

EU AGREES NEW RULES ON PLASTICS

The EU institutions have agreed ambitious new measures to tackle marine litter, by limiting the use of the single-use plastic products that are most often found along Europe's beaches. Products made from oxo-degradable plastic and lost and abandoned fishing gear are also targeted.

The new measures take a variety of forms, from a ban for the likes of plastic cotton bud sticks, straws and drink stirrers as well as products made from oxo-degradable plastic and certain items made from expanded polystyrene, to measures to reduce the consumption of other single-use plastic products.

'Extended producer responsibility' schemes are to be established for certain products, with producers having to contribute to costs related for instance to awareness raising measures, waste management or litter clean-up. Member States are given waste collection targets. There are also new marking requirements for products including wet wipes and tobacco products, to indicate how they should be disposed of, the presence of plastic in the products and the resulting negative impact on the environment if they are not disposed of properly.

The new EU Directive¹ was published in the Official Journal on 12 June 2019. EU Member States have until 3 July 2021 to implement the Directive.

BACKGROUND

Responding to increasing public concern about plastic in the seas, the European Commission proposed² new rules in May 2018 to tackle marine litter

Key issues

- The EU institutions have agreed a new Directive to tackle marine waste from plastics and fishing gear.
- The Directive introduces new rules for the most common plastic waste items found on Europe's beaches.
- The new rules take various forms including product bans, consumption reduction measures, 'extended producer responsibility' and marking requirements.
- Products made from oxo-degradable plastic are banned because of their contribution to microplastic pollution.
- Single-use food and beverage containers and cups for beverages made of expanded polystyrene are also banned.
- The Directive was agreed after seven months of discussions between the European Parliament, Council of the EU and European Commission.
- Member States have until 3 July 2021 to transpose the Directive into national law.
- Certain Member States have also announced new national rules on single-use plastics.

¹ [Directive \(EU\) 2019/904](#) of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

² European Commission [proposal](#) for an EU directive on the reduction of the impact of certain plastic products on the environment.

at its source, targeting the ten plastic products most often found on European beaches, as well as abandoned fishing gear, which together it estimated made up 70% of all marine litter.

The Commission urged the other institutions to work speedily to reach agreement before the European Parliament elections in May 2019. It took the European Parliament and the Council of the European Union barely seven months to reach a political agreement. Despite the speed at which the institutions worked, some significant changes were introduced by the Parliament and Member States including a total ban on products made from oxo-degradable plastics because of their contribution to microplastic pollution as they break down into micro-fragments.

The new Directive is part of the EU Plastics Strategy, adopted in 2018 and aimed at protecting citizens and the environment from plastic pollution whilst fostering growth and innovation. It is also part of the EU Circular Economy Action Plan adopted in December 2015 and aimed at turning Europe into a more sustainable, circular economy.

DIFFERENT RULES FOR DIFFERENT PRODUCTS

The Directive specifically targets the most common plastic waste items found on Europe's beaches and imposes new rules adapted to each product. Where alternatives exist and are affordable, single-use plastic products will generally be banned save exceptions³. For other products, the focus is on such things as: limiting their use through a reduction in consumption; design and marking requirements; or having producers contribute to waste management / clean-up. For example:

1. **Cotton bud sticks.** Complete ban on single-use cotton bud sticks made of plastic unless for certain medical use.
2. **Cutlery, plates, straws and drink stirrers.** Complete ban on single-use products made of plastic, except straws for certain medical use.
3. **Sticks for balloons and balloons.** Various measures, including complete ban on plastic sticks; and 'extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures) for balloons intended for consumers.
4. **Food containers.** New national consumption reduction measures for certain plastic food containers. 'Extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures). Complete ban on relevant food containers made of expanded polystyrene.
5. **Cups for beverages.** New national consumption reduction measures for plastic cups. Other measures include 'extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures), as well as new marking requirements. Complete ban on cups made of expanded polystyrene.

"When we have a situation where one year you can bring your fish home in a plastic bag, and the next year you are bringing that bag home in a fish, we have to work hard and work fast."

European Commissioner for Environment, Maritime Affairs and Fisheries, Karmenu Vella,
19 December 2018

³ e.g. cotton bud sticks and straws falling within the scope of [Council Directive 90/385/EEC](#) of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices or [Council Directive 93/42/EEC](#) of 14 June 1993 concerning medical devices will be exempt.

