

Civil Society and Progressive Businesses Put to Rest Single-Use Plastic Directive Fears

The undersigned organisations, representing civil society and progressive businesses across Europe, would like to express key concerns regarding the statement which sixty-eight packaging value chain associations recently issued on the European Commission's proposal on single-use plastics.¹ We believe there are several points that need both greater contextualisation and greater clarification. These are outlined in the response statement below.

Plastics account for 85% of marine litter, and packaging items comprise several of the top ten items found as marine plastic pollution in Europe. Currently, plastic packaging is almost exclusively single-use, and causes significant environmental and socio-economic damage. Plastic pollution harms biodiversity and increases greenhouse gas emissions as well as impacting on tourism, fisheries and public safety. Plastic packaging for single-use applications is neither efficient nor sustainable.

It is clear that a significant share of all plastic pollution could be avoided by ending single-use plastic packaging and the unnecessary use of plastic in items that commonly leak into the environment. Furthermore, this is an opportunity for considerable innovation in alternative packaging methods and models. This is exactly what the Commission's proposal² seeks to encourage: the elimination of unnecessary single-use plastics; incentives for reduced consumption; improved design; a transition to reusable systems; high collection rates; and producer responsibility. These are a first step, and a clear opportunity, for Member States and businesses to meaningfully tackle plastic pollution.

Below are the principal points made in the packaging industry's statement with further contextualisation and clarification from civil society and progressive businesses:

1 - The legal base for the single-use plastics directive must be Environment

The Circular Economy Package constitutes four separate legislative proposals to amend six different EU waste directives, namely the Waste Framework Directive, Landfill Directive, Packaging and Packaging Waste Directive, Batteries Directive, WEEE Directive on electronic waste and End-of-Life Vehicles Directive. Each amending act to these waste directives was proposed and adopted under an environment legal basis, except the Packaging and Packaging Waste Directive amending act, which was approved under an internal market legal base. As part of the *European Strategy for Plastics in a Circular Economy*, additional legislation specific to the problem of marine plastic pollution was proposed, including this most recent proposal for a Directive on the reduction of the impact of certain plastic products on the environment (single-use plastics directive)³. According to well-established case law, the appropriate legal base is that which constitutes the main or predominant purpose or component of the legislation, which here is clearly environmental protection.⁴ Thus, not only is the environment legal base consistent with that of the

¹ <http://www.amchameu.eu/position-papers/joint-statement-packaging-value-chain-associations-single-use-plastics-proposal>

² http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_proposal.pdf

³ http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_proposal.pdf

⁴ See e.g. Case C-178/03 *Commission v Parliament and Council*, paragraph 42; Case C-155/07 *Parliament v Council*, paragraph 35.

Circular Economy Package as a whole, it is also appropriate to the proposed single-use plastic directive - all products addressed in this directive, including those products deemed as packaging, must be subject to an environmental legal base. The notion advanced in the *Joint Statement from 68 Packaging Value Chain Associations* that policymakers should include language privileging the Packaging and Packaging Waste Directive seems like a backdoor attempt to change the legal base of the single-use plastic directive and, in addition to being legally suspicious, could have the practical implication of potentially precluding important Member State action on these significant contributors to marine plastic pollution.

As much as the Packaging and Packaging Waste Directive includes limited environmental requirements, these will not address the EU's commitment to achieve a 30% reduction in marine litter from the top 10 items responsible for marine pollution by 2020, to ensure recyclability of all plastic packaging on the EU market by 2030, and to reduce consumption of single-use plastics and the intentional use of microplastic ingredients in products. These commitments are included in both the *European Strategy for Plastics in a Circular Economy* and the Circular Economy Package under the Sustainable Consumption and Production Action Plan. Nor will they address the EU's commitment to meet UN SDG 14.1 target to "by 2025, prevent and significantly reduce marine pollution of all kinds, particularly from land-based activities, including marine debris" as well as UN SDG 12 to, by 2030, achieve the sustainable management and efficient use of natural resources.

The legal base fit to meet these objectives for plastic packaging, in relation to preventing plastic pollution, must be Article 192 of the Treaty on the Functioning of the European Union, i.e. Environment.

