

# Overview of EU Members States measures threatening the Single Market and the free movement of goods across the EU

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## Executive Summary

The Green Deal and the Circular Economy Action Plan 2.0 intend to create the conditions for the EU industry to lead the transformation towards a sustainable economy. Rigorous implementation and enforcement of the Single Market principles are key to ensure harmonised legal requirements facilitating economies of scale, long-term investments and strengthening the business case for innovative products and technologies. This is not only a precondition for the free movements of packaged goods and packaging materials across the EU, but it is essential to strengthen the implementation of packaging and packaging waste targets in all Member States and to encourage the development of fully integrated EU markets for secondary raw materials.

Clearly defined and harmonised EU provisions are the necessary first step to avoid the adoption of diverging and disproportionate national measures, which result in overly restrictive national requirements and EU market fragmentation. Firstly, core provisions should be clearly enshrined in the main EU legislative text or in its implementing acts to ensure legal certainty and avoid divergent implementation at national level. Secondly, when implementing and transposing EU law on packaging and packaged goods, national legislators must ensure compliance with the Single Market principles and with Article 18 of the Packaging and Packaging Waste Directive (PPWD). Our longstanding concerns are especially relevant today, in the context of the upcoming revision of the PPWD and Waste Framework Directive (WFD), as well as the transposition and implementation of the revised WFD, PPWD, Single-Use Plastics Directive (SUP) and of other EU packaging policies.



Two types of measures in particular pose concrete threats to the Single Market for goods:

- **Country-specific labelling obligations**, intrinsic barriers to the Single Market as they establish different and sometimes contradicting conditions to the marketing of packaged products in different Member States. Sorting-related marking requirements in particular either limit the marketing of the product to one specific market or forces economic operators to produce Member State-specific packaging as sorting rules differ from one Member State to the other.
- **Unilateral national targets**, which can introduce new barriers to the free movement goods. They also risk undermining the goal of strengthening the harmonisation of EU requirements for packaging and packaged goods as part of the upcoming revision of the PPWD.

This document provides an overview of some of the recent national measures, which have introduced or could introduce new market barriers impacting the free movement of goods across the EU. It summarises the content of the measures, an assessment of the risk they pose to the Single Market, and whether the measure was or not notified to the Commission according to the TRIS notification system.


This document is meant to be a living document and will be updated regularly, as needed.

National measure	Content of the measure	Risks for the Single Market	TRIS Notification
<p><b>Draft Federal Act amending the Waste Management Act 2002 (Austria)</b></p> <p><a href="#">Link</a></p>	<p>Establishes reusable packaging obligation for food products and beverages sold by retailers from 1 January 2024.</p>	<p>Producers exporting products to Austria would need to create an entire new logistic chain to be able to comply with the reuse targets, which puts them at a competitive disadvantage compared with locally established producers (not exporting outside of Austria) for whom it will be easier to comply.</p> <p>Unilateral national targets risk undermining the upcoming revision of the PPWD, which is looking at ways to boost reuse through harmonised measures at EU level.</p>	<p>Yes</p>
<p><b>Draft Royal Decree to limit the placing on the market of single-use products harmful to the environment and to increase the recycled content of certain products (Belgium)</b></p> <p><a href="#">Link</a></p>	<p>Measures to phase out the marketing of certain single-use plastic products and packaging and encourage the use of recycled plastics. It also prohibits to place on the market for the first time packaging containing PFAS.</p>	<p>Many of the provisions in the Royal Decree pre-empt the forthcoming revision of the <a href="#">Directive 94/62/EC</a> on Packaging and Packaging Waste (PPWD). Similarly, those obligations will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect.</p> <p>Several requirements in the Royal Decree do not find a legal basis in any of the currently enforced EU legislations or depart from already adopted EU laws. If adopted, the Royal Decree will have negative economic impacts on economic operators without added environmental value.</p>	<p>Yes</p>

