

The End of Europe-Wide E-Commerce? New EU Packaging Regulation Poses Major Challenges for Online Retailers

ecosistant views the European Council's proposal as harmful for online commerce

Berlin, 20.12.2023 – On Monday, the European Council announced its agreement on a proposal for a new EU packaging regulation. However, the warnings published by ecosistant and numerous online retailers about a de facto exclusion of small and medium-sized enterprises from the EU single market due to Article 40 of the regulation were ignored. Therefore, ecosistant GmbH once again warns of the creation of significant trade barriers by the regulation, which requires the establishment of a branch or the appointment of authorized representatives in each individual EU member state for intra-community shipping.

Regarding the draft of a new EU regulation on packaging and packaging waste:

A new EU packaging regulation is intended to replace the current EU Packaging Directive and counteract the problem of ever-increasing packaging waste. The main goal of the regulation is to reduce packaging waste in the EU by at least 15% by 2040 compared to the year 2018. To this end, the regulation includes, among other things, requirements for the recyclability of packaging, mandatory quotas for the use of reusable packaging, as well as minimum recycled content. Like the directive, the new regulation stipulates that online retailers, like any other company that introduces packaged products into the member states, must also take responsibility for the packaging waste and its recycling as part of the so-called 'Extended Producer Responsibility' (EPR).

'Without a doubt, these measures are important for the circular economy and the goals that the EU is trying to achieve with a packaging regulation are absolutely commendable,' says Andreas Landes, founder and CEO of ecosistant.

What is the problem?

ecosistant sees the obligation in Article 40, paragraph 2 of the draft regulation for 'producers' (i.e., online retailers) to appoint an Authorized Representative in each member state as problematic. A online shop would be prohibited from offering shipping to other EU countries if it does not appoint an Authorized Representative in each of these states to take care of its EPR obligations.

'The fact that retailers can no longer fulfill their EPR obligations themselves across Europe, but need a contract partner in each country, makes Europe-wide online trade quasi impossible – or at least unprofitable – for most retailers,' says Andreas Landes.

Similar rules are already in force in the EU for the sale of electronics. According to Landes, this has not solved the freerider problem but only led to a situation where electronics are often illegally shipped across borders. Establishing branches or appointing Authorized Representatives is associated with high administrative costs and bureaucratic processes. Therefore, ecosistant warns that the implementation of the EU packaging regulation in its current form will exclude a large portion of online retailers from the EU single market.

What solution does ecosistant propose?

Ideally, the obligation set out in Article 40, paragraph 2, to appoint representatives in each individual member state should be waived. A company based in one EU state should be able to join pan-European take-back systems and thus fulfill the EPR obligations on its own. Companies outside the EU should designate a single Authorized Representative within the EU, who would then take over the EPR for them across Europe. According to ecosistant's estimate, this measure would save each online retailer shipping Europe-wide potentially five-figure amounts per year.

Another consideration could be exceptions for micro-businesses or producers of small amounts of packaging waste. Although the regulation provides for simplified quantity reports for companies that bring less than 10 tons of packaging material into circulation in each member state, no one is exempted from the general obligation to register in each state and join national take-back systems. *'Unfortunately, this legislation is completely out of touch with reality,'* says Andreas Landes. *'Especially for shipping to smaller EU countries, most German online shops send so few packages that it quickly becomes unprofitable to sell there.'* The latter could then also become a problem for consumers with the new EU packaging regulation, namely when the online offering is only available from national retailers.

The new EU packaging regulation has not yet been finally adopted. The next step involves negotiations between the European Council and Parliament in the so-called trilogue procedure to reach a compromise text.

About ecosistant:

ecosistant GmbH, based in Berlin, Germany, is a consulting agency for EPR & Recycling Compliance in e-commerce. The founders, Andreas Landes and Johannes Kohlmann, aim with their startup to reduce trade barriers for e-commerce in the EU and strengthen the national recycling systems. Through the first fully digitalized consulting service, ecosistant already supports thousands of online retailers, Amazon sellers, and online platforms in complying with their recycling obligations in a legally secure and affordable manner in all European countries.

For more information, visit www.ecosistant.eu/en

Blog: <https://www.ecosistant.eu/en/blog/eu-packaging-regulation-e-commerce/>

Draft of the packaging regulation, 18 Dec. 2023: [Download PDF](#)

For questions or interviews, our founder and CEO Andreas Landes is happy to be available.



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