

29 May 2018

## **Proposal for a Directive on the reduction of the impact of certain plastic products on the environment**

*On 28 May 2018, as part of the EU Plastics Strategy, the European Commission proposed a Directive to reduce the impact of certain plastic products in the environment. It puts forward some radical measures aimed at reducing single use plastics items in the environment. It is already highly controversial and will no doubt remain so over the coming year's negotiations.*

*Overall, the idea behind the proposal is to target products that are among the so-called "10 most found items of litter on EU beaches". The proposal defines plastics and single use plastic items and then sets out seven measures to be applied to different types of single use plastic item that are listed in an Annex. The measures envisaged are:*

- Significant consumption reductions for food & beverage service packaging
- Mandatory bans on cotton buds, cutlery, plates, straws, beverage stirrers, and balloon sticks
- Product design requirements to ensure that caps/lids stay attached to beverage containers in "use phase"
- Marking or labelling requirements on disposal options, environmental impact and presence of plastics for sanitary towels (pads), tampons and tampon applicators, wet wipes, and balloons
- Extended producer responsibility for a range of specific single use plastics items (to cover the cost of collection & treatment; awareness raising; and litter clean-up) and fishing gear (to cover the cost of collection & treatment; and, awareness raising)
- A 90% collection target for plastic bottles by 2025 via deposit return schemes or green dot schemes
- Member states will be required to run awareness-raising measures regarding the environmental impact of single use plastics products, littering and other inappropriate disposal of single use plastics products

*The proposal contains a food hygiene and food safety criteria that must be observed by member states when developing measures. Member states will also have to collect market data for products subject to the consumption reduction measures and share this with the EU.*

*The proposal will now be considered by the European Parliament and the EU Council of Ministers (the 28 EU member countries) who will jointly decide on the final text. The final content is likely to be agreed within 10 months, before the May 2019 European Parliament elections.*

- Attachment 1:** Proposal for a Directive on the reduction of the impact of certain plastic products on the environment
- Attachment 2:** Annex to the proposal for a Directive

## About this memo

The much-awaited proposal for *a Directive to reduce the impact of certain plastic products in the environment* was presented on Monday this week, 28 May. The broad lines of the proposals have been well-publicised in the press around the world but sometimes overstated in headlines.

This briefing memo aims to give Network members an overview of what is on the table, a bit of context, identify the relevance of the proposal for the Clean Europe Network's specific interest in promoting shared responsibility for litter and prevention of littering and provide some sort of the future prognosis and timetable – as far as it is possible to predict the latter with any firmness at this time.

## Is this good for litter prevention?

There is no doubt that *most of what is proposed is going to be good for the cause of litter prevention*. At the very least, the fact that this is on the table alone puts litter and littering centre stage in public debate, but perhaps in a more narrow way than the Network's broad shared responsibility approach to tackling the litter challenge.

The most striking proposal – to *make producers liable to pay for clean-up of litter* (this is left vague and could be stretched in current language to mean both land-based and marine litter) – *goes against the Network's point of view* that such an approach risks sending a message to citizens that they have “paid” for the right to litter and that someone else will clean it up.

Furthermore, *the Commission effectively avoids in this proposal any real effort to recognise the responsibility of the citizen* – the main polluter along with inadequate waste management infrastructure and systems, notably water treatment. There are measures relating to awareness-raising but this is not really characterised as behavioural change, even if one might argue that it is implicit. This is one of the recurring challenges we see with policy-makers who say that things are “implicit” but then nothing actually happens...

There is a potential greater negative. There is a risk, perhaps, that both politicians and policy-makers will feel that they have “*done their job*” by banning or restricting a few products and that the litter challenge has somehow been “*solved*”. Of course, *the comprehensive litter policy set down in the revised general waste directive* will still be there – but will it get any attention after straws and stirrers are banned and cotton bud manufacturers switch to alternative paper or wood sticks?

It is hard to say how this will finally come out. There will be fierce opposition to some of what is proposed. *At the very least, we will come out at the end, hopefully, with some focused measures to prevent some plastics litter in the future*. That can only be good!

