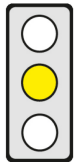


## KEY ISSUES

**Aim of the Directive:** Marine pollution from plastic products and packaging will be reduced.

**Affected parties:** Consumers, manufacturers and traders in single-use plastic products, catering, fisheries



**Pro:** (1) The ban on free “take-away packaging” and single-use cups in the catering sector is an effective way of reducing plastic waste.

(2) A deposit refund scheme will create the incentive to collect and return empty single-use drinks bottles.

**Contra:** A ban on drinking straws and plastic cutlery massively reduces freedom of choice for the consumer and will deprive the companies, that manufacture and distribute these products, of the basis of their business. Since there are also less intrusive methods, it is also in breach of the principle of proportionality.

The most important passages in the text are indicated by a line in the margin.

## CONTENT

### Title

**Proposal COM(2018) 340** of 28 May 2018 for a **Directive on the reduction of the impact of certain plastic products on the environment**

### Brief Summary

#### ► Context and objectives

- Every year in the EU, 150,000 to 450,000 tonnes of plastic waste ends up in the sea [SWD(2018) 254, p. 10].
- This plastic waste may [p. 1]
  - endanger marine animals and birds and
  - also damage human health via the food chain.
- Beach litter counts in the EU have shown that plastic makes up 80 to 85% of marine litter. Of this plastic waste [Recital 5]
  - 50% is made up of single-use plastic items such as bottles, straws and bags and
  - 27% is fishing-related items such as nets and fishing rods.
- To protect the marine environment, the proposed new Directive will regulate the ten single-use items that are most commonly found during beach clean-ups as well as fishing gear which together makes up 70% of plastic waste in the seas [p. 1].
- For this purpose, it lays down various requirements – consumption reduction, marketing ban, product requirements, separate collection, marking and information requirements, “extended producer responsibility” (EPR) – for certain product types contained in lists [Annex Parts A–G] specific to each requirement.

#### ► Reducing the consumption of single-use plastic packaging

- Member States are already required to cut the consumption of lightweight plastic carrier bags by [Art. 4 (1a) Packaging Directive (94/62/EC)]
  - setting a maximum consumption limit of an average of 90 plastic bags per capita per year by the end of 2019 and an average of 40 by the end of 2025 or
  - by bringing in a ban on the provision of free plastic bags at the point of sale by the end of 2018.
- Member States have to take the “necessary measures” in order to achieve a “significant consumption reduction”, within 8 years after entry into force of the Directive [Art. 4 (1) in conjunction with Annex Part A],
  - of single-use plastic packaging in the catering sector that is used for food that does not “require any further preparation” and is intended either for “immediate consumption from the receptacle on-the-spot” or as a “take-away meal” – e.g. “fast-food containers” and “wrappers containing food”;
  - of single-use cups.
- Member States can decide whether to achieve these consumption reductions by [Art. 4 (1)]
  - a ban on giving away these single-use plastic products to consumers,
  - laying down national consumption reduction targets or
  - obliging catering operators to provide reusable alternatives.

► **Ban on marketing certain single-use plastic products**

Member States have to ban the placing on the market of the following single-use plastic products for which there are “suitable and more sustainable alternatives that are also affordable” made from other materials [Recital 12] [Art. 5 in conjunction with Part B]:

- straws,
- single-use plastic cutlery and plates,
- cotton buds,
- beverage stirrers and
- sticks used to hold balloons.

► **Product requirements and separate collection for single-use drinks bottles**

- In order to reduce marine pollution caused by plastic lids from single-use drinks bottles [Recital 13], bottle and lid must remain attached to one another after opening [Art. 6 in conjunction with Annex Part C].
- In order to improve the recycling of single-use plastic drinks bottles Member States must ensure that 90% of single-use drinks bottles are collected separately by 2025 [Art. 9 in conjunction with Annex Part F]. For this, the Commission recommends the introduction of deposit refund schemes [p. 12 et seq. and Recital 20].