<p><b>PPWD Decree (Bulgaria)</b></p> <p><a href="#">Link</a></p>	<p>Establishes obligation to use alphanumerical codes laid down in laid down in <a href="#">Decision 97/129/EC</a></p>	<p>The Decree makes the use of material identification markings mandatory despite the voluntary framework in place, set by <a href="#">Decision 97/129/EC</a>.</p>	<p><b>No</b></p>
<p><b>Triman Decree (France)</b></p> <p><a href="#">Link</a></p>	<p>Mandatory symbol: mandates the inclusion of the “Triman” symbol (below) on the labelling of household products (excluding household glass drinks packaging) to indicate sorting rules to consumers.</p> 	<p>France adopted the Triman Decree in June 2021. However, many of the Single Market concerns raised by the European Commission in its detailed opinion remain unaddressed :</p> <ul style="list-style-type: none"> <li>- Multiplication of sorting symbols throughout the EU ultimately creating barriers to the Single Market.</li> <li>- Absence of harmonised marking at the EU level which could be recognised in all Member States and avoid barriers to the Single Market.</li> <li>- Lack of proportionality between the impact of the measure on the movement of goods and the environmental protection goal.</li> </ul>	<p><b>Yes</b></p>
<p><b>Green Dot Decree (France)</b></p> <p><a href="#">Link</a></p>	<p>The use of Green Dot marking is subject to penalties in France.</p> 	<p>Direct contradiction of this measure with existing provisions of other Members States such as Spain where the Green Dot is mandatory.</p> <p><b>NB:</b> the only measure included in the Decree to address this issue is a longer transition period for packaged products having to comply with both the mandatory Green Dot in another Member State and its prohibition in France.</p>	<p><b>No</b></p>
<p><b>Single-Use Plastics Directive Decree (France)</b></p> <p><a href="#">Link</a></p>	<p>First reduction and eventual ban of SUP packaging from the French market:</p> <ul style="list-style-type: none"> <li>- Ban of certain SUP products from 1 January 2022</li> <li>- 50% reduction of SUP beverage bottles placed on the French market by 2030</li> <li>- Ban of all SUP packaging by 2040</li> </ul>	<p>Banning certain SUP products and packaging from the French market, whereas they can be marketed in other Member States, creates a barrier to the free movement of goods.</p> <p>Violation of the Art. 18 of the PPWD, which obliges Member States to allow the placing on the market of their territory of packaging that satisfies its provisions.</p>	<p><b>Yes</b></p>

<p><b>3R Decree (France)</b></p> <p><a href="#">Link</a></p>	<p>- Sets a roadmap to phase-out “useless single-use plastic packaging”.</p> <p>- Sets milestone of 20% reduction of SUP packaging placed on the French market by 31 December 2025, 50% of which must be achieved through packaging reuse.</p>	<p>Banning some SUP products and packaging from the French market, whereas they can be marketed in other Member States, creates a barrier to the free movement of goods.</p> <p>Violation of the Art. 18 of the PPWD, which obliges Member States to allow the placing on the market of their territory of packaging that satisfies its provisions.</p> <p>Definition of “useless SUP packaging” might contradict existing EU rules and disregard Essential Requirements set out in the PPWD.</p> <p>Increasing trend of national targets risks to create a multiplication of diverging legal requirements and consequent Single Market barriers. This also risks undermining the upcoming revision of the PPWD, which is looking at ways to boost reuse through harmonised measures at EU level.</p>	<p><b>No</b></p>
<p><b>Reuse Decree (France)</b></p> <p><a href="#">Link</a></p>	<p>Sets a roadmap to increase the share of reusable packaging placed on the French market. Includes a definition of reused packaging.</p>	<p>Producers exporting products to France would need to create an entire new logistic chain to be able to comply with the reuse targets, which puts them at a competitive disadvantage compared with locally established producers (not exporting outside of France) for whom it will be easier to comply.</p> <p>Unilateral national targets risk undermining the upcoming revision of the PPWD, which is looking at ways to boost reuse through harmonised measures at EU level.</p>	<p><b>Yes</b></p>
<p><b>Fruits and Vegetables Plastic Packaging Decree (France)</b></p> <p><a href="#">Link</a></p>	<p>Sets the obligation to sell fresh unprocessed fruit and vegetables without packaging made up entirely or partly of plastic.</p>	<p>Violation of the Art. 18 of the PPWD, which obliges Member States to allow the placing on the market of their territory of packaging that satisfies its provisions.</p> <p>By prohibiting packaging types that are allowed in other Member States, the text creates unjustified obstacles to trade between Member States of the EU and a barrier to the free movement of goods.</p> <p>Risk to have unintended negative environmental impacts, in the form of increase of food loss and waste of unprocessed fruits and vegetables.</p>	<p><b>Yes</b></p>
<p><b>Decree prohibiting certain SUP Food Containers made of Expanded or Extruded Plastics</b></p> <p><a href="#">Link</a></p>	<p>Prohibits the provision of single-use plastic food containers consisting entirely or partly of extruded polystyrene, expanded or extruded polypropylene and intended for on-site or nomadic consumption.</p>	<p>By prohibiting packaging types that are allowed in other Member States, the text creates unjustified obstacles to the trade of goods between Member States of the EU and a barrier to the free movement of goods.</p> <p>Measure translating into a ban of most single-use plastic food containers for immediate or on-the-go consumption, which will be applicable in France only, making producers established outside of France unable to market their products, therefore constituting a measure equivalent to a quantitative restriction on imports, prohibited by Article 34 TFEU.</p>	<p><b>Yes</b></p>

