

EUROPEN's comments on TRIS notification 2025/0080/LU (Luxembourg)

Draft Law amending the amended Law of 21 March 2012 on waste; the amended Law of 21 March 2017 on packaging and packaging waste; the Law of 9 June 2022 on the reduction of the impact of certain plastic products

1. Object of the TRIS contribution

On 10 February 2025, Luxembourg notified to the TRIS portal a Draft Law (hereafter "the draft law") amending the amended Law of 21 March 2012 on waste; the amended Law of 21 March 2017 on packaging and packaging waste; the Law of 9 June 2022 on the reduction of the impact of certain plastic products. The draft law is composed of three chapters, the following specific provisions are the object of this submission (presented per Chapter):

Chapter 1 - Amendment of the amended Law of 21 March 2012 on waste

- **Article 3(2)**, introducing the reference to an Annex VI (not given as part of the original law on waste, nor as part of the draft law) including a list of single-use products which are prohibited from being served to the consumer and the relevant dates of application of such bans.
- > *Packaging bans are the most restrictive packaging waste prevention measures and, before being introduced at national or EU level, their proportionality should be carefully evaluated against Single Market principles and possible unintended consequences. Considering that the draft law is only referring to the introduction of an Annex listing bans, with no additional details regarding its content, development and implementation, evaluating the proportionality, impact and the relevant legal basis potentially justifying such measures is currently impossible.*

Chapter 2 - Amendments to the amended Law of 21 March 2017 on packaging and packaging waste

- **Article 24(3)**, introducing, from 1 January 2027, the obligation for final distributors carrying out their commercial activities in the HORECA sector and making available on the market, in take-away packaging, cold or hot beverages and ready-to-eat food intended for immediate consumption without further preparation and generally consumed directly from the container, to offer a system allowing consumers to bring their own container to be filled and fulfil specific additional requirements. Similarly, **Article 24(4)** introduces, from 1 January 2028, the obligation for final distributors carrying out their commercial activities in the HORECA sector and making available on the market, in take-away packaging, cold or hot beverages or ready-to-eat food, to offer consumers the possibility of using packaging covered by a reuse system.
- > *While the above requirements are in line with Articles 32 and 33 of Regulation (EU) 2025/40 on packaging and packaging waste (PPWR), the Luxembourgish provisions are set to enter into force from 1 January 2027 and 1 January 2028, respectively. This anticipates the obligations set out in the PPWR, which are set to apply by 12 February 2027 and by 12 February 2028, respectively, thus implying that final distributors operating in Luxembourg will have to fulfil the requirements by 31 December 2026 and 2027. Although, from a compliance perspective, this anticipation is likely to have limited impacts on most operators, this approach is problematic*

from a Single Market point of view as it underscores a reality where Member States anticipate at national level the provisions of a directly applicable Regulation (contravening Article 288 TFEU), which does not require Member States' transposition and has a Single Market legal basis. This clearly undermines the harmonisation objective pursued by the PPWR and creates fragmentation of the internal market, in an area where the EU co-legislators has decided to harmonise.

Chapter 3 - Amendments to the Law of 9 June 2022 on the reduction of the impact of certain plastic products on the environment

- **Article 31**, introducing the obligation for any retail store displaying unprocessed fresh fruits and vegetables for sale to display them without packaging composed wholly or partly of plastic (except when fruits and vegetables are packaged in lots of 1.5 kilograms or more).
 - > *The proposed ban cannot be justified based on a transposition of Directive (EU) 2019/904 on Single-use Plastics (SUPD) as the latter foresee the adoption of bans and consumption reduction measures for specific product categories, namely those listed in Annex - Part A and B to the SUPD, under which packaging for fresh fruits and vegetables are not contemplated. In this sense, the ban represents an over transposition of the SUPD.*
 - > *It should also be recalled that Article 25 and Annex V of the PPWR foresee the introduction of a similar ban as of 1 January 2030. Although Article 25(2) of the PPWR establishes a grandfathering clause allowing Member States to maintain restrictions adopted at national level before 1 January 2025, it should be considered that the grandfathering provision exclusively applies to packaging in the formats and for the uses listed in Annex V of the PPWR but made from materials not listed in Annex V. Since the ban foreseen under the draft law is meant to apply to packaging made partly or wholly of plastic, the PPWR grandfathering clause is not applicable in the case of single use plastic packaging and cannot be used as a legal basis for the proposed ban. Considering this, the proposed ban represents a violation of Article 4(3) of the PPWR, expressly forbidding Member States to introduce at national level sustainability requirements conflicting with those set out in the Packaging Regulation or prohibiting the placing on the market of packaging that complies with the Regulation's requirements.*
- **Article 35**, providing a list of fruits and vegetables presenting a risk of deterioration and which shall exempt from the above-mentioned ban.
 - > *Under the PPWR, the EU Commission is due to publish by 12 February 2027 guidelines, in consultation with Member States and the European Food Safety Agency (EFSA), to provide a non-exhaustive list of fruits and vegetables that are excluded from the ban. This is to ensure a harmonised approach in the transposition of the packaging bans foreseen under Article 25 and Annex V of the PPWR. The implementation of the proposed ban, which is considered unlawful for the reasons explained above, paired with the introduction of a national list of exemptions, will entail the divergent application of the bans foreseen under the PPWR across EU Member States, with negative implications for the single market and increased burden for economic operators.*

