

Joint industry letter

on the

Notification 2019/346/F of the Draft Decree of the French Government banning the use of certain single-use plastic products

30 September 2019

We, PlasticsEurope and the European Plastics Converters (EUPC) would like to share our concerns about the Draft Decree of the French Government banning the use of certain single-use plastic products (hereinafter “the Draft Decree”), which was notified on 18 July 2019 (Notification 2019/346/F) to the European Commission under the TRIS procedure.

We believe that the proposed Draft Decree poses serious questions with respect to abiding by Articles 6 § 3 and 4 of Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services and with regards to a harmonized implementation of the Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment, (hereinafter “the SUP Directive”). In addition, we consider that the proposed prohibitive measures are not proportionate, in contravention of Articles 4, 5 and 11 of the SUP Directive and effectively represent barriers to trade which are in contravention of Article 18 of the Packaging and Packaging Waste Directive.

Over-transposition of the SUP Directive

The range of products falling under the restriction in Article 3 of the Draft Decree is significantly larger than the prohibitions and restrictions for placing on the market as foreseen by Article 4 and 5 of the SUP Directive.

More specifically Article 3 of the Draft Decree, which modifies the French Environmental Code (*Code de l'environnement*), prohibits from 3 July 2021, the placing on the market of all the plastic cups, including their lid, made totally or partially of plastic, and of all the food containers made totally of plastic (i.e. meal trays, ice pots, salad bowls, boxes, etc.) whereas only those made of expanded polystyrene are covered by Article 5 of the SUP Directive which provides for the total ban.

The plastic products banned by the French Draft Decree, are instead listed in the Part A of the Annex to the SUP Directive and covered by Article 4 of the same Directive, which requires in paragraph 1 to adopt measures to achieve a reduction in their consumption.

The total ban of the products laid down in the French Draft Decree creates more stringent conditions for the placing on the market of certain items made partially or fully out of plastics.

The plan for reduction in consumption under the Draft Decree takes the form of additional bans. These bans do not meet the conditions set forth in Art. 4 of the SUP Directive for the consumption reduction plans.

The breaches to Art. 4 are detailed below.

Proportionality

Article 4 §1 sub§1 of the SUP Directive allows Member States to impose marketing restriction in derogation from Article 18 of Directive 94/62/EC¹, provided that they are substituted with alternatives that are re-usable and do not contain plastic and that, as laid down in sub§4, these measures are **proportionate and non-discriminatory**.

Moreover, in Recital 14 of the SUP Directive, it is clearly explained that for certain single-use plastic products, such as those included in the French ban, "suitable and more sustainable alternatives are not yet readily available". For such a purpose, Member States are required to achieve "an ambitious and sustained reduction" of consumption of these products, "without compromising food hygiene, food safety, good hygiene practices, good manufacturing practices, consumer information or safety traceability requirements, hygiene and labeling of foodstuffs". This does not seem to be the case of the Draft Decree.

In fact, Article 11 of the SUP Directive explicitly establishes that the measures adopted by the Member States to implement the Directive are to be in compliance with Union food law, in the case of materials intended to come in contact with food, with the aim to ensure that food hygiene and food safety are not compromised.

In its current version, the Draft Decree could lead to the risk of regrettably replace certain plastic items with other products which will not necessarily comply with the relevant EU and national food safety and hygiene legislation.

Also, with regard to compliance with the principle of proportionality as enlisted by the SUP Directive, with regard to drink cups, in many conditions of use, (for example, when they are provided by beverage distributors within structures with appropriate waste management which allows for their collection and recovery - as in offices, hospitals, enclosed sport structures, etc.), these cups do not present any risk of leakage into the marine environment. Therefore, their total ban appears totally disproportionate and not meant at achieving the objective of combating marine litter in the case that appropriate waste management infrastructure is in place.

More cost effective solutions with a lesser impact on the EU single market would be more appropriate and indeed compliant with the text and underlying principles of the SUP Directive.

Therefore, in light of the above and in the absence of safe and more sustainable alternatives, the extended bans provided for by the French Draft Decree would constitute an unjustified and disproportionate measures as they apply to all the above mentioned plastics products while not achieving the objective of the Directive to prevent marine litter.

¹According to Article 18 of Directive 94/62/EC on packaging and packaging waste "Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive"

Internal Market and free movement of goods.

Due to the fact that the Draft Decree would ban products that are not included in the prohibition laid down in the SUP Directive, this would result in producers, converters and users of such single use plastic items, based outside France, where the restrictions are not in force, being unable to put their products on the French market. This situation would then cause a fragmentation of the Single Market and result in barriers to trade.

Coordination with other measures arising from the SUP Directive

Pursuant to Article 4 of the SUP Directive, which defines 2022 as the reference year for calculating the reduction in consumption of certain single-use plastic products to be achieved by 2026, the European Commission must define a calculation method by 3 January 2021.

Furthermore, pursuant to Article 12 of the SUP Directive, no later than 3 July 2020, the Commission shall publish, in consultation with the Member States, guidelines containing examples of what should be considered as a single use plastic product for the purposes of this Directive.

In the absence of precise provisions on the plastic items concerned by the SUP Directive and the methods of calculation the reduction in consumption, the Draft Decree appears premature and could well be in breach of the fundamental pillars of the TFEU thus triggering undesired consequences (e.g. it could worsen resource efficiency and circularity, hinder innovation, result in fragmentation of the internal market; etc.).

Commission letter to Member States / permanent Representatives of the Member States on the “Transposition and implementation of the Directive on Single Use Products”

We are aware that DG Environment has contacted the permanent Representatives of the Member States by sending individual letters containing indications on the “Transposition and implementation of the Directive on Single Use Products”. These indications contain clarifications on the deadlines and modalities for the implementation of the reduction measure, marketing restrictions, product and marking requirements and Extended Producer Responsibility schemes.

We welcome the letter from DG Environment as we strongly think that Member States should be provided with unambiguous and clear indications on how to effectively transpose and implement the SUP Directive provisions without running the risk of hampering the good functioning of the Single Market.

However, in light of the content of the French Draft Decree, we, the undersigned organizations strongly encourage the European Commission to submit Detailed Opinions under the TRIS procedure since the provisions it contains are not in line with the spirit of the SUP Directive, and do not comply with proportionality and the EU principle of the free movement of goods.

We call on the Commission to ensure that national measures to implement the SUP Directive are aligned with the SUP Directive, in terms of scope, definitions and application deadlines.

Yours sincerely,



Plastics*Europe*
Association of Plastics Manufacturers