

Notification 2021/185/B of the Draft Royal Decree of the Belgian Government on single-use products and to promote reusable products

Brussels, June 10, 2021

On the 26th of March 2021, the Belgian Government notified the European Commission (the Commission) a draft measure in accordance with the European Union (EU) Technical Regulations Information System (TRIS) consultation procedure (Notification 2021/185/B)¹.

The measure notified by the Belgian authorities is a Draft Royal Decree **on single-use products and to promote reusable products** (herewith “the Draft Royal Decree”). The Draft Royal Decree aims at transposing into Belgian Law certain provisions of Directive (EU) 2019/904 of June 5, 2019, on reducing the impact of certain plastic products on the environment (the SUP Directive) and Directive (EU) 2018/851 amending the Waste Framework Directive (2008/98/CE). In addition to the transposition of the bans as foreseen under the Article 5 of the SUP Directive, the Draft Royal Decree seeks to introduce into Belgian legislation a prohibition of placing on the market of all single-use plastic food containers and drinking cups for immediate and individual consumption, as well as of plastic carrier bags (Article 5 § 1 of the Draft Royal Decree).

PlasticsEurope fully supports the objective of the SUP Directive to reduce impact of certain plastic products on the environment and welcomes its timely transposition in Belgian law. We nonetheless believe that the proposed Draft Royal Decree raises several serious concerns. The Draft Royal Decree has been notified to the TRIS procedure without prior stakeholder consultation, and the submitted versions in Dutch, French and English differ in content, suggesting diverging interpretations. The prohibitive measures proposed in Article 5 of the Draft Royal Decree are disproportionate from an environmental point of view, in contravention of

¹ Pursuant to Directive 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (the TRIS Directive).

Articles 4² and 11³ of the SUP Directive. Moreover, articles covered by the REACH regulation⁴ (e.g. plastics containers) fall under the principle of 'one product, one EU market'. Finally, the broadening of the scope of banned SUP items as foreseen by the Draft Royal Decree may be considered as a barrier to trade.

These concerns are further elaborated in the below paragraphs.

Significant differences in the submitted linguistical versions

PlasticsEurope deplores that Belgium submitted diverging French, Dutch and English versions of the Draft Royal Decree to the TRIS procedure, with differences in terms of the described scope. The latter issue does not enable the European Commission and Member States to provide comments on the Draft Royal Decree in an appropriate manner as it is unclear which version is considered as the official text. We therefore call this is rectified to allow harmonised transposition and consistent interpretation of the Royal Decree by competent Belgian Regional Authorities

Proportionality

The Draft Royal Decree constitutes a disproportionate measure as it prohibits the placing on market of all single-use plastic food containers and drinking cups for immediate and individual consumption, in addition to plastic carrier bags in Belgium (Article 5 § 1 of the draft Royal Decree). Moreover, the ban on plastic carrier bags is unclear as neither the thickness threshold nor the use of the plastic bag are defined, suggesting that any carrier bag falls in the scope of the ban, including bags for medical application, waste collection, airport security, industrial application, etc...

No scientific evidence is provided on the litter frequency of such containers, cups and beakers in Belgium, nor on how the Draft Royal Decree will ensure that those products are sustainably substituted with alternatives. Therefore, PlasticsEurope does not believe that the Draft Royal Decree fulfils the criteria under Article 4, 1° § 4 SUP Directive⁵ to justify national market restrictions on all single-use plastic food containers, drinking cups with respect to environmental benefits. In addition, the impacts of such measure have not been assessed, whether by

² SUP Article 4, 1° § 4: *"Measures adopted pursuant to this paragraph shall be proportionate and non-discriminatory"*.

³ SUP Directive, Article 11, § 2 *"The measures that Member States take to transpose and implement Articles 4 to 9 of this Directive shall comply with Union food law to ensure that food hygiene and food safety are not compromised. Member States shall encourage the use of sustainable alternatives to single-use plastic where possible for materials intended to come into contact with food."*

⁴ Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals

⁵ SUP Article 4, 1° § 4: *"Measures adopted pursuant to this paragraph shall be proportionate and non-discriminatory"*.

considering the products over their life cycle (environmental) or on plastic producers, converters, recyclers and any other users in the value chain (economical).

PlasticsEurope strongly believes that litter potential is independent from products' material. Tackling litter should rather be done by improving waste management practices and infrastructure (including the availability of more public litter bins and proper collection), raising awareness among citizens about litter prevention, and enforcing anti-litter laws in line with Article 36 of the revised Waste Framework Directive 2008/98/EC. In this regard, PlasticsEurope stresses that the banned single-use plastics items under Article 5 of the Draft Royal Decree are already collected, sorted and recycled in Belgium to make new plastics products.⁶ The EPR scheme for household packaging waste has been extended to every household plastic packaging waste in Belgium (the so called "blue bag").

The bans as foreseen under Article 5 § 1 of the draft Royal Decree cannot therefore be motivated by Belgian environmental concerns and therefore inhibits the existing circular economy and more than 20 years of waste management efforts.

Compliance with regulations acknowledged by the SUP Directive

PlasticsEurope reminds that the SUP Directive relies on definitions and therefore acknowledges several regulations: the Union Food Law, Food Contact Material (FCM) legislation and REACH. Based on these regulations, the SUP Directive defines what a single-use plastic product is, and what immediate consumption means.

The SUP Directive is not about a container, but about a product defined as a whole made of a container and a content, as the nature of the content qualifies the status of immediate consumption.

According to the definitions in both the Directive and the above-mentioned regulations, food contact single-use plastic products are compliant with FCM regulation and with REACH. Therefore, they can only be defined as REACH articles for which the basic principle is 'one product, one market'.

The manufacturing of a REACH compliant article cannot legally define the intension of use. Therefore, the ban of all food containers is disproportionate.

Preserving the Single Market

Article 5 § 1 of the Draft Royal Decree would significantly extend the scope of products other than those listed under the SUP Directive (Annex A), prohibiting all single-use plastic food containers and drinking cups for immediate and individual consumption, as well as plastic carrier bags on the Belgian market.

⁶ As indicated in "The Belgian plastics industry and the circular economy report", p. 25, https://www.essenscia.be/wp-content/uploads/2019/11/Plast_BROCH_A5_HR.pdf

These provisions would set stricter requirements that go beyond the scope of the SUP Directive. PlasticsEurope believes that unilateral additional restrictions create economic distortions between competitive companies in different Member States. This may impair the free movement of goods between Member States.

The need for the SUP Directive to avoid fragmentation of the EU Single Market was clearly identified by the Commission in its Impact Assessment accompanying the original legislative proposal. Such a harmonized approach to implementation of EU legislation is essential to foster investments in innovation and accelerate the transition towards a plastics circular economy.

PlasticsEurope welcomes the opportunity to provide inputs to the European Commission. We believe that the issues raised above warrant the adoption by the Commission of a detailed opinion concluding that the Draft Royal Decree as notified by Belgium is disproportional and creates clear barriers to the free movement of goods that have not been justified and requires amendment before the Decree can enter into force. We remain at your disposal for any further information or clarifications related to the issues raised in this submission.

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