2 - Environmental legislation is not a threat to the internal market

Environmental legislation adopted under Article 192 of the Treaty on the Functioning of the European Union is not incompatible with the internal market and the risk of market fragmentation is being grossly misrepresented. In arguing against Articles 4 and 7 in their current form, the *Joint Statement from 68 Packaging Value Chain Associations* selectively cites the Commission statement that there is a "risk of market fragmentation when Member States take measures in an uncoordinated manner," failing to acknowledge however that it is for this very reason (the risk of market fragmentation) that the Commission believes action at the EU level is necessary: "For this reason, it is necessary to establish a harmonised legislative framework setting common objectives and measures at EU level to prevent and reduce marine litter so that Member State measures are focused to specific single use plastic products and fishing gear containing plastic."

To this end, Article 4 requires Member States to take "the necessary measures to achieve a significant reduction in consumption" of single use plastic products listed in Part A, namely beverage cups and food containers for immediate consumption. To reduce consumption of these products, Article 4 sets out a series of measures that may be taken to achieve this reduction. Moreover, with respect to the marking requirements in Article 7, the Commission will "adopt an implementing act laying down the specifications for the marking" to ensure a harmonised approach and prevent any market fragmentation. The fact that the legislation is being adopted under an environmental legal base does not exacerbate this risk nor require reference to Article 18 of the Packaging and Packaging Waste Directive, which would only create confusion.

EU Treaties provide specific safeguards to allow the EU and Member States to protect the environment while also respecting the internal market. For example, Article 193 of the Treaty on the Functioning of the European Union states that Members States have the freedom to go beyond the various environmental

measures established at the European level, provided that these measures comply with the Treaties, including Articles 34-36 of the Treaty on the Functioning of the European Union on the free movement of goods, which require such measures to be proportional and non-discriminatory, no more obstructive than other equally effective measures, and compatible with the achievement of the objective.⁵

Thus, the proposed measures in Articles 4 and 7 will not prohibit the free movement of packaging and packaging goods, the Environment legal base is appropriate and does not require making references to the Packaging and Packaging Waste Directive which attempt to restrict the ability of Member States to adopt ambitious measures.

3 - Ensure an open rather than a closed product list

The possibility for Member States to add additional products to the lists in the annexes during transposition is unlikely to create legal uncertainty or risk distortive consequences for the internal market. Calls to close the product list should be rejected.

First, it would restrict the ability of Member States to take action on single-use products not listed in the annexes no matter how environmentally urgent action on those products may be in that Member State, violating the principles of proportionality and subsidiarity.

Second, it precludes action on non-listed single-use products whereas Article 193 of the Treaty on the Functioning of the European Union specifically allows for more stringent protective measures under legislation adopted under an environmental legal base so long as such measures are compatible with EU Treaties.

Member States must be allowed to add additional products to the Annex lists during transposition, in order to address any other nationally significant sources of plastic pollution.

4 - Any clarifications to definitions must not narrow the scope of the directive

While there are some minimal clarifications that could be made to the definitions, this should be done from the perspective of preventing plastic pollution not of weakening the directive and narrowing its scope to a small range of products.

We support the proposed definition of plastics, with the amendment that it does not need to “function as a main structural component of final products”. Plastic composite materials (e.g. coffee cups) should not be exempted given that these also contribute to plastic pollution and, in many cases, are very difficult to economically recycle and achieve low collection rates.

With respect to the definition of litter clean-up, this should cover all activities carried out by, or on behalf of, municipalities and other public authorities, including clean-up of littering in urban, rural, freshwater, coastal and marine environments.

5 - Companies must take responsibility for waste prevention and clean-up

The measures proposed in the single-use plastics directive are consistent with the polluter-pays principle, and aim to ensure that producers of the relevant single-use plastics, and fishing gear, take responsibility

⁵ See e.g. Case 219/07 *Nationale Raad van Dierenkwekers en Liefhebbers VZW*; Case C-64/09 *Commission v France*.

for the waste phase of their products, including both the costs of waste management and clean-up. ***These measures facilitate positive incentives for producers to better design products for reuse and recycling, as well as to improve collection rates.*** Coverage of clean-up costs (to date carried by municipalities, NGOs and volunteers) is essential in incentivising producers to support infrastructure, such as deposit return schemes, that improve collection rates. However, many companies are lobbying against such schemes, despite their demonstrated effectiveness at preventing littering.

The cost represented by these activities will be progressively reduced in accordance with the reduction of waste leakage, therefore representing an incentive to address corresponding issues (collection systems, consumer information on product use and disposal, best practices etc).

6 - Bans are necessary

It is important to acknowledge that the Commission already performed an impact assessment with the most up-to-date available information and therefore we do not believe having another impact assessment is needed. We support expanding the monitoring provisions of the directive in order to collect data on the consumption of single-use plastic products, and the impacts of the measures, and believe that this provides a more robust and expeditious approach to tackling the plastic pollution crisis than undertaking further impact assessments at the national level prior to implementation of this directive.

