

## The European Commission Proposes Restrictions on Single Use Plastics

### IN SHORT

**The Situation:** Current EU legislation does not address management of single use plastic products.

**The Result:** Following its previous example of light-weight plastic carrier bags, the European Commission therefore proposes a Directive on the reduction of the impact of certain plastic products on the environment, which specifically targets 10 sets of single use plastic items, and fishing gear containing plastic.

**Looking Ahead:** It is expected that the new Directive on single use plastic products will improve the environmental situation of marine litter and at the same time will diminish the risk of potential EU market fragmentation in case an increasing number of Member States were to adopt national legislation.

On May 28, 2018, the European Commission ("Commission") published its [Proposal](#) for a Directive on the reduction of the impact of certain plastic products on the environment ("Proposal").

The Proposal addresses gaps in the below-referenced Circular Economy Package of legislation, as well as the EU Plastics Strategy, and is aimed at the prevention and reduction of plastic marine litter from 10 sets of single use plastic ("SUP") items, and fishing gear containing plastic. Article 3 (2) of the Proposal defines a SUP as: "[...] a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to the producer for refill or re-used for the same purpose for which it was conceived."

Although a Directive typically leaves Member States with more flexibility in choosing the implementation means, the Proposal will actually impose new harmonized obligations on the plastics industry and will introduce a number of immediate restrictions and/or bans on plastic products, such as certain types of food contact materials ("FCM"). The measures are explained in parts A to G of the technical Annex to the Proposal and are summarized in the following table from the Explanatory Memorandum to the Proposal.

|  | Consumption reduction | Market restriction | Product design requirement | Marking requirements | Extended producer responsibility | Separate collection objective | Awareness raising measures |
|--|-----------------------|--------------------|----------------------------|----------------------|----------------------------------|-------------------------------|----------------------------|
| Food containers                        | ●                     |                    |                            |                      | ●                                |                               | ●                          |
| Cups for beverages                     | ●                     |                    |                            |                      | ●                                |                               | ●                          |
| Cotton bud sticks                      |                       | ●                  |                            |                      |                                  |                               |                            |
| Cutlery, plates, stirrers, straws      |                       | ●                  |                            |                      |                                  |                               |                            |
| Sticks for balloons                    |                       | ●                  |                            |                      |                                  |                               |                            |
| Balloons                               |                       |                    |                            | ●                    | ●                                |                               | ●                          |
| Packets & wrappers                     |                       |                    |                            |                      | ●                                |                               | ●                          |
| Beverage containers, their caps & lids |                       |                    | ●                          |                      | ●                                |                               | ●                          |
| - Beverage bottles                     |                       |                    | ●                          |                      | ●                                | ●                             | ●                          |
| Tobacco product filters                |                       |                    |                            |                      | ●                                |                               | ●                          |
| Sanitary items:                        |                       |                    |                            |                      |                                  |                               |                            |
| - Wet wipes                            |                       |                    |                            | ●                    | ●                                |                               | ●                          |
| - Sanitary towels                      |                       |                    |                            | ●                    |                                  |                               | ●                          |
| Lightweight plastic carrier bags       |                       |                    |                            |                      | ●                                |                               | ●                          |
| Fishing gear                           |                       |                    |                            |                      | ●                                |                               | ●                          |

In essence:

- Where no suitable and more sustainable alternatives exist, the Member States should set appropriate measures to reduce the consumption of particular SUP products—e.g., imposition of reduction targets, assurance that alternative products are available at the point of sale to the final consumer, and that SUP products are not provided free of charge (Article 4).
- Where alternatives are readily available and affordable, SUP products will be banned (Article 5)—e.g., plates, straws, drink stirrers, plastic cotton buds, cutlery, and sticks for balloons, unless they are made of more sustainable materials.

- Some SUP products will have to comply with design requirements—e.g., drinks containers made of plastic may only be placed on the market, if their caps and lids cannot be removed (Article 6).
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- The Proposal will introduce new compliance rules for plastics manufacturers and importers. Notably, Article 8 envisages an extended producer responsibility, whereby the economic operators will have to contribute to the costs of waste management, clean-up, and consumer awareness raising measures.
- Within the producer responsibility scheme, the Member States will have to collect 90 percent of the SUP drink bottles by 2025 (annually w/w).

The Proposal must be adopted by the two colegislators (Council and European Parliament), which are urged to have a final vote in the first half of 2019. Member States will then have two years to transpose the rules of the Directive into national law. In this regard it is noted that several Member States have existing regulations on SUP. For example:

- In France, plastic cups, glasses, and plates, and the plastic sticks of cotton buds will be banned from the French market as of January 2020 at the latest, unless they can be composted with other domestic composting matter and are made, in whole or in part, of bio-based matter.
- Spain has introduced legislative amendments to ban, as of January 2020, the use of plastic plates, glasses, cups, disposable cups, cutlery, and straws, unless they are made of at least 50 percent biodegradable substances.
- In March 2018, the UK Department, for Environment, Food & Rural Affairs ("DEFRA") announced that it will introduce a deposit return scheme for single use drinks containers. This measure will apply to glass, metal, and SUP drink containers and not just plastic containers.

By way of background, the Proposal complements existing acts and ongoing legislative initiatives of a more general nature. In particular, it is an addition to the measures already envisaged under the EU Plastics Strategy adopted at the beginning of 2018 (e.g., REACH restrictions for deliberately added microplastics in preparations (e.g., cosmetics), oxo-plastics, and microplastics coming from other sources (e.g., tires, plastic pallets, and textiles)), as well as the broader waste package reform within the Commission Circular Economy Package and amendments to the Packaging Waste Directive providing for a ban on free-of-charge light weight plastic carrier bags.