## Some Context and Background Remarks

Firstly, *this is a proposal, not yet a law*. Even if some press coverage might give the impression that the proposed package is “signed, sealed and delivered”. It is not. There is a political and legislative negotiation to come that will involve *the European Parliament and the EU Council of Ministers* (i.e. the committee of 28 EU member state governments) who, together, *will have the final say on the content of the directive*. There is an ambition to get a deal done by *March/April next year*.

Then the 28 member countries will have to turn the objectives set down in the directive into national laws/measures. This would probably need to be done two years after the final adoption at EU level. Within the proposal there are some specific deadlines spelled out for delivering on some elements of the package. Overall, we could be looking at national transposition of the directive by mid-2021. However, there will be great effort put in to delay this so as to avoid a rush that delivers a flawed directive.

The proposal for a directive aims to target products that are among the so-called “**10 most found items of plastics litter on EU beaches and fishing gear that contains plastics**”.

The proposal puts forward some radical measures aimed at reducing such single use plastics items in the environment. It would be fair to say that the severity of the measures proposed in some cases does not reflect the relative prevalence of those items as litter.

For example, **plastics plates** would be banned but there is no evidence to suggest that these items are a major problem. On the other hand, cigarette butts are not subject to any sort of restriction. It would appear that the proposal to ban plastics plates has more to do with legitimising the French ban on “disposable plastics tableware” than targeting a balanced and proportionate measure. In France the legal challenge to the decree banning the disposable tableware has stalled – it is obvious what is happening **informally** even if the formal position is that the **Conseil d’Etat** is independent of the government...

In short, the proposal is already highly **controversial** and will no doubt remain so over the coming negotiations, however long they will take.

## The Commission

It seems rather evident that this Commission – which has not scored too highly on overall achievement so far – is seeking to ride **the current political and popular wave of attention to plastics and marine litter**. Indeed, it appears to have circumvented its own consultation and impact assessment procedures to put this proposal out. There is a general feeling that the consultation was a sham and that the Commission had already made up its mind based on politics not on sound analysis.

Our sources inside the Commission said openly that they were “going through the motions” because they were “obliged to do an online consultation”, but would not be taking it into account. Indeed, the Commission’s own **Regulatory Scrutiny Board** was highly critical of the proposed Directive – but it was largely ignored and its position overruled by the leadership, notably Vice-president Frans Timmermans.

Timmermans’ responsibilities include overseeing “**better regulation**” but he is the most overtly political member of the Commission after Jean-Claude Juncker. He has become a “convert” to the political cause of marine litter in recent months and made himself the Commission’s front man on this topic. Some may recall that it was Timmermans who advocated “killing” the circular economy package when he was first appointed. He rapidly did a U-turn, given the backlash to this idea the emanated from all sides. The point here is that **it is principally about the politics at this moment**.

**The Commission is in a hurry** as it hopes that the final decision-makers (Parliament and Council) will push this through before the European elections in 2019. That leaves just 9 or 10 working

months before the Parliament is dissolved. To put this in context, it took two and a half years for the revision of the EU waste directives to be completed (it happened mid-May, in fact).

It would be fair to say, that *many in industry feel that the Commission has not listened to them at all* and has had its mind made up on how to proceed since before consultations began. This is evidenced, in the minds of many, by the fact that the Commission employed an external consultant, Eunomia, as its principal advisor for the preparation of the EU Plastics Strategy that had a direct *conflict of interest* before its contract started.

In the two years prior to its appointment by the Commission, Eunomia publicly campaigned against so-called “single use plastics items” through high profile publications and public appearances, proposing its own recommended policies that were clearly aimed at influencing governments and the European Commission. It could not in any way be seen as an *objective* advisor.

During the period of its work for the Commission, the same consultancy prepared a lobby report for public use by a campaigning NGO “Seas at Risk” on the topic of single use plastics and marine litter, *paid for by the Commission*. The report was released at a critical moment last October (and is again being cited in the press now). In other words, *the Commission engaged a conflicted consultancy to advise it and then paid the same company to support a lobby campaign on the same topic aimed at EU legislators, including itself*. This is surprising behaviour by any standards.

We are hearing in Brussels that some interests are considering some sort of *legal challenge* to the proposal, but we have no details.

On the other hand, *lobbying NGOs have been relentless in pushing for this proposal*, treating the Commission in a very arrogant way last year in public communications, only to switch to calling them “heroes” in recent weeks.