► **Marking and information requirements**

- Hygiene articles such as wipes, tampons and sanitary pads are often inappropriately disposed of through the sewer and, where filtering by sewage plants is poor, can easily end up in the sea [Recital 14].
- Member States must ensure that hygiene products containing plastics, as well as balloons, bear a conspicuous, clearly legible marking informing consumers of [Art. 7 in conjunction with Annex Part D]
  - appropriate waste disposal options,
  - the negative environmental impacts of inappropriate waste disposal,
  - the presence of plastics in the product.
- Member States must provide information about how single-use plastic products and fishing gear containing plastics [Art. 10 in conjunction with Annex Part G]
  - can be appropriately disposed of,
  - can detrimentally affect the environment if inappropriately disposed of.

► **Extended producer responsibility (EPR)**

- Member States must establish “extended producer responsibility schemes” (EPR schemes) to ensure that manufacturers of certain plastic products bear the costs of [Art. 8]
  - the collection, transport and treatment of the resulting waste,
  - measures to clean up plastic waste,
  - measures to raise user awareness of the appropriate disposal of plastic waste.
- This obligation to establish EPR schemes applies to [Annex Part E]
  - balloons,
  - take-away packaging and single-use cups,
  - wet wipes,
  - lightweight plastic bags as well as
  - synthetic cigarette filters,
  - fishing gear containing plastic.

## Main Changes to the Status Quo

- Until now, EU legislation on the reduction of single-use plastic packaging only related to light-weight plastic bags. In future, there will also be EU legislation to reduce take-away packaging and single-use cups,
- New: the marketing of some single-use plastic products – such as straws and single-use plastic cutlery – will be completely banned.
- In future, manufacturers of certain plastic products will have to bear the cost of collecting and disposing of the resulting waste and for cleaning up beaches and awareness campaigns.

## Statement on Subsidiarity by the Commission

According to the Commission, marine pollution from plastics is a cross-border problem that requires “coherent and comprehensive” regulation at EU level. In addition, the internal market will become fragmented if the Member States take uncoordinated measures to reduce plastic waste in the sea (see p. 6 et seq.).

## Policy Context

In 2013, the Commission set out possible measures for reducing plastic waste in the environment in a Green Paper [COM(2013) 123, see [cepPolicyBrief 2013/19](#)]. The amendment made to the Packaging Directive [94/62/EC; COM(2015) 596, see [cepPolicyBrief 2016/3](#)] in 2018 provides for a mandatory recycling target for plastic packaging in all Member States of 50% by 2025 and 55% by 2030 as well as the introduction of EPR schemes for all packaging waste by the end of 2024. This proposal for a Directive builds on the Strategy on Plastics in the Circular Economy submitted by the Commission in January [COM(2018) 28, see [cepPolicyBrief 10/2018](#)].

## Legislative Procedure

|             |  |
|-------------|--|
| 28 May 2018 | Adoption by the Commission   |
| Open        | Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force |

## Options for Influencing the Political Process

|  |  |
|--|--|
| Directorates General:                  | DG Environment (leading)   |
| Committees of the European Parliament: | Environment, Public Health and Food Safety (leading), Rapporteur: Frédérique Ries (ALDE Group, B)  |
| Federal Ministries:                    | Environment (leading)  |
| Committees of the German Bundestag:    | Environment, conservation and nuclear security (leading); European Union Affairs; Legal Affairs and Consumer Protection; Economic Affairs and Energy |
| Decision-making mode in the Council:   | Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)   |

## Formalities

|                                 |  |
|---------------------------------|--|
| Competence:                     | Art. 192 TFEU (Environment)                    |
| Form of legislative competence: | Shared competence (Art. 4 (2) TFEU)            |
| Legislative procedure:          | Art. 294 TFEU (ordinary legislative procedure) |

# ASSESSMENT

## Economic Impact Assessment

**Marine pollution from plastic waste constitutes a cross-border environmental problem and therefore requires regulation at least at EU level, preferably at global level.**

Plastic waste principally ends up in the sea due to inappropriate disposal by careless consumers. Effective regulation which penalises such behaviour is virtually impossible because, ultimately the behaviour of millions of consumers cannot be controlled. For this reason, legislation aimed at influencing consumer behaviour or the environmental impact of the careless disposal of waste by consumers, in order to protect the marine environment, is basically justified.