## KEY TAKEAWAY

The new Directive on single use plastic products will be a challenge for the EU plastics industry as well as for consumers. It introduces product design and marking requirements and will ban certain types of products. It remains to be seen how the Member States will vote on this controversial Commission Proposal.



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**JONES DAY**  
COMMENTARY  
JUNE 2018

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**The Situation:** Current EU legislation does not address management of single use plastic products.

**The Result:** Following its previous example of light-weight plastic carrier bags, the European Commission therefore proposes a Directive on the reduction of the impact of certain plastic products on the environment, which specifically targets 10 sets of single use plastic items, and fishing gear containing plastic.

**Looking Ahead:** It is expected that the new Directive on single use plastic products will improve the environmental situation of marine litter and at the same time will diminish the risk of potential EU market fragmentation in case an increasing number of Member States were to adopt national legislation.

On May 28, 2018, the European Commission ("Commission") published its [Proposal](#) for a Directive on the reduction of the impact of certain plastic products on the environment ("Proposal").

The Proposal addresses gaps in the below-referenced Circular Economy Package of legislation, as well as the EU Plastics Strategy, and is aimed at the prevention and reduction of plastic marine litter from 10 sets of single use plastic ("SUP") items, and fishing gear containing plastic. Article 3 (2) of the Proposal defines a SUP as: "[...] a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to the producer for refill or re-used for the same purpose for which it was conceived."

Although a Directive typically leaves Member States with more flexibility in choosing the implementation means, the Proposal will actually impose new harmonized obligations on the plastics industry and will introduce a number of immediate restrictions and/or bans on plastic products, such as certain types of food contact materials ("FCM"). The measures are explained in parts A to G of the technical Annex to the Proposal and are summarized in the following table from the Explanatory Memorandum to the Proposal.

|  | Consumption reduction | Market restriction | Product design requirement | Marking requirements | Extended producer responsibility | Separate collection objective | Awareness raising measures |
|--|-----------------------|--------------------|----------------------------|----------------------|----------------------------------|-------------------------------|----------------------------|
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| Cups for beverages                     | ●                     |                    |                            |                      | ●                                |                               | ●                          |
| Cotton bud sticks                      |                       | ●                  |                            |                      |                                  |                               |                            |
| Cutlery, plates, stirrers, straws      |                       | ●                  |                            |                      |                                  |                               |                            |
| Sticks for balloons                    |                       | ●                  |                            |                      |                                  |                               |                            |
| Balloons                               |                       |                    |                            | ●                    | ●                                |                               | ●                          |
| Packets & wrappers                     |                       |                    |                            |                      | ●                                |                               | ●                          |
| Beverage containers, their caps & lids |                       |                    | ●                          |                      | ●                                |                               | ●                          |
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| Tobacco product filters                |                       |                    |                            |                      | ●                                |                               | ●                          |
| Sanitary items:                        |                       |                    |                            |                      |                                  |                               |                            |
| - Wet wipes                            |                       |                    |                            | ●                    | ●                                |                               | ●                          |
| - Sanitary towels                      |                       |                    |                            | ●                    |                                  |                               | ●                          |
| Lightweight plastic carrier bags       |                       |                    |                            |                      | ●                                |                               | ●                          |
| Fishing gear                           |                       |                    |                            |                      | ●                                |                               | ●                          |

In essence:

- Where no suitable and more sustainable alternatives exist, the Member States should set appropriate measures to reduce the consumption of particular SUP products—e.g., imposition of reduction targets, assurance that alternative products are available at the point of sale to the final consumer, and that SUP products are not provided free of charge (Article 4).
- Where alternatives are readily available and affordable, SUP products will be banned (Article 5)—e.g., plates, straws, drink stirrers, plastic cotton buds, cutlery, and sticks for balloons, unless they are made of more sustainable materials.

- Some SUP products will have to comply with design requirements—e.g., drinks containers made of plastic may only be placed on the market, if their caps and lids cannot be removed (Article 6).
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- Within the producer responsibility scheme, the Member States will have to collect 90 percent of the SUP drink bottles by 2025 (annually w/w).

The Proposal must be adopted by the two colegislators (Council and European Parliament), which are urged to have a final vote in the first half of 2019. Member States will then have two years to transpose the rules of the Directive into national law. In this regard it is noted that several Member States have existing regulations on SUP. For example:

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By way of background, the Proposal complements existing acts and ongoing legislative initiatives of a more general nature. In particular, it is an addition to the measures already envisaged under the EU Plastics Strategy adopted at the beginning of 2018 (e.g., REACH restrictions for deliberately added microplastics in preparations (e.g., cosmetics), oxo-plastics, and microplastics coming from other sources (e.g., tires, plastic pallets, and textiles)), as well as the broader waste package reform within the Commission Circular Economy Package and amendments to the Packaging Waste Directive providing for a ban on free-of-charge light weight plastic carrier bags.

## KEY TAKEAWAY

The new Directive on single use plastic products will be a challenge for the EU plastics industry as well as for consumers. It introduces product design and marking requirements and will ban certain types of products. It remains to be seen how the Member States will vote on this controversial Commission Proposal.



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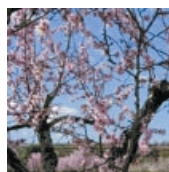


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