6. **Beverage containers (including plastic bottles).** 'Extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures). New requirement to attach plastic caps and lids to plastic beverage containers from 3 July 2024. 90% separate collection (for recycling) for certain plastic beverage bottles by 2029 with an intermediate level of 77% by 2025. Complete ban on relevant beverage containers made of expanded polystyrene.
7. **Tobacco products.** 'Extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures) for tobacco products with filters and filters. New marking requirements.
8. **Plastic carrier bags.** 'Extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures) for lightweight plastic carrier bags, in addition to existing measures in the Plastic Bags Directive⁴.
9. **Crisp packets and sweet wrappers.** 'Extended producer responsibility' and awareness raising requirements (including producers covering costs of certain awareness raising measures) for certain plastic packets and wrappers.
10. **Wet wipes and sanitary items.** New marking requirements to inform consumers on environmental impact of the products and how to dispose of them properly. Awareness raising requirements, and 'extended producer responsibility' for wet wipes (including producers covering costs of certain awareness raising measures).

As noted above, the Directive also bans all products made from **oxo-degradable plastic**.

In addition, the Directive imposes new rules on **lost and abandoned fishing gear** in the form notably of 'extended producer responsibility'. Producers of fishing gear containing plastic will be required to cover the costs of waste collection from port reception facilities or other relevant collection system and its subsequent transport and treatment, as well as the costs of certain awareness raising measures.

As regards **awareness raising**, Member States are required to take measures aimed at informing consumers and promoting responsible behaviour on their part, so as to reduce littering. These measures should for example inform consumers of certain single-use plastics and users of relevant fishing gear about the availability of re-usable alternatives and the impact of littering.

A CLOSER LOOK

Defining plastic and single-use products

The Directive acknowledges that plastic products can be manufactured from a wide range of plastics and that for example polymers which occur naturally in the environment should not be covered. The Directive creates a new definition to cover polymer-based rubber items and bio-based and bio-degradable

Close-up on Member States

France

Certain plastic items are already banned in France (including single-use plastic carrier bags made available at the counter), and others will soon be banned under existing laws e.g. certain plastic disposable cups, glasses and plates, straws, cutlery and drink stirrers (except certain compostable products), or certain domestic use cotton bud sticks – by 1 January 2020 at the latest, it will in principle no longer be possible to make these items available.

In 2018, the French government announced its aim of working towards 100% of plastics recycled in 2025, and new rules are expected. Reference has been made to schemes to incentivise industrials in terms of 'eco-design' of products, including a 'bonus – penalty' mechanism that could impact the price of goods sold, and a new law on the 'circular economy' is under preparation.

⁴ [Directive \(EU\) 2015/720](#) of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags.

plastics, regardless of whether they are derived from biomass and/or intended to biodegrade over time. According to the recitals, paints, inks and adhesives should be excluded from the Directive however.

There is also a market ban in the Directive for products made from oxo-degradable plastic, as it does not properly biodegrade but instead contributes to microplastic pollution in the environment and is not compostable.

Single-use food and beverage containers and cups for beverages made of expanded polystyrene are also banned by the Directive.

The Directive also calls on the Commission to issue guidelines by 3 July 2020, including examples of what is to be considered a single-use plastic product.

Plastic bottles

There will be a new requirement from 3 July 2024 for single-use plastic beverage containers that have caps and lids made of plastic and a capacity of up to three litres to ensure that the caps and lids remain attached. The reason for this is that caps and lids are some of the most frequently found plastic products in beach clean-ups, and the logic is that they will be easier to collect if they remain attached to the container. The European Commission will mandate the European standardisation bodies to develop harmonised standards relating to this requirement and ensuring the strength, reliability and safety of beverage container closures, including for carbonated drinks.

Producers of plastic bottles are required to contribute to awareness raising, clean-up, collection and waste treatment. There will also be a 90% separate collection target (for recycling) for plastic bottles by 2029 with an intermediate target of 77% by 2025. Caps and lids of metal and glass beverage containers are not covered by the Directive as they are not among the most littered plastic items, although this may be revisited down the line.

The Directive also requires that, from 2025, beverage bottles with a capacity of up to three litres manufactured from Polyethylene Terephthalate as the major component (PET bottles) contain at least 25% recycled plastic, calculated as an average for all PET bottles placed on the market on the territory of the relevant Member State. From 2030, that requirement increases to 30%.