<p><b>Order specifying the substances contained in mineral oils prohibited for use on packaging and for printed matter distributed to the public</b></p> <p><a href="#">Link</a></p>	<p>Prohibits certain mineral oils used in the manufacture of inks for packaging and printed products</p>	<p>By prohibiting mineral oils in certain applications that are allowed in other Member States, the text creates unjustified obstacles to trade between Member States of the EU and a barrier to the free movement of goods.</p> <p>The draft Order also impedes the placing on the market of packaging that meets the essential requirements as laid down in Article 9 of the PPWD.</p>	<p><b>Yes</b></p>
<p><b>Decree of implementation of the circular economy package (Italy)</b></p> <p><a href="#">Link</a></p>	<ul style="list-style-type: none"> <li>- Establishes obligation for packaging producers to provide consumers with information about the final destinations of the packaging in accordance with the <a href="#">UNI</a> technical standards</li> <li>- Establishes obligation for producers to label all packaging with the material identification markings (alphanumeric codes) laid down in <a href="#">Decision 97/129/EC</a></li> </ul>	<p>The Decree makes the use of material identification markings and inclusion of sorting instructions on the labelling mandatory despite the voluntary framework in place, set by <a href="#">Decision 97/129/EC</a>.</p> <p>Sorting instructions are not harmonised across the EU, such obligations at national level create a barrier to the free movement of goods.</p>	<p><b>No</b></p> <p>(Notification on the postponement of the obligations and the adoption of labelling guidelines only. The initial decree was not notified)</p>
<p><b>Circular Economy Package (Luxembourg)</b></p> <p><a href="#">Link</a> <a href="#">Link</a> <a href="#">Link</a></p>	<ul style="list-style-type: none"> <li>- Establishes obligation to use alphanumeric codes laid down in laid down in <a href="#">Decision 97/129/EC</a></li> <li>- Establishes that containers, trays, plates and cutlery used in the context of a home delivery service or a take-away service shall be reusable and subject to take-back</li> <li>- Introduces the prohibition of certain single-use products and packaging in parties and events open to the public</li> <li>- Introduces the prohibition of packaging made entirely or partly of plastics for the sale of fruits and vegetables</li> </ul>	<p>The proposed measures will impede the placing on the market of packaging that is fully compliant with the provisions of the EU packaging legislation, thus being contrary to Article 18 of the PPWD.</p> <p>The obligations will create unjustified barriers to intra-EU trade and amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by Article 34 of the TFEU.</p>	<p><b>Yes</b></p> <p>(The prohibition of packaging made entirely or partly of plastics for the sale of fruits and vegetables listed in Annex II of the law was not included in the notified text)</p>

<p><b>Portuguese Decree-Law</b></p> <p><a href="#">Link</a></p>	<p>- Establishes obligation to use alphanumerical codes laid down in laid down in <a href="#">Decision 97/129/EC</a></p> <p>- Establishes obligation to include sorting information in labelling, including the color of recycling bin.</p> <p>- Bans use of “Tidy Man” symbol on recyclable packaging.</p> 	<p>These requirements would require specific packaging for the Portuguese market, therefore creating a barrier to the free movement of goods. Sorting instructions and colour codes of bins are not harmonised across the EU, this information could be confusing for consumers in other Member States.</p> <p>Direct contradiction of this measure with existing provisions of other Members States. Banning the “Tidy Man” symbol might result in a ban of packaging / labelled products lawfully marketed in other Member States where this symbol is affixed.</p>	<p>Yes</p>
<p><b>PPWD Decree (Slovenia)</b></p> <p><a href="#">Link</a></p>	<p>Establishes obligation to use alphanumerical codes laid down in laid down in <a href="#">Decision 97/129/EC</a> and forbids import of packaging that does not have this marking.</p>	<p>The Decree makes the use of material identification markings mandatory despite the voluntary framework in place, set by <a href="#">Decision 97/129/EC</a>. The ban on imported packaging not bearing the marking constitutes a barrier to trade.</p>	<p>Yes</p>
<p><b>Draft Royal Decree on Packaging and Packaging Waste (Spain)</b></p> <p><a href="#">Link</a></p>	<p>- Sets out measures on packaging waste reduction, targets on packaging reuse, mandatory plastic recycled content targets, a prohibition on certain packaging for fruits and vegetables in retail, as well as marking obligations.</p>	<p>The proposed measures will impede the placing on the market of packaging that is fully compliant with the provisions of the EU packaging legislation, thus being contrary to Article 18 of the PPWD.</p> <p>Most obligations will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by Article 34 of the TFEU.</p>	<p>Yes</p>
<p><b>Draft law on Waste and Soil Protection (Spain)</b></p> <p><a href="#">Link</a></p>	<p>Sets out quantitative reduction targets for SUP products, restrictions on new lines of plastic products and products containing plastic microbeads, measures related to product line design and marking requirements, and consumer awareness measures to reduce littering.</p>	<p>The original proposal aimed to introduce a differentiated tax system for recycled plastic content, exempting from the tax only recycled plastic content originating from Spain, as well as the obligation for producers established in another Member State to designate a representative in Spain for the purposes of fulfilling their EPR obligations.</p> <p><b>NB:</b> Spain eventually dropped the proposal of a differentiated tax system, which could have resulted in a barrier to developing a Single Market for recycled plastic.</p>	<p>Yes</p>

