

Brussels, 7 November 2023

Concerning the TRIS-procedure 2023/0490/BE regarding the EPR-framework on litter

On August the 7th, the Belgian Government (the three regional governments) notified a draft text entitled “Cooperation Agreement on the framework for extended producer responsibility for certain waste streams and for litter” via the **TRIS procedure (2023/0490/BE)**.

The undersigned associations representing the European soft drinks (UNESDA), packaging (EUROPEN) and natural mineral water (NMWE) sectors have noted several issues that seem to point towards a **misinterpretation of the objectives of the Single-Use Plastics Directive (EU/2019/904, hereafter SUPD)** and of the fundamental principles of the Union regarding internal market rules under the Treaty on the Functioning of the European Union (in particular **Article 28 of the TFEU**).

We would like to share our serious concerns regarding this transposition project (more specifically on chapter III: litter), which would have dramatic repercussions on the businesses and sectors we represent if it were to be adopted as it stands and **might jeopardise the placement of goods on the Belgian market**.

It seems important before we proceed to recall the objectives of the SUPD in Article 1:

- (1) to prevent and reduce the impact of certain single use plastic products on the environment;
- (2) to promote the transition to a circular economy with innovative and sustainable models and;
- (3) to contribute to the efficient functioning of the internal market.

In this respect, it seems equally important to recall that being a directive, each Member State is free to decide how to transpose the SUPD into national laws. However, the EU regulatory framework is supposed to harmonise rules, ensure transparent and efficient decision-making, and safeguard proportionate legislations, which is the objective of the Better Regulation agenda. The aim is first and foremost to avoid competitive distortions and ensure equal operating conditions for European companies in the EU, but also between Member States.

We strongly believe that **the Belgian draft text does not follow these principles, nor the objectives pursued by the European legislator** and that it may even place more barrier to access its market. There are four main reasons that support this:



1. It opposes the shared-responsibility principle

The TRIS notification was submitted collectively by the three regions under the name of an agreement of cooperation between the regions. The new approach in the draft text seems to consider that waste management is only about litter management and shifts the responsibility solely on the producers, bringing us to our first main preoccupation, namely that the text opposes the shared-responsibility principle.

As it stands the draft text introduces an EPR for litter, with **the total and real costs of managing litter being charged solely on producers.**

The SUPD clearly defines, in alignment with article 8 of the Waste Framework Directive (WFD), that EPR schemes should be seen as a shared responsibility between producers, authorities, and consumers. Recital 35 of the SUPD literally states that litter control is a "shared effort between competent authorities, producers and consumers". However, the Belgian agreement places all responsibilities on producers by imposing a (disproportionately high) fee on them without any justification or **without guarantees or criteria for the services provided from the regional governments** (i.e. cleaning up litter).

Thereby, producers become accountable for the maintenance and management, without control of public cleanliness, in lieu of regional and local public authorities. The Belgian implementation overcharges producers with the general costs (total and real costs) of litter policy of the authority – all in contradiction with the SUP Directive.

2. It opposes the EU harmonisation principle

Using the obligation to transpose the waste management obligations set out in the SUPD as a pretext, **the regional governments propose to extend the scope of the EPR levy scheme to products that are not covered by the SUPD** and have voiced the explicit intention to keep adding products in the future under the same pretext. As stated in article 8 of the SUPD, the EPR and related fees must be applied in conformity with the article 8 on EPR in the WFD. This is here obviously not the case.

The Belgian Government's decision is therefore surprising as the SUPD clearly indicates that Member States shall ensure that EPR schemes are established for all SUP products listed in Part E of the Annex, and not for all types of waste. Furthermore, by laying down all responsibilities of the lump sum associated with the burden of waste management and in particular of littering, on the producers, this arbitrary lump sum may be considered as jeopardising the access to the Belgian market. This applies to any foreign company importing any type of products which can be listed by the Belgian Government outside of Part E of the Annex of the SUPD for which Belgium decided to levy an EPR lump sum fee.

