

## **Plastics Europe comments on TRIS notification 2022/167/F - Decree on the Prohibition of Certain Single-Use Plastic Food Containers made of Expanded or Extruded Plastics**

On 18 March 2022, the French Government notified to the European Commission a draft Decree on the Prohibition of Certain Single-Use Plastic Food Containers made of Expanded or Extruded Plastics. This decree would introduce a ban on single-use plastic food containers consisting entirely or partly of extruded polystyrene, expanded or extruded polypropylene and intended for on-site or on-the-go consumption.

### **Mis-transposition of Directive (EU) 2019/ 904 on the reduction of the impact of certain plastic products on the environment**

Plastics Europe believes that the draft Decree represents an over-transposition of Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment (the Single-Use Plastics Directive). This Directive, as transposed by the French AGECL law of February 10, 2020,<sup>1</sup> allows for restrictions on placing on the market of certain types of expanded polystyrene food containers used for on-the-go consumption.

The Draft Decree goes far beyond the requirements established at EU level to tackle marine litter and plastic waste. It is, therefore, in open contradiction with the underlying purposes of the legislative procedure, wherein the European legislators provided for an exhaustive list of banned single-use plastic applications.

The inclusion of extruded polystyrene, expanded or extruded polypropylene food containers in the draft decree extends the scope of the ban far beyond the intention of the text.

### **Breach of the general principle of proportionality**

Whereas Plastics Europe supports the ambition of the European Commission to prevent marine litter, this draft Decree, just as Directive (EU) 2019/904, fails to justify that singling out specific materials is the most effective way forward.

The Decree aims to widen the scope of the ban, beyond the originally included expanded polystyrene, to extruded polystyrene and expanded and extruded polypropylene. This rather appears as the intention to ban all plastics used for food boxes where non-plastic alternatives are available.

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<sup>1</sup> LOI n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire

Furthermore, the introduction of the term “extruded” could lead to a wide ban of packaging for consumer products which are only occasionally used on-the-go.

In our perspective, Article 8 of Directive (EU) 2019/904 provides a more proportionate solution to address the issue of the potential littering of these types of packaging by financing prevention and remediation actions through EPR systems, as transposed into French law since February 2020.

### **Breach of Directive 94/62/EC on Packaging and Packaging Waste and TFEU provisions on Single Market**

The *lex specialis* nature of the SUP Directive allows for a departure from Article 18 of Directive 94/62/EC on Packaging and Packaging Waste which does not allow the prohibition of packaging that complies with European requirements. The packaging covered by the proposed measure complies with the essential requirements as set down by this Directive and therefore may not be the subject of a national ban.

According to Article 4 of the Single-Use Plastics Directive (SUPD), single-use plastic food containers for immediate use or take away are subject to consumption reduction measures, which may include marketing restrictions. However, the article clearly states that measures adopted pursuant to this paragraph shall be proportionate and non-discriminatory. France has not established that such a significant restriction is justified nor needed to fulfil the SUPD objectives, as it would be required by Article 36 TFEU.

This over-transposition prohibiting recyclable and recycled packaging once again weakens the regulatory predictability and stability which is necessary for such a large-scale transformation. It also undercuts the recyclability efforts of the industry by eliminating products integrating a well-functioning recycling chain.

### **Conclusions**

PlasticsEurope supports the need for a climate neutral and circular economy. We also understand that it will be challenging to achieve the goals being set in legislation. We are convinced that an essential tool to drive the transformation needed to achieve the EU’s vision of a circular economy will be the power of the EU’s internal market. It is vital that an EU harmonised approach is taken to the types of measures set out in this notification, so that all relevant stakeholders and Member States are driving towards the same sets of criteria and goals.

The draft decree thus sends a contradictory signal that goes against the whole work of the plastics value chain, weakens its investments and creates a new legal instability. This will affect the capacity to innovate, as there are no guarantees of the longevity of a given packaging, even when it is

recyclable and recycled. We also warn against the lack of an impact assessment for this planned ban, which could lead to less environmentally friendly alternatives being placed on the market.

We therefore call on the Commission to protect the EU Single Market and to create the conditions enabling forthcoming harmonised measures to unleash change and achieve their intended objectives. We believe that the issues raised above warrant the adoption by the Commission of a detailed opinion, concluding that the draft laws as notified by France would constitute technical regulations contrary to the Essential Requirements set down in Directive 94/62/EC on packaging and packaging waste and Directive (EU) 2019/904 on single-use plastic products, and creating a barrier to the free movement of goods.

We wish also to highlight that the Commission may require Member States to postpone the adoption of a draft technical regulation for 12 months from the date of receipt of the notification if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.

We remain at your disposal for any further information or clarifications related to the issues raised in this submission.