



Brussels, 26 April 2022

To: European Commission
DG Growth, Unit E.3 - Notification of Regulatory Barriers
DG Environment B.3 - Waste Management and Secondary Materials

Ref: French Decree on the Prohibition of Certain Single-Use Plastic Food Containers made of Expanded or Extruded Plastics – TRIS Registry no. 2022/167/FR

The present views build upon the Joint Industry Comment so-signed by EuPC and other 10 associations and submitted on April 8th 2022.

On March 18th 2022, France has notified a draft decree which prohibits the provision of single-use plastic food containers consisting entirely or partly of extruded polystyrene (XPS), expanded (EPP) or extruded polypropylene (XPP) and intended for on-site or nomadic consumption. The decree at issue has been drafted in the framework of a further implementation of the Law of 10 February 2020 on the fight against waste and on the circular economy (known as the “AGEC law”) and is not supported by any Impact Assessment.

EuPC, the European Trade Association of plastics converters, would like to provide its views on the possible risks of violation of EU legislation that could take place, should the mentioned decree be adopted in the version notified to the European Union.

Violation of EU legislation

As indicated in the notification, the AGECE Law prohibits certain single-use plastic products, including expanded polystyrene (EPS) containers or receptacles for on-site or on-the-move consumption as a result of the dutiful implementation of the Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment (so-called “*Single Use Plastics Directive/SUP Directive*”). This prohibition is intended to prevent the environmental impact of the disposal of EPS single-use plastic products and risk related to the unintended release of particles that EPS is made of.

However, in order to avoid any circumvention of this prohibition, the Decree supplements it by targeting the same products when they are made partially or wholly of extruded polystyrene and expanded or extruded polypropylene.

EuPC believes this proposed prohibition is not in line with the European legislative *acquis*. It is not proportionate nor non-discriminatory and violates the rationale of the SUP Directive. Under the SUP





Directive, **prohibitions should be seen as a last resort for implementing measures** that are in line with the environmental principle while at same time maintaining the free circulation of goods in the Single Market as indicated in the mentioned Joint Industry Comment.

Targeting XPS, EPP and XPP

It is important to remember the spirit of the Directive and the intention of the European Legislator upon which the AGEC Law relies. Initially, EPS SUP containers were not included in the list of the 10 most littered items (out of the JRC Study¹) that prompted the legislative proposal for the Directive, however EPS items were eventually added by the European Parliament as to avoid the unintentional release of the little particles that EPS is made of. The rationale was to limit the appearance of the little particles in the environment from the discard and abrasion of on-the-go EPS containers by consumers.

On the contrary, XPS, EPP and XPP containers such possible scenario cannot happen: first, **their density is thicker than EPS and their composition does not allow for a dispersion of their components**; second, **today they are sorted and collected by national EPR systems**.

With its prohibition, **this Decree will unjustifiably punish these items for their proximity by name to EPS** and, at the same time, **put in jeopardy the recycling infrastructure and industry commitments** that are in place for them. Rigid EPP and XPP products are already widely collected and recycled; while flexible polystyrene is subject to many recycling investments today.

Unfounded reputational damage

Foreseeing a prohibition risk to negatively stigmatise these polymers without having assessed their impact and whether other materials are effectively better from an environmental point of view. Impact assessments and LCA studies are crucial elements that any public authority should care to carry out before proposing an impactful prohibition like the one in question.

EuPC fears not only the immediate result coming from the lack on the market of the items covered by the Decree at issue, but the reputational damage that such independent and unjustified French initiative could cause at European level.

Since 2016, **France has been very creative in proposing restrictive measures against SUP items, disregarding not only the European legislative framework as such, but the scientific and objective approach that the European authorities have applied to the *plastics* subject.** It is therefore crucial that the **European Commission intervenes in its role of Guardian of the Treaties** to ensure that France refrains from these unfounded and unassessed initiatives.

¹ Addamo A.M., Laroche P., Hanke G., Top Marine Beach Litter Items in Europe: a review and synthesis based on beach litter data. JRC Technical Report EUR 29249 EN.





Conclusion

In the light of the abovementioned reasons, the French draft decree undeniably creates an unjustified prohibition of materials and SUP items, **adding an additional deviation from the framework created by the SUP Directive, which will result in a violation of the free circulation of goods in the Single Market and an unjustified bigger fragmentation of the Single Market.** This Decree goes beyond the provisions set in the policy objectives foreseen by the Legislator, while at the same disregarding other fundamental principles set by other pivotal pieces of legislation.

Therefore, EuPC kindly invites the European Commission and Member States to adopt a Detailed Opinion according to these considerations, thus inviting the French Authorities to discard the adoption of this draft decree.