Based on the reasons already exposed, we contest the lawfulness of the above-mentioned measures on the following grounds:

- > **Article 4(3) TEU:** In line with the principle of sincere cooperation, a Member State should refrain from adopting legislation to address an issue which can only be adequately resolved at EU level and in a field which the EU intends to harmonise, as in the case of the packaging legislation. Considering that the PPWR, which entered into force on 11 February 2025, establishes harmonised market access requirements regulating the placing on the market of packaging, which are directly applicable in all EU Member States by virtue of Article 288 TFEU, Luxembourg should not pre-empt the implementation of harmonised rules at EU level.
- > **Article 4(3) of the PPWR:** The latter foresees that "If Member States choose to maintain or introduce national sustainability requirements, or information requirements additional to those laid down in this Regulation, those requirements shall not conflict with those laid down in this Regulation". Several of the proposed measures are

contrary to the provisions of the PPWR and will impede or obstacle the placing on the market of packaging that is fully compliant with its provisions. It is also noteworthy that the legal basis of the PPWR is Article 114 of the TFEU. This further limits the discretion of Luxembourg vis-à-vis imposing additional requirements on packaging in contradiction to Article 4(3) of the PPWR, as further detailed below.

- > **Article 114.5 TFEU:** The legal basis of the PPWR, foresees that “if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment [...] it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.” It should be noticed that no such new scientific evidence has been provided by Luxembourg to justify the adoption of the suggested national provisions.
- > **Article 34 TFEU:** Several of the proposed measures will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by article 34 of the TFEU. Notably, the article prohibits “quantitative restrictions on imports and all measures having equivalent effect between Member States”. Quantitative restrictions can only be justified by one of the public interest grounds set out in Article 36 TFEU or by one of the overriding and mandatory requirements developed by case-law in the EU Court of Justice. Such rules must be necessary in order to attain legitimate objectives and be in conformity with the principle of proportionality, which requires that the least restrictive measure be used. The proportionality of measures mandated by the draft law can be questioned. Luxembourg has failed to provide adequate justification on the need and proportionality of the proposed measure. Even if the intended objective to prevent and reduce the impact of packaging and plastic packaging waste on the environment would be considered legitimate, the measures are not proportionate as this objective can be better addressed by an EU-wide approach, which the draft law currently undermines.
- > **The requirements in the draft Decree do not find a legal basis in any of the currently enforced EU legislations or depart from already adopted EU laws.** Particularly the proposed ban on packaging composed wholly or partly of plastic for the display of fresh fruits and vegetables, is beyond the scope of Article 4 (consumption reduction) and Article 5 (restrictions on placing on the market) of the SUPD. The latter only targets single-use plastic products intended for on-the-go consumption and does not include in its scope packaging made partly or entirely of plastic used to sale unprocessed fresh fruit and vegetables.
- > **Article 9 (1)(g) of Directive 2008/98/EC on waste (WFD):** the latter requires Member States to take measures to prevent the generation of waste, including to “reduce the generation of food waste in [...] retail and other distribution of food, [...] as a contribution to the United Nations Sustainable Development Goal to reduce by 50% the per capita global food waste at the retails and consumer level [...] by 2030”. While its adoption is still pending, the recent targeted revision of the WFD also sets specific food waste reduction targets applicable to the retail sector (30% by 2030, in conjunction with other distribution of food). If adopted, the draft law will have potentially adverse implications for food waste without added environmental value. Indeed, packaging plays a central role in extending food life shelf, thus minimising food losses and preventing the waste of resources and the greenhouse gases emissions associated with discarded food.

2. Conclusions

Pursuant to the EU principles of subsidiarity and sincere cooperation, Luxembourg should abstain from imposing unilateral requirements which will pre-empt the application of EU legislation and create barriers to trade. Based on the findings from our contribution, we submit the following requests to the EU Commission:

- > to adopt a detailed opinion concluding that the draft law may create barriers to the free movement of goods in Europe and should not be adopted since it contravenes TFUE Single Market provisions and EU legislation;

- > to inform Luxembourg that the draft law is in breach of Regulation (EU) 2025/40 on packaging and packaging waste;
- > to request Luxembourg to renotify its amendment to amended Law of 21 March 2012 on waste, ensuring that the content of Annex VI, mentioned in Article 3(2) recalled above, is also notified to the EU Commission