It will not be lost on members of the Clean Europe Network that, while the Commission has been making a lot of noise on this single use plastics proposal, it has been silent on the comprehensive EU litter policy package contained in the revised Waste Directive (adopted definitively last week by the EU Council of Ministers). It seems clear that this was a political choice and confirms the view that the Commission, certainly at the top of the institution, is more interested in the current political opportunity than the quality of the policy. This approach is in line with the philosophy of being “*a political Commission*”, set down by Jean-Claude Juncker at the beginning of his presidency.

## The Proposal

The goal is “**to prevent and reduce the impact of certain plastic products on the environment, in particular the aquatic environment**”. The key features of the proposal are as follows:

### Key Definitions

- **Plastic** means a “material consisting of a polymer within the meaning of Article 3(5) of regulation (EC) No 1907/2006, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified”.

- **Single-use plastic product** is defined as “a product made wholly or partly from plastic that is not conceived, designed and placed on the market to accomplish within its lifecycle multiple trips or rotations by being refilled or re-used for the same purpose for which it was conceived”.
- **Placing on the market** means the “first making available of a product on the Union market”.
- **Making available on the market** means “any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge”.
- **Producer** means any natural or legal person that, irrespective of the selling techniques...places on the market single use plastics products...

The underlined element of the “**plastic**” definition would seem to indicate that some multi-material items are excluded from the scope. An good example would be paper cups. This view appears to be confirmed in the last two sentences of Recital (8) on page 20 where the Commission says:

*“Certain polymeric materials are not capable of functioning as a main structural component of final materials and products, such as polymeric coatings, paints, inks, and adhesives. Those materials should not be addressed by this Directive and should therefore not be covered by the definition.”*

This may well be a point of debate as the political negotiations evolve.

Likewise, the underlined element of the “**single-use plastic product**” definition would appear to leave a lot of room for interpretation in practice to include combinations of plastics and other materials.

The definition of “**producer**” combined with the definitions of “**placing on the market**” and “**making available on the market**” would appear to put the onus on what we might call “the manufacturer” to assume the financial responsibilities.

In the case of packaging, that would mean the packaging manufacturer. This is in contradiction to the established arrangements of Directive 94/62/EC on packaging and packaging waste, where the onus is on the “packer-filler” (the food company or retailer) to take the main responsibility and not the packaging manufacturer. This is reflected in the way most “green dot” schemes are structured today. This apparent contradiction, is bound to lead to confusion and to disputes.

## **7 Measures for different plastics products**

### **Consumption reduction (Article 4 / Annex Part A)**

**The proposal seeks to reduce significantly the consumption of all food & beverage service packaging containers and cups.** Plates, wrappers & packets containing food, and other beverage containers are excluded from this because they are covered by other measures, some of which are more stringent (*see below*).

Members States may choose how to achieve this reduction objective via a wide range of recommended measures such as encouraging reusable alternatives or putting charges on single use

plastic products. No targets are set in the proposal – these would be up to member states to decide. Almost certainly, EU-wide targets will be put forward by some MEPs in the upcoming negotiations.

The deadline for transposition of the Directive into national legislation is two years after it becomes EU law. Member States would then have six more years to achieve the consumption reductions – that would likely mean achieving the consumption reductions by mid-2027.

### **Restrictions on placing on the market** (Article 5 / Annex Part B)

Member States are required to ban the following products: **cotton bud sticks, disposable cutlery (e.g. forks, knives, spoons, chopsticks), plates, straws** (except for straws intended and used for medical purposes), **beverage stirrers** and **balloon sticks**.

Materials used to replace the plastics in alternative products would have to avoid any negative environmental impact. However, there is no guidance as to what those alternative materials might be, nor the criteria establishing if an alternative is actually more environmentally friendly (e.g. there is no reference to use of Life Cycle Analysis to measure the environmental impact of products).

No exemption is put forward for use of food & beverage service packaging in contexts (e.g. hospitals, penitentiary institutions or sporting events) where single use plastics products are indicated for hygiene, public health and consumer safety reasons.

The deadline for national bans would be two years after the directive becomes EU law – that would likely mean bans in place by mid-2021.