The Directive suggests that Member States can set up deposit-refund schemes, or separate collection targets for relevant 'extended producer responsibility' schemes. In this context, the Commission will facilitate the sharing of information and best practices between the Member States.

Marking requirements

In order to address the problem of improper disposal of plastic items, and the negative consequences on the sewage system, new marking and information requirements will be imposed. These should clearly inform consumers about appropriate waste management options for the product or waste disposal means to be avoided and about the presence of plastic in the product. The rules apply to the following products:

- Sanitary towels, tampons and tampon applicators;
- Certain wet wipes;
- Tobacco products with filters, and filters; and
- Cups for beverages.

Close-up on Member States

Germany

On 1 January 2019, a new Packaging Law came into effect in Germany. Amongst others, the new law provides for mandatory registration and data reporting requirements, higher recycling rates and new packaging schemes which have to take ecological criteria into consideration when determining license fees. This approach encourages packaging manufacturers to use materials that consist partially of recycled or recyclable components.

Already in 2016, the Federal Ministry for Environment, Nature Conservation and Nuclear Safety (*Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit – Bundesumweltministerium, "BMU"*) agreed a voluntary commitment with retailers in Germany to no longer give away plastic bags for free.

In addition, the BMU recently adopted a five-point action plan for reducing plastic waste and increasing recycling, and identified further key aspects to pave the way for Germany to move away from the throwaway society. Moreover, the BMU is continuing a political dialogue with retailers in Germany on avoiding unnecessary plastic packaging.

'Extended producer responsibility'

For products for which there are no readily available suitable and more sustainable alternatives, Member States are required, in line with the 'polluter pays' principle, to also introduce 'extended producer responsibility' schemes. The measures vary depending on the product, including in terms of costs to be borne by the producer.

This is the case for example for the containers used for take-away food, wet wipes, balloons for consumers and tobacco products, where producers must cover the necessary costs of clean-up of litter as well as the costs of awareness-raising measures to prevent and reduce such litter. For wet wipes, balloons and tobacco products, producers must also bear the costs of data gathering and reporting.

Tobacco products

The European Commission impact assessment⁵ accompanying the 2018 Directive proposal cited cigarette butts as the second most littered single-use plastic item. Innovation and product development are expected to provide viable alternatives to filters containing plastic but, until then, measures such as 'extended producer responsibility' schemes for tobacco products will be put in place.

Fishing gear

The recitals to the Directive suggest that additional financial incentives should be introduced for fishermen to bring their waste fishing gear on shore, not least because of the high recycling potential of the plastic components in fishing gear. Member States are also required to introduce 'extended producer responsibility' for fishing gear or its components containing plastic to ensure separate collection of waste fishing gear and to finance sound waste management of such fishing gear, in particular recycling.

However, according to the Directive, fishers themselves and artisanal makers of fishing gear containing plastic should not be considered producers under the Directive. Accordingly, they should not be responsible for fulfilling obligations that apply to the producer with respect to 'extended producer responsibility'.

Member State reporting and review by the European Commission

There are many new reporting requirements for Member States, covering for example data relating to the single-use plastic items placed on the market in any given year, data relating to the measures taken by Member States to reduce consumption of single-use plastic products, separate collection of single-use plastic items, data on fishing gear placed on the market and on waste fishing gear collected, data on the recycled content of beverage bottles, and data on the post consumption waste of tobacco products and filters containing plastic. The first reporting period will be calendar year 2022, save limited exceptions.

Close-up on Member States**United Kingdom**

The UK Government has [announced](#) that it will introduce limits on the sale of plastic straws, drinks stirrers and cotton bud sticks in England from April 2020.

Shops and restaurants will be banned from displaying plastic straws and will only be allowed to give them out on request for medical reasons.

A public consultation showed that more than 80% of respondents supported a ban on certain single-use plastics.

Environment is a devolved matter and the Scottish government has also been looking at possible new measures to tackle plastic waste. On 8 May 2019, they published proposals for the design of a new [deposit return scheme](#) for beverage containers. In 2018 they consulted on a [proposal to ban the manufacture and sale of plastic cotton bud sticks](#) in Scotland.

⁵ European Commission [Impact Assessment](#), "Reducing Marine Litter: action on single use plastics and fishing gear", Accompanying the Proposal for a Directive on the reduction of the impact of certain plastic products on the environment, 28 May 2018

On the basis notably of the information gathered, the Commission will, by 3 July 2027, carry out an evaluation of the Directive and submit a report on its findings along with a new legislative proposal if required (please see 'Next steps' below).

