

## Overview of the EU's Single-Use Plastics Directive

14 February 2019

### INTRODUCTION

This client alert provides an overview of the EU's forthcoming "*Directive on the reduction of the impact of certain plastic products on the environment*", otherwise known as the single-use plastics Directive.<sup>1</sup> The Directive is expected to enter into force in late spring or early summer 2019 and will have a major impact on the future of the EU plastics market. It is important for both traders and manufacturers to understand how their businesses may be affected as the requirements of the Directive are phased in over the next two to five years.

The objective of the Directive is to reduce the consumption of single-use plastic products and to incentivise recycling. This is achieved by measures ranging from outright bans on certain products to consumption reduction measures, extended producer responsibility obligations, product design requirements, labelling, and/or awareness raising measures in the case of others. As a consequence, producers will be subject to significant additional costs even for products which they can continue to market to consumers. As further explained below, whether and to what extent the consumption of a product will have to be reduced or other types of measures will have to be taken depends on the part of the Directive's annex in which a product is listed.

The first part of this client alert gives an overview of the products which are covered by the Directive and which measures Member States will be required to take in respect of each product category. The second part discusses the Directive's implementation and entry into force.

### 1. PRODUCTS COVERED AND APPLICABLE MEASURES

The scope of the Directive is limited to products which fall within the definition of "*single-use plastic products*" (**SUPs**). This definition covers products made either wholly or partly from plastic. Whether a product is classified as "*single-use*" depends on whether the product's design suggests that the product can be re-filled and/or is intended for use more than once.

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<sup>1</sup> Since official enactment and publication of the Directive is only expected to occur later this year, the analysis is based on the final compromise text published by the Council on 18 January 2019, available at: <https://data.consilium.europa.eu/doc/document/ST-5483-2019-INIT/en/pdf>

The Directive covers the following single-use products:

- Beverage containers (including bottles) with a capacity of up to three litres;
- Cups for beverages, including their covers and lids;
- Food containers;
- Packets and wrappers intended for food;
- Plates, cutlery, straws and beverage stirrers;
- Plastic carrier bags;
- Certain sanitary products;
- Balloons;
- Tobacco products and filters.

In the Annex to the Directive, the products are sorted into different groups (A-G) depending on the measures they are subject to. Each measure also falls under a different Article. The type and scope of the different measures can thus be summarised as follows:

- **Part A – consumption reduction measures (Article 4):** Applies to single-use food containers and cups for beverages. Member States must impose consumption reduction measures which achieve a measurable quantitative reduction in the consumption of these products. These measures must be “*ambitious and sustained*” but the type of measures is at the discretion of the Member States. The reduction is to be achieved by 2026 compared to 2022 levels.
- **Part B – prohibition of sales (Article 5):** Applies to cutlery, plates, beverage stirrers, and straws. The prohibition takes effect two years after the Directive enters into force, i.e., by 2021. The prohibition also applies to cups, food and beverage containers made from expanded polystyrene. In addition, Article 5 bans sales of products made from oxo-degradable plastics.
- **Part C – product requirements (Article 6):** Beverage containers with a capacity of up to three litres must be designed to ensure that caps remain attached to the container during and after use by 2024. Furthermore, polyethylene terephthalate (**PET**) bottles must contain at least 25% recycled plastic by 2025 and all single-use plastic bottles must contain at least 30% recycled plastic by 2030.
- **Part D – marking requirements (Article 7):** Cups, sanitary products, and tobacco products must be clearly labelled with the amount of plastic they contain as well as waste disposal instructions by 2021.

- **Part E – extended producer responsibility (EPR) (Article 8):** Food containers, beverage containers with a capacity of up to three litres, cups, packets and wrappers, tobacco products, balloons, wet wipes, and plastic bags will be covered. EPR requires producers to take responsibility for the waste management of these products by 2024.
- **Part F – separate collection (Article 9):** 77% of all bottles with a capacity of up to three litres sold in the same year must be collected by 2025, and 90% by 2029.
- **Part G – awareness raising (Article 10):** EPR will also include costs of measures that Member States will have to take to inform the public of the availability of reusable alternatives, re-use systems, and waste management options, as well as information on the impact of littering.

## 2. IMPLEMENTATION AND ENTRY INTO FORCE

At the time of writing, the Directive has not yet received full legislative approval and certain details may therefore be subject to change. We anticipate that the Directive will be adopted in May or June this year. It will come into force twenty days thereafter.

According to the EU treaties, a directive is “*binding, as to the result to be achieved, upon each Member State to which it is addressed*”. This means that its provisions must be transposed into national law by the Member States in order to become applicable. The Directive specifies that the time period granted to Member States to finalise this transposition will be two years after the Directive comes into force, i.e., in 2021.

The Commission will publish guidelines on the application of the Directive within one year of its entry into force. Stakeholders are expected to be given an opportunity to comment and provide input on the formulation of these guidelines, likely in May or June of this year.

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