



Federazione Gomma Plastica

UNIONPLAST

Unione Nazionale Industrie Trasformatrici Materie Plastiche

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

Comments from Unionplast

The French decree amending the Law of 10 February 2020 on the fight against waste and on the circular economy (known as the "AGEC law") extends the prohibition applicable to food containers made of expanded polystyrene (EPS) for on-site or on-the-move consumption to those made of extruded polystyrene (XPS) as well as those made of expanded polypropylene (EPP) or extruded polypropylene (XPP).

This proposal is clearly against the rules that each EU Member States should apply in term of an appropriate evaluation of the measure proposed, the consequences of such measures and about the free movement of good as regulated by the TFEU.

1. The restriction proposed is not supported by an adequate Impact Assessment.

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.

UNIONLAST 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.

2. The restriction jeopardize the efforts aim to promote the recyclability of containers.

The draft ban undercuts the recyclability efforts of the industry aim to promote the collection, sorting and recycling of XPS and EPP or XPP.

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PP products are already widely collected and recycled; while flexible polystyrene is subject to many recycling investments today. Actually PP is the most recycled material (considering recycling and down recycling)

Significant results are also registered in the recycling of XPS containers. The collaboration between converters, recyclers, raw material producers brought to the expected results about the production of XPS item with use of recycled plastics and the development of systems for their collection and recycling.

The draft decree thus sends a contradictory signal that goes against the whole work of the packaging industry, 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 if it is recyclable and recycled. We also again warn against the lack of an impact assessment for this planned ban, which could lead to less recyclable alternatives being put on the market from an environmental point of view.

3. Infringement of free movement of good as regulated by the TFEU

The proposed prohibition is not proportionate nor non-discriminatory and violates the rationale of the SUP Directive. Under the SUP Directive, prohibitions should be seen as the 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.

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.

National packaging bans lead to a patchwork of different packaging rules in the internal market and thus prevent the free exchange of - mostly packaged - goods in the internal market. Harmonised packaging rules in the EU are however the prerequisite for companies to be able to make the necessary investments in new packaging design, new materials and new machines that are needed for a full transition to a circular economy.

Therefore, in line with the idea of maintaining the common market, such projects should not be approved by the EU. Current regulations, such as the SUP Directive, the Waste Framework Directive, or the amended PPWD directive, impose many new regulations on companies from the plastics processing industry. They require significant changes in the enterprises themselves in order to adapt to the new situation. The instability of regulations

and constant changes will cause chaos and, consequently, weaken this innovative industry, so important for the economy. It should be remembered that the economic potential of the EU countries is already relatively decreasing in relation to other areas of the world economy. If the EU has the ambition to be a leader in creating a sustainable economy, it must also go hand in hand with a stable and strong economy.

Conclusion

In the light of the abovementioned reasons UNIONPLAST ask for a withdraw of the French draft decree that 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.

It is therefore crucial that the European Commission intervenes in its role of Guardian of the Treaties adopting any necessary initiative aimed to avoid the publication of the draft decree.

Milan, 20th June 2022