### **Product requirements** (Article 6 / Annex Part C)

The legislative proposal envisages new design requirements for “beverage containers”. This would appear to be broader than “beverage bottles” (which are specifically identified as a category in the Annex to the proposed directive). No clear definition is provided.

Specifically, the directive would require that **all beverage containers that have caps and lids with a significant part made of plastic could only be marketed in future if those caps and lids remain “attached” to the container during the “use stage” of the product.** Metal caps with a small amount of plastic film would not be covered, however.

How this works out in practical application will come down to what “attached” and “use stage” would mean in practice. Not as straightforward as it might seem. It is possible that this provision might be expanded during the legislative negotiations to cover other types of packs but it seems that the main target is the plastic screwcaps commonly used for PET drinks bottles.

The deadline for product requirements would be three years after the directive becomes EU law – that would likely mean product redesign to be compliant by mid-2022.

### **Marking requirements** (Article 7 / Annex Part D)

The proposal establishes mandatory labelling requirements for sanitary towels, tampons and tampon applicators, wet wipes (i.e. pre-wetted personal care, domestic and industrial wipes) and balloons.

This labelling must be a conspicuous, clearly legible and indelible marking concerning the negative environmental impacts of littering and other inappropriate disposal of single-use plastic product waste, including information, where appropriate, about the presence of plastics in those products.

We anticipate that there will be calls for such labelling to be required for a wider range of products.

The deadline for introducing marking requirements would be two years after the directive becomes EU law – that would likely mean labelling requirements in place by mid-2021.

### **Extended producer responsibility (1) – various items (Article 8 / Annex Part E)**

**Member States must put in place extended producer responsibility (EPR) schemes for a list of single use plastic products.** This provision covers:

- food & beverage service packaging
- flexible packets and wrappers used for food intended for immediate consumption (snacks and confectionery)
- beverage containers including caps and lids
- cups for beverages
- lightweight plastic carrier bags

All of the above are already covered in theory and practice by existing “green dot” schemes. Also included are:

- tobacco products with filters or filters sold alone
- wet wipes
- balloons

In line with the usual principles of extended producer responsibility, this provision means that the costs of collection of used single-use plastics items and their subsequent transportation and treatment must be paid for by producers. However, the proposed directive goes further by also requiring that producers pay the cost of cleaning up litter and of awareness-raising measures. An earlier draft had referred to “marine litter” but this final formulation of the requirement potentially covers litter everywhere.

As mentioned, packaging items are already covered (for collection and recycling) by the existing EPR schemes for packaging that exist across the EU, as set up under the impetus of Directive 94/62/EC on packaging and packaging waste. The “awareness-raising measures” proposed here would appear to be a superfluous duplication as far as packaging is concerned, because they are already included under the new EPR arrangements laid down in the revised EU general waste directive.

In practice, these national “green dot” schemes are not effective in collecting and recycling food & beverage service packaging, especially in out-of-home and on-the-go contexts. This provision would put these schemes under a much more stringent obligation to deliver an effective service for

food & beverage service products – which would be good news from a litter prevention point of view.

The current payments from producers to the “green dot” schemes around Europe would not cover the cost of cleaning up litter and of awareness-raising measures. Litter clean-up is estimated by the Clean Europe Network to be a cost of €11 to 13 billion annually across the EU, an amount that far outstrips the combined turnover of all the green dot schemes. It seems unlikely that this element of the proposal will survive but we are only at the start of the discussion...

The deadline for applying this broader EPR would be two years after the directive becomes EU law – that would likely mean paying for litter clean-up and awareness-raising measures by mid-2021.

### **Extended producer responsibility (2) - fishing gear (Article 8)**

The proposal also introduces *a specific EPR obligation for manufacturers of fishing gear that contains plastic*. Producers will have to pay for collection and recycling of used gear delivered to port reception facilities for waste or similar. The definition of “producer” explicitly excludes fishermen from any responsibility. Producers, on the other hand, would have to pay for awareness raising measures, presumably targeted at fishermen and port operators.

The deadline for applying this EPR would be two years after the directive becomes EU law – that would likely mean paying for collection and recycling and awareness-raising measures by mid-2021.