Penalties for infringements of the Directive

Member States are required to lay down rules applicable to infringements of the provisions adopted pursuant to the Directive and to take measures to ensure they are implemented. Penalties should be "effective, proportionate and dissuasive".

Microplastics

Microplastics are commonly defined as man-made plastic items smaller than 5mm either generated from fragments of larger plastic items such as through car tyre wear, or intentionally added to products in the form of microbeads for example in cosmetics.

Microplastics do not fall directly within the scope of the Directive, but it is acknowledged that they contribute to marine litter and that producers should be encouraged to strictly limit their use in formulations. The ban on products made from oxo-degradable plastic introduced by the Directive is justified precisely on the grounds that they contribute to microplastic pollution as oxo-degradable plastic does not properly biodegrade.

Further work on microplastics is separately underway in the EU. In April 2019, the European Commission's independent Group of Chief Scientific Advisors issued an Opinion⁶ on the environmental and health risks of microplastic pollution that set out a number of recommendations.

Interaction with other legislation

When it initially proposed the Directive, the Commission argued that new harmonised EU rules were needed to give businesses certainty in the face of national measures which some Member States had started taking to ban certain single-use plastic items. By acting at the European level, the Commission hoped to avoid market fragmentation and ensure a level playing field.

There is also the question of how the new Directive interacts with existing related EU rules. According to recital 9 and Article 2(2), the Directive is a *lex specialis* compared to both the Directive on Packaging and Packaging Waste⁷ and the Waste Framework Directive.⁸ This means that where there is a conflict between the provisions of either of these Directives and the new Directive, the latter will prevail.

This was a concern that was raised notably by a coalition of 74⁹ industry associations covering everything from soft drinks to cosmetics and packaging, back in August 2018. They were concerned about how the Directive would interact with the Packaging and Packaging Waste Directive and, in particular,

⁶ Scientific Advice Mechanism (SAM) Group of Chief Scientific Advisors, [Scientific Opinion 6/2019](#): "Environmental and Health Risks of Microplastic Pollution", 30 April 2019.

⁷ [Directive 94/62/EC](#) of 20 December 1994 on packaging and packaging waste.

⁸ [Directive 2008/98](#) of 19 November 2008 on waste.

⁹ [Joint Statement](#) from 74 Packaging Value Chain associations on the Proposal for a Directive on the Reduction of the impact of certain plastic products on the environment, August 2018.

what it might mean for the free movement of packaged goods. Indeed, the Packaging and Packaging Waste Directive has the internal market as its legal base (Article 114 of the Treaty on the Functioning of the European Union) whereas this new Directive has environmental protection as its legal base (Article 192 of the Treaty on the Functioning of the European Union).

The new Directive is to be considered a complement to other related EU rules including the Plastic Bags Directive¹⁰ and the Tobacco Products Directive¹¹.

NEXT STEPS

The new Directive was published in the EU's Official Journal on 12 June 2019, and it enters into force 20 days later. Member States have until 3 July 2021 to ensure its correct transposition into national law. This being said, certain measures apply at different dates (e.g. as regards the requirement for plastic caps and lids to remain attached to beverage containers, where Member States must apply the measures to comply with this requirement by 3 July 2024, or as regards 'extended producer responsibility' schemes and related requirements).

National measures to transpose the Directive, and other developments in terms of national laws, will need to be closely monitored going forward.

As indicated above, the Commission will issue guidelines by 3 July 2020, including examples of what is to be considered a single-use plastic product.

Other guidelines and a number of implementing acts are also foreseen by the Directive. These implementing acts will, among other things:

- Outline the methodology for calculating and checking consumption reduction of products such as cups for beverages and food containers, and for calculating and checking the separate collection targets;
- Establish harmonised standards for the new marking requirements; and
- Set out the format for reporting data.

Looking further ahead, the European Commission will carry out an assessment of the Directive by 3 July 2027, and prepare a report including its main findings. The report could be accompanied by a legislative proposal setting binding quantitative consumption reduction targets and/or binding collection rates for waste fishing gear. The report will also include an assessment of the list of single-use plastic products, including as regards plastic caps and lids of glass and metal bottles, which are currently not covered by the Directive.

These aspects, too, should be followed closely.

¹⁰ [Directive \(EU\) 2015/720](#) of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags.

¹¹ [Directive 2014/40/EU](#) of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related product.

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