of the collection of electronics - refurbishment and preparation for reuse should be prioritized as step one in the collected product's treatment. This could mean for example mandating the sorting and dismantling of any WEEE before recycling, in order to identify repairable products and useful recoverable spare parts and make sure the refurbishment sector can have access to these products.

Re-think communication on the handling of products and waste

Citizens and consumers have a role to play, from preventing waste to contributing to the separate collection of waste. It is therefore important that the right information is available, accessible and up-to-date. Companies and consumers would benefit from harmonised and simplified rules for communicating information (e.g. harmonising recycling symbols and material codes; limiting the use of text on packaging...) and for broader awareness programs that would engage a wide range of stakeholders.

We are concerned about the recent proliferation of national labelling and information requirements to be placed on the packaging of products. Diverging national measures that are planned or even already implemented we see more uncertainty, confusion and in some cases even more waste/use of material because packaging needs to be re-labelled or even discarded completely. Not only do these legislations go against the free movement of goods in the Single Market, but they also contradict companies' commitment and policy objectives, without benefiting consumers.

Some striking examples of the diverging national policy initiatives have been raised consistently by representatives of the industry in the past years⁵. Certain cases are leading to contradicting rules from one Member State to another, for example, the case of the "Green Dot", whose use is no longer allowed in France, while simultaneously being either allowed or even mandated in Spain. We, therefore, echo calls to further harmonise sorting and recycling symbols, pictograms but also material codes at EU level.

Consultation and coordination on communication to consumers should be a central part of the ongoing discussion and the revision of the WFD. The focus should be on streamlining and avoiding an overload of information, as well as harmonisation of practices in the EU. Focusing solely on packaging as the way to communicate to consumers how to dispose of a product, while multiplying requirements on what information must be communicated, is not a sustainable way to envisage the future of consumer awareness and communication.

To go further, it is important to consider how to link the digitalisation of product information with how data can be leveraged to trigger more sustainable behaviour. E-commerce generates data, on where a product is located, when it has been purchased and how to contact consumers. In the future, retailers will become able to provide consumers with information during the lifecycle of the product, from maintenance tips to advice on personalisation, reuse, and waste management. Consumers will in turn increase the use of their purchases and reduce waste. However, complex privacy frameworks make it harder for consumers to allow the processing of their personal data for these purposes that would ultimately be beneficial to the environment.

⁵ See for example the joint industry paper on Establishing an EU harmonised system to provide consumers with understandable and clear sorting instructions for packaging waste, available [here](#)