

To the kind attention of the European Commission,

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

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), for which we believe that the proposed Draft Royal Decree raises a number of several serious concerns.

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).

2

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**. Differences in terms of the described scope 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. The rectified version should be resubmitted to the TRIS procedure to allow EU stakeholders to provide sound comments if any.

3

By comparing the different submitted versions, there is a large uncertainty with the **definition of plastics bags** as the Dutch version speaks about plastic carrier bags at the counter, while the French version addresses any type of plastics bags, for any purpose.

4

The prohibitive measures proposed in Article 5 of the Draft Royal Decree are disproportionate from an environmental point of view, in contravention of Articles 4 and 11 of the SUP Directive. Moreover, articles covered by the REACH regulation (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**.

5

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, airport security, industrial application, etc...

No demonstration 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, essenscia does not believe that the Draft Royal Decree fulfils the criteria under Article 4, 1° § 4 SUP Directive to justify national market restrictions on all single-use plastic food containers, drinking cups and carrier bags with respect to environmental benefits.

In addition, the **impacts** of such measure have **not been assessed**, whether by considering the products over their life cycle (environmental) or on plastic producers, converters, recyclers and any other users in the value chain (economical).

6

According to the Blue Guide, the principle of the transposition is to fit the legal context of the Member State. The intention of the directive is to prevent the occurrence of single use plastic products in the environment. Therefore, and as consequence of the Constitution of Belgium, environmental impact is a regional competence.

The reduction in consumption of a product to avoid environmental occurrence is therefore also a regional competence.

The objective of banning product on the market is not mentioned in the Federal government agreement, posing the question of an eventual bypass of the Federal Parliament or of the Regional Parliaments on a topic impacting society as a whole, in absence of impact assessment.

7

The 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, Belgium waste management, collection, recycling facilities or littering awareness may be considered as pioneer in Europe.

We would like to stress 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. The EPR scheme for household packaging waste has been extended to every household plastic packaging waste in Belgium (the so called "blue bag"). The EPR is covering littering.

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.

8

essenscia 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, neither the intention of consumption nor the intention of discarding by littering.

Therefore, **the ban of all food containers is disproportionate.**

9

The Belgian Product Norm defines the role, the use and the specification of a packaging in its Article 11. The draft Royal Decree has the intention of changing the Product Norm, banning full compliant products for which alternative do not exist. The provision of Article 11 foresees that the King may allow exception, leading if the Royal Decree comes into force like it is drafted, to demonstrate the compliance of banned compliant products. This is overwhelmingly complicated and provides lots of uncertainties.

10

Article 5 § 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.

These provisions would set stricter requirements that go beyond the scope of the SUP Directive. essenscia 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 and put several economic operators at risk, along the value chain.

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 plastic's circular economy.

Therefore, **the ban acts against the circular economy of plastics.**

11

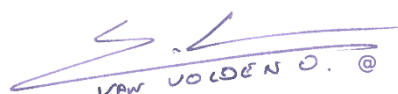
essenscia welcomes the opportunity to provide inputs to the European Commission. We believe that the issues raised above warrant the adoption by the Commission of a detailed opinion concluding that the Draft Royal Decree as notified by Belgium is disproportional and creates clear socio-economic risks, environmental unexpected issues on safety, hygiene and waste prevention, barriers to the free movement of goods that have not been justified and requires clarification, impact assessment or amendment 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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