



## **European Paper Packaging Alliance (EPPA)**

### **Comments on the Belgian measures transposing Article 4 of Directive 2019/904**

1. The European Paper Packaging Alliance's ("EPPA") respectfully wishes to express its serious concerns about the draft "*Royal Decree on single-use products and to promote reusable products*" (the "*Belgian Royal Decree*") notified by Belgium to the European Commission, in accordance with Directive (EU) 2015/1535. EPPA is of the view that the Belgian Royal Decree violates the text, spirit and purpose of Directive (EU) 2019/904 (the "*SUP Directive*") – which it is intended to transpose into Belgian law – as well as several provisions and fundamental principles of EU and International law.

2. First, the prohibition on placing on the market of paper-based cups and food containers, which are listed in Part A of the Annex of the SUP Directive, violates the wording of the Directive. Article 4 of the SUP Directive expressly provides that these products must be subject to consumption reduction requirements – and not to the prohibition set out in Article 5. The outright prohibition of paper-based cups and food containers set out in the Belgian Royal Decree runs manifestly against the wording of those provisions.

3. Second, the application of that ban violates the intention of the EU legislator. Recitals 14 and 15 of the SUP Directive indicate that the EU legislator's choice whether to require consumption reduction measures (Article 4) or impose an outright prohibition (Article 5) rests on whether the products at stake could be replaced by viable alternatives. In essence, in the mind of the EU legislator, Article 4 is intended to target products for which suitable, more sustainable, affordable and readily available alternatives are not yet available, whereas Article 5 is aimed at prohibiting products for which such alternatives already exist. This is the *rationale* based on which the list of products in Part A of the Annex of the SUP Directive (i.e., those subject to Article 4) was drafted. It is clear that the Belgian Royal Decree violates this intention of the EU legislator, insofar as it prohibits products as paper-based cups and food containers, which do not have suitable, more sustainable, affordable and readily available alternatives yet, and are for that reason listed in in Part A of the Annex of the SUP Directive.

4. Third, the prohibition on paper-based cups and food containers set out in the Belgian Royal Decree violates the principle of proportionality. An efficient and important consumption reduction can be achieved through the replacement of plastic cups and food containers with paper-based cups and food containers. Such replacement would provide a concrete and immediate reduction of around 90% of the plastic content, while making possible further plastic content reduction and promoting R&D research for achieving total plastic substitution. Instead, this ban not only goes further than what is necessary to achieve the objectives pursued by the SUP Directive and the Belgian implementing measures, but it will also unnecessarily harm entire economic sectors such as restaurants, vending or retail as well as hospital and prisons where single use cups and containers are mandatory for hygiene requirement. Moreover, it also violates the principle of non-discrimination, since it subjects paper-based cups and food containers to the same outright prohibition as products that are entirely made of plastic, although paper-based products provide an important consumption reduction as being made of the only renewable material among all other product alternatives, coming from sustainably managed forests, and being the only recyclable and recycled products compared to their ceramic, tableware glass or plastic alternatives.

5. Fifth, the application of the prohibition at issue runs against the EU principle of free movement of goods. The ban on paper-based cups and food containers would in fact infringe the prohibition of quantitative restrictions between Member States set out in Article 34 of the TFEU, as it may be regarded as having an effect equivalent to quantitative restrictions.

6. Sixth, the prohibition paper-based cups and food containers set out in the Belgian Royal Decree would amount to a breach of Article X:1 of the GATT, which prohibits contracting parties to adopt quantitative restrictions on the importation of any product in their territories.

7. In light of the above, EPPA would recommend, first, removing the reference to “drinking cups, caps and lids” and “food packaging” in Annex 1 to the Belgian Royal Decree; and, second, adopting different consumption reduction measures, such as the progressive reduction of the weight of plastic in cups and food containers that would provide an immediate, efficient and important contribution to the objective of the SUP Directive without disproportionate effects, while supporting entire economic sectors and allowing further innovation.

(End)