Although the choice of measures open to the Member States, to comply with their obligation to reduce the consumption of “take-away packaging” and single-use cups, does reduce entrepreneurial freedom to a certain extent, as experience with the existing rule on plastic bags has shown, **the suggested option of a ban on giving away free e.g. “take-away packaging” and single-use cups in the catering industry, in particular, is an effective means of reducing plastic waste.** Catering businesses have a choice between refraining from the use of such packaging or charging for it. Most consumers will react to such a price signal and reduce the use of take-away packaging and single-use cups.

**The proposed ban on drinking straws and plastic cutlery, on the other hand, massively reduces freedom of choice for the consumer and will deprive the companies, that manufacture and distribute these products, of the basis of their business.** The reasoning that these products can easily be replaced with “suitable, sustainable and affordable alternatives” is not valid because in a market economy it is not the legislator who decides how attractive a product is but the consumer by way of his buying behaviour. The fact that the vast majority of drinking straws and single-use cutlery being sold is made of plastic shows that alternatives from wood or paper, if available at all, are less attractive to the consumer, at least currently.

In addition, a general ban on these products is not accurately targeted because the likelihood of e.g. a drinking straw ending up in the sea depends greatly on where it is used. Therefore, it should only be possible for local authorities to ban the use of single-use plastic products, as a last resort, in the vicinity of particularly sensitive ecosystems.

The EU’s requirement for 90% of single-use plastic drinks bottles to be collected separately by 2030 can – as the Commission recommends – only be achieved by introducing a mandatory deposit refund scheme for single-use drinks

bottles. **A deposit refund scheme** is a highly effective way of counteracting the inappropriate disposal of single-use plastic drinks bottles in the environment because it **creates the incentive to collect and return empty plastic single-use drinks bottles**. Separate collection also allows for purer and therefore higher quality recycling of plastic bottles. The greater the purity of the material attained from the recycling process, the better it can be used as source material in the manufacture of new products. This applies in particular to its re-use in drinks bottles because it makes it easier to comply with the strict hygiene requirements in the food industry.

Inappropriate disposal of hygiene products containing plastics through the sewerage system is difficult to regulate. Marking requirements for manufacturers and information campaigns in the Member States may at least raise awareness among consumers of the fact that these products should be disposed of properly in the household waste.

Extended producer responsibility (EPR) is an effective means of providing incentives for litter reduction and increasing recyclability during the manufacture of products and packaging. **The** manufacturers of single-use plastic products which often end up in the environment, should – as the Commission proposes – be involved via EPR schemes in the **costs of clean-up operations** and consumer awareness campaigns. This applies in particular to products – such as balloons and synthetic cigarette filters –, where even normal use means they end up in the environment, because the costs of environmental pollution **should be** factored in when products are manufactured and **borne via the end-user price by consumers who ultimately cause the environmental pollution**.

## Legal Assessment

### Legislative Competency

Unproblematic. The EU may issue measures for the protection of the marine environment against plastic waste based on its general competence in the field of environmental protection [Art. 192 (1) TFEU].

### Subsidiarity.

Pollution of the marine environment by plastic products is a cross-border problem so EU legislation is compatible with the principle of subsidiarity [Art. 5 (3) TEU]. In addition, it is more sensible to establish requirements for the design, as well as the marking and information obligations, for certain plastic products, at EU level in order to avoid a fragmentation of the internal market.

### Compatibility with EU Law in other respects

**Since less intrusive means** – such as awareness campaigns and marking and information obligations – **for reducing the litter produced by certain single-use plastic products are available, a complete ban on these**, which encroaches upon the freedom of consumers and businesses, **is in breach of the principle of proportionality** [Art. 5 (3) TFEU].

### Impact on German Law

The proposed Directive requires changes to the German law on the circular economy (KrWG) and the German packaging ordinance (VerpackV).

## Conclusion

Marine pollution from plastic waste constitutes a cross-border environmental problem and therefore requires regulation at EU level. The ban on free “take-away packaging” and single-use cups in the catering sector is an effective way of reducing plastic waste. A ban on drinking straws and plastic cutlery massively reduces freedom of choice for the consumer and will deprive the companies, that manufacture and distribute these products, of the basis of their business. Since less intrusive means are available it is also in breach of the principle of proportionality. A deposit refund scheme creates the incentive to collect and return empty single-use drinks bottles. The cost of environmental clean-up operations should be borne via the end-user price by consumers who ultimately cause the environmental pollution.