By charting its own course, **Belgium prejudices the SUP Directive's overall harmonisation objective and the smooth functioning of the internal market.**



3. It opposes to the fundamental principles of transparency and proportionality

According to Article 8 of the SUPD, the littering cost (1) should be proportional, meaning that it shall not exceed the costs necessary to provide the services needed in a cost-efficient manner and (2) it shall be established in a transparent way between the actors concerned. In the Belgian draft text neither of these principles are respected, since the economic operators and the related sectors are **disproportionately levied** based on calculation methods which **lack complete transparency**. The Belgian Government failed to disclose the different methods of littering cost assessment (of the three regions) and did not clarify on which data the assessments are based. As this information has not been disclosed, the rules for transparency as required for the setup of an EPR mechanism under WFD are not respected. In the **annex** you will find some comparisons we made with other Member States illustrating that the costs are disproportionately high in Belgium (littering cost per capita). For the packaging sector the average littering fee per inhabitant is with €9,83 in Belgium way higher than its neighbour countries France (€2,75/inhabitant), Germany (€3,22/inhabitant) and the Netherlands (€2,32/inhabitant).

Article 8 of the SUPD also requires that the data and processes used to establish the necessary costs must be robust and transparent, including information on how costs are allocated amongst producers.

4. It opposes the EU environmental policy objectives

It is equally surprising to note that, contrary to the SUPD's objective enshrined in the first article, Belgium does not incentivise the development of innovative and sustainable models related to waste management and reduced impacts of waste.

Producers will be charged the same amount, whatever the composition of their waste. They will not be rewarded for their efforts, while the freeriders are not contributing to the prevention of littering. Therefore **it is crucial that an EPR system is limited to the consequences of the producers' own activities** and that the other stakeholders take their responsibilities in sensibilisation, control and reduction of littering by creating incentives for the development of innovative and sustainable models, in alignment with the WFD. Moreover, the drafted text does not provide for any evolution of the EPR levy towards the promotion of circular economy. If the objective pursued is in fine the reduction of litter, it seems reasonable to anticipate a mechanism that will take into account the improvements made in litter reduction and that rewards producers who have innovated, transitioned to an improved model and reduced potential litter.



Conclusions

In sum, as recalled at the beginning of this letter, one Member State should not prejudice the Directive's harmonising objective when implementing the said Directive. Thereby, when transposing the SUPD Directive, Member States should ensure a fair balance between the various fundamental rights protected by the EU legal order, to protect the free trade of goods in the internal market. The current draft law would have dramatic repercussions on the business and sectors we represent if it were to be adopted as it stands and might jeopardise the placement of goods on the Belgian market. It should respect the following principles:

- **The environmental objectives** of the SUPD and the goal of a **harmonised approach** as stated by the European Commission;
- The **shared-responsibility principle**: the shared effort between competent authorities, producers and consumers resulting in a shared burden of the costs between stakeholders;
- The **principle of transparency**: the disclosure of the methods and the data used, and the disclosure of the reasons for having different methods between regions. Producers need to be informed in a transparent manner about the calculation methods of waste management operations and the costs which they are expected to cover;
- The **principle of proportionality**: the calculation method regarding the costs of cleaning up litter needs to be established in a proportionate way. As a first step, the level of cleanliness expected to be achieved and how it will be achieved should be determined. The fees to be covered by producers must adequately represent the amounts necessary to ensure adequate and cost-efficient litter related operations specific to the product group. Services undertaking the litter clean-up should only receive payments that meet their relevant costs in full if they run their services efficiently.
- The fee calculation should be regularly **reviewed** and updated to take into account improvements achieved.

Therefore, our associations (UNESDA, EUROPEN and NMWE) call upon the European Commission to assess the Belgian draft by considering the exposed concerns and, if deemed necessary to address the relevant remarks towards Belgian authorities in order to ensure that the final Cooperation Agreement on EPR schemes related to SUP items respects the principles mentioned above.

We sincerely hope that these key elements will be duly considered by the Commission when analysing Belgium's notification.

We thank you in advance for your consideration.



Annex

Comparison of the littering cost of packaging (cost per capita) of Belgium, France, the Netherlands and Germany