Bans of unnecessary and unsustainable single-use products will certainly prove more efficient in halting marine pollution than the development of voluntary agreements which are not monitored independently and have no compliance or enforcement penalties or mechanisms. Many countries, both within and outside Europe, have already announced or implemented specific bans at the national level.

7 - Caution in the use of Life Cycle Assessments

In principle, Life Cycle Assessment (LCA) can provide a comprehensive framework for analysing and assessing the environmental impact of packaging. However, in a recent study conducted by the Institute for European Environmental Policy⁶, LCA studies on packaging were analysed, concluding that the scope and methodology of these should be improved. Concretely, the study found the following:

- LCAs focus on very few environmental indicators, mainly greenhouse gas emissions, and in many cases ignore the end of life impact of packaging. While we acknowledge that greenhouse gas emissions are highly relevant, other environmental impacts should also be considered.
- When end of life is taken into account by LCA studies, inappropriate disposal is not. Analyses assume 100% collection of waste streams go to landfill, incineration or recycling, which is at odds with reality, where a substantial fraction of packaging ends up in the environment.
- In the cases when recycling is assumed to take place, local conditions for waste management are clearly important. Assuming the existence of waste management infrastructure equipped to deal with all types of packaging does not match reality.

While LCAs can provide an insight into the impacts of materials, the definition of good packaging will often end up being determined based on whether the priority is to reduce greenhouse gas emissions or reduce physical waste, ignoring many other impacts including health impacts and pollution impacts.

⁶ <https://www.foeeurope.org/unwrapped-throwaway-plastic-food-waste>

In conclusion, Life Cycle Assessments should be used with caution and should look to better address and balance the key sustainability challenges for the packaging sector, including impacts of packaging on health and marine pollution, and should better investigate reusable alternatives.

8 - Packaging design requirements are key in preventing plastic pollution

The *Joint Statement from 68 Packaging Value Chain Associations* expresses a general concern about Articles 5 and 6 of the single-use plastics directive, without any additional details before concluding that the Packaging and Packaging Waste Directive should remain the only legal provision concerning eco-design requirements for packaging. It is unclear what the basis is for this concern and notion.

Article 5 simply requires market restrictions for certain single-use plastic products, and has nothing to do with the design of any products that fall outside its scope. Article 6 simply requires plastic caps and lids of beverage containers to be attached to the container to prevent their loss to the environment – the design is not at issue once the cap or lid is attached – and requests the Commission to request the European standardisation organisations to develop harmonised standards relating to that requirement, which is a very common approach that is also considered industry friendly.

These two articles are specific to - and inspired by - the prevention of marine plastic pollution and therefore are appropriately included here.

9 - Make Europe a leader in curbing plastic pollution

This directive is a critical opportunity to prevent plastic pollution at source and greatly reduce Europe's contribution to the global plastic pollution crisis.⁷ There is overwhelming evidence of the negative impacts of plastic pollution on marine, freshwater and terrestrial biodiversity and emerging evidence of significant human health impacts.

The proposed single-use plastics directive, in its present form, could reduce pollution by more than half for the most littered single-use plastic items, avoiding environmental damage which would otherwise cost €22 billion by 2030, and avoiding the emission of 3.4 million tonnes of CO₂ equivalent by 2030.⁸ These figures could be even higher, should the measures proposed be further strengthened.

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⁷ Considered collectively, coastal EU countries rank eighteenth in a recent assessment of global sources of plastic waste inputs from land. Jambeck, et al. 2015. Plastic waste inputs from land into the ocean. *Science* 347(6223): 768-771.

⁸ European Commission, 2018/072. Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment.

#breakfreefromplastic

#breakfreefromplastic is a global movement envisioning a future free from plastic pollution, representing nearly 1,300 organisations from across the world and 62 active members in Europe.

RETH!NK PLASTIC

Rethink Plastic is the alliance of #breakfreefromplastic members working with European policy makers to stop plastic pollution at source, through reduction, better design and better management of plastics.



Ecopreneur is a formation of seven associations from different countries in the European Union: UnternehmensGrün (Germany), Grüne Wirtschaft (Austria), Entreprenre Vert (France), MVO Nederland (Netherlands), SANNAS (Spain), SEA (Belgium) and Circular Hungary, together representing more than 4500 sustainable businesses, mostly SMEs.



WWF's mission is to stop the degradation of the planet's natural environment and build a future in which humans live in harmony with nature.