

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
The Director-General

Brussels,
ENV/DCC ARES(2019)

EFTA Secretariat, Brussels
Rue Joseph II, 12-16
1000 Brussels
Belgium
Email: mail.bxl@efta.int

**TO THE MEMBER STATES / PERMANENT REPRESENTATIVES OF THE MEMBER STATES
AND EEA/EFTA COUNTRIES**

Subject: Transposition and implementation of the Directive on the reduction of the impact of certain plastic products on the environment

The Directive on the reduction of the impact of certain plastic products on the environment¹ (“the Single Use Plastic Directive”, hereafter “the SUP Directive”) entered into force on the 3rd of July 2019.

This letter serves to provide clarification of the legal timeframe for applying the different measures in the SUP Directive, to ensure that the Directive reaches its objectives of reducing the impact of certain plastic products on the environment, in particular the aquatic environment, and contributing to the functioning of the internal market.

Member States have two years to bring into force the laws, regulations and administrative provisions to comply with the SUP Directive, i.e. they have to transpose the SUP Directive *by 3 July 2021*.

In addition, in line with the objective of the Directive to safeguard the functioning of the internal market, article 17(1) (second subparagraph) provides for specific deadlines for the uniform application of a number of measures, namely:

- Restrictions on placing on the market (bans) for products listed in Part B of the Annex² and products made from oxo-degradable plastic *from 3 July 2021*;

¹ Directive (EU) 2019/904 of the European Parliament and the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ L 155, 12.6.2019, p. 1).

- Product requirements for beverage containers (tethered caps and lids) *from 3 July 2024*;
- Marking requirements for sanitary towels (pads), tampons, tampon applicators, wet wipes, tobacco products with filters, filters marketed for use in combination with tobacco products and cups for beverages *from 3 July 2021*.

Specific deadlines are also envisaged for the introduction of extended producer responsibility for single use plastic products listed in Part E, namely, *by 31 December 2024*. Existing schemes and those in relation to tobacco products with filters made of plastic must be adapted to the requirements of the SUP Directive *by 5 January 2023*.

Subject to the specific deadlines established in Article 17, second sub-paragraph (for the application of the bans, product and marking requirements), Member States may transpose and apply the requirements of the SUP Directive ahead of the transposition deadline. For example, Member States may apply market restrictions³ adopted under **Article 4** (consumption reduction) for the purpose of preventing products from becoming litter if these comply with the requirements of that article, namely, that the products subject to market restrictions are substituted with **alternatives that are re-usable or do not contain plastic**. Biodegradable single-use plastic products continue to be plastic as defined in Article 3(1) of the SUP Directive and non-reusable, and hence cannot be considered 'alternatives' in the sense of Article 4(1).

Furthermore, it is important to recall that the SUP Directive requires any draft measures transposing consumption reduction measures pursuant to Article 4(1), to be notified to the Commission under the Single Market Transparency Directive⁴ where so required by the latter. The Single Market Transparency Directive requires Member States to communicate technical regulations⁵ at the draft stage to the Commission. This obligation applies to all draft technical measures that may be adopted by the Member States pursuant to the SUP Directive, as specified in the EU Transparency Directive⁶.

In accordance with Article 193 of the Treaty on the Functioning of the EU, Member States are also required to notify national transposition measures that are stricter than those in the SUP Directive, should they be adopted. Such measures have to comply with the Treaty requirements and cannot be contrary to secondary EU law. In particular, Member States must demonstrate that the measure in question is adequate and does not go beyond what is necessary to attain the objective of preventing and reducing the impact

² Cotton bud sticks, cutlery, plates, straws, beverage stirrers, sticks to be attached to balloons, food and beverage containers, as well as cups for beverages made of expanded polystyrene.

³ The Directive specifies that these market restrictions apply in derogation of Directive 94/62/EC on packaging and packaging waste, and thus apply to SUP products, which are packaging.

⁴ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1–15).

⁵ Pursuant to Article 1(1)(f) of Directive (EU)2015/1535 "*technical regulation*' means *technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 7, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider*".

⁶ To the extent that such measures fall under the definition of "technical regulation", as laid down in the Directive (EU) 2015/1535.

of certain plastic products on the environment and does not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Finally, I would also like to draw your attention to the need to ensure that the national transposition measures comply with the EU hygiene and food safety regulations, in particular Regulation (EC) 178/2002⁷.

In conclusion, the Commission services invite you to respect the following principles during the transposition period:

- Respect the application deadlines in Article 17(1), second sub-paragraph, of the SUP Directive, i.e. not to apply measures such as bans on single use plastic products and marking of sanitary items *before* the 3rd of July 2021. A harmonised application of these rules across the EU is necessary to ensure the proper functioning of the internal market, and give sufficient time to economic operators to adapt their production and business models.
- Notify the Commission of any technical regulations at the draft stage, in particular those aiming to transpose Article 4(1), pursuant to the Single Market Transparency Directive where so required by that Directive⁸. Notify planned national transposition measures that are stricter than those in the Directive while demonstrating that the measures in question are proportionate and non-discriminatory.
- Not to introduce single use plastic market restrictions based on substitution with 'biodegradable' single use plastic alternatives because, in accordance with Article 4 of the SUP Directive, this is not a valid justification to introduce market restrictions in derogation of Article 18 Directive 94/62/EC on Packaging and Packaging Waste. Please note that the SUP Directive's definition of plastic includes biodegradable plastics, and no exceptions are provided for biodegradable plastic products.
- As far as transposing legislation that has already been adopted or is in the process of being adopted, ensure that they are in full conformity with the Directive and respect the deadlines as set out therein.

Pursuant to the SUP Directive, the Commission will have to prepare Guidelines on Single Use Products covered by the Directive and the litter clean-up costs under the extended producer responsibility obligations, as well as the implementing acts on marking, calculation and verification of the different targets and reporting.

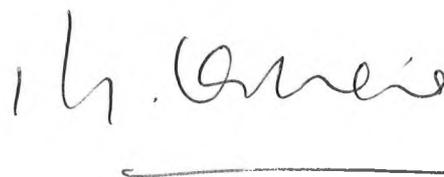
A group of consultants led by Ramboll, supported by Deloitte, Prognos, IEEP and Wood, has been selected to assist the Commission in these tasks. The consultants will carry out a study that has just been launched. As part of the study, the consultants will conduct stakeholder consultations and workshops in autumn. We count on your participation in this process to ensure a full and harmonised application of the new rules across the Member States.

⁷ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1–24).

⁸ For further information on the functioning of the Single Market Transparency Directive, see <https://ec.europa.eu/growth/tools-databases/tris/en/>.

My services, and in particular the colleagues in unit ENV.B3 in charge of waste policy, stand ready to assist you and welcome an open dialogue on any questions you may have in this respect.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Calleja', with a horizontal line underneath it.

Daniel Calleja

c.c.:

Mr. Ciobanu Dordea, Director ENV(E); Mr Kestutis Sadauskas, Director ENV(B), Mr. Nunes de Almeida, Director GROW(B); Carlo Pettinelli, Director GROW (D)