### **Separate collection (Article 9 / Annex Part F)**

**By 2025, Member States shall ensure that at least 90% of the beverage bottles placed on the market by weight are separately collected.** This can be done either by introducing deposit return schemes (DRS) or by separate collection targets for the “green dot” schemes (EPR).

Currently, these packages are covered by the “green dot” EPR schemes in most countries, whereas in a minority of states they are subject to a DRS approach. There is heated debate in some countries at the moment about introducing the DRS for PET bottles (and cans) as it would be an expensive way to deal with litter.

On the other hand, the EPR schemes already collect and recycle the vast majority of used bottles but are failing to address litter and littering effectively – the main reason that NGOs are lobbying for introduction of DRS. The exceptions, as we know, are Belgium and the Netherlands, yet the pressure for the introduction of DRS is at its highest in the Low Countries!

While the focus of the single use plastics directive is plastic (PET) bottles, in the event that the DRS approach gains momentum, it seems almost inevitable that the schemes would also cover metal drinks cans.

We assume that the 90% collection objective for member states would need to be met by 1 January 2025.

### **Awareness-raising measures** (Article 10 / Annex Part G)

Member States are also required to “take measures” to raise awareness of consumers regarding the **environmental impact of single use plastics products, littering and other inappropriate disposal of single use plastics products**. This would focus on the same products mentioned in the previous point.

It is not clear how that would be financed but it would not be surprising to see that this is rolled into the EPR requirement.

### **Food Hygiene and Safety Safeguards**

#### **Article 11 on “coordination of measures”**

The proposal requires member states to ensure that their measures are in line and coordinated with other EU rules. In this context it states that the measures referred to in Article 4 to 9 (see above) **comply with EU food law to ensure that food hygiene and food safety are not compromised in any case**. However, no reference is made to public health or consumer safety concerns.

### **Business Information**

#### **Article 13 / Annex Part A**

The proposal includes **a provision specifically requiring all EU member states assisted/coordinated by the European Environment Agency to collect data annually on the volume of food & beverage service packaging put on the market**. This action will also include cataloguing the measures taken by Member States to reduce consumption of these products. This also has to be made available to the Commission. The Agency will publish a regular overview report using this data.

The objective of this is clear: establish the market size so that reduction targets can be set for reducing the consumption of this packaging. No deadlines are set for this but it would appear evident that this would need to be implemented as soon as the EU directive is transposed into national measures (two years from adoption) – likely requirement to share data with national governments would be in 2021.

### **Penalties**

#### **Article 14**

Member states are required to put in place **“effective, proportionate and dissuasive” penalties for infringement of national provisions laid out above**. This is targeted at companies but no responsibility appears to be attributed to the consumer in this proposal.

### **Evaluation and review**

#### **Article 15**

A review of the Directive will be carried out by the Commission six years after the deadline for transposition of the legislation, based on among others the data provided (see previous item). This report will indicate whether:

- **More products** should be added to the lists of products subject to measures
- It is feasible to set **binding EU-wide reduction targets** for food & beverage service packaging
- Sufficient progress has been made to be able to **exempt certain bio-based products** because they are sufficiently biodegradable in the marine environment

Earlier drafts explicitly suggested that the Commission should also include legislative proposals in this report but this has been removed in the proposal presented. We expect that such a requirement will nonetheless be put forward during the coming legislative negotiations.

## **Transposition**

### **Article 17**

Once the Directive is adopted by the European Parliament and the Council of Ministers, Member States have two years to convert the provisions into national legislation or equivalent measures. Assuming that the Directive is approved in spring next year, national measures are likely to be introduced by mid-2021.

## **Next Steps**

After the adoption of the proposal by the College of Commissioners this week, the Directive will now be sent to the European Parliament and Council of Ministers (28 EU Member States) for review and negotiation. The latter will jointly agree the final text.

Long-serving Belgian MEP, Frédérique Ries, who is a member of the liberal ALDE group has been named as the main spokesperson for the Environment, Public Health & Food Safety Committee.

Industry groups are expected to push for the dossier to be shared with a number of other relevant parliamentary committees to avoid this being dominated by “green” points of view.

This topic will be reived at the upcoming annual general meeting of the Clean Europe Network / European Litter Prevention Association.

The secretariat will keep you informed of developments

\*\*\*\*\* \* \*\*\*\*\*