## Detailed overview of national measures

### I. Austria

#### TEXT

- *Draft Federal Act amending the Waste Management Act 2002 (AWG-Novelle Kreislaufwirtschaftspaket) - [Link](#)*

#### ABOUT THE INITIATIVE

- The draft Federal Act aims to amend Austria's Waste Management Act.
- Article 14b of the draft Act establishes that from 1<sup>st</sup> January 2024, distributors who sell beverages in the food retail sector are required to offer the following products in reusable beverage packaging at each point of sale:
  - o At least 60% of beer and mixed beer drinks,
  - o At least 20% of mineral waters, table waters, sodas,
  - o At least 10% of fruit juices, vegetable juices, nectars,
  - o At least 10% of soft drinks (e.g. lemonades, flavoured waters, energy drinks, ice tea),
  - o At least 10 % of milk.

#### STATE-OF-PLAY

- The draft Federal Act was notified to the European Commission via TRIS on 29 April 2021, the notification's standstill period ended on 30 July 2021.

#### IMPLICATIONS FOR THE SINGLE MARKET

- Producers exporting products to Austria would need to create an entire new logistic chain to be able to comply with the reuse targets, which puts them at a competitive disadvantage compared with locally established producers (not exporting outside of Austria) for whom it will be easier to comply.
- Unilateral national targets risk undermining the upcoming revision of the PPWD, which is looking at ways to boost reuse through harmonised measures at EU level.
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### II. Belgium

#### TEXT

- *Draft Royal Decree to limit the placing on the market of single-use products harmful to the environment and to increase the recycled content of certain products - [Link](#)*

#### ABOUT THE INITIATIVE

- On 29 November 2022, Belgium notified to the European Commission a Draft Royal Decree to limit the placing on the market of single-use products harmful to the environment and to increase the recycled content of certain products. The Decree sets out measures to phase out the marketing of certain single-



use plastic products and packaging and encourage the use of recycled plastics. It also prohibits to place on the market for the first time packaging containing PFAS. Below is an overview of the key proposed measures (non-exhaustive):

- Article 3 sets out a prohibition to place on the market for the first time any single-use plastic (SUP) container intended for the distribution of food or drink for immediate consumption either on-the-spot or take-away, with the exception of SUP containers which are industrially pre-filled.
- Article 4. 1 and 4.2 introduce a prohibition to place on the market for the first time, non-compostable labels intended to be glued to fruit and vegetables and, from 1st January 2025, to place on the market for the first time labels which are not compostable at home, intended to be glued to fruit and vegetables.
- Article 5 proposes a prohibition to place on the market for the first time SUP packaging intended to pack unprocessed fresh fruit and vegetables (see below the related exemptions).
- Article 6.1 sets out a prohibition to place on the market for the first time products (listed in Annex 2 of the Royal Decree<sup>1</sup>) which are not composed of post-consumer recycled plastic.
- Article 7 prohibits the placing on the market for the first time the single-use products listed in Annex 3 of the Royal Decree<sup>2</sup>.
- Article 9 sets out a prohibition to place on the market for the first time single-use cups made of cardboard with a plastic coating.

## STATE-OF-PLAY

- On 14 December 2022, the EUROPEN Secretariat submitted a [joint contribution](#) to the TRIS portal on the Belgian Draft Royal Decree, which has been prepared by the EUROPEN Secretariat and co-signed by more than 15 associations from the Packaging Chain Forum. The standstill period will end on 1 March 2023.

## IMPLICATIONS FOR THE SINGLE MARKET

- Many of the provisions in the Royal Decree pre-empt the forthcoming revision of the [Directive 94/62/EC](#) on Packaging and Packaging Waste, for which the EU Commission has published a legislative proposal on 30 November 2022. The Royal Decree therefore infringes Article 6 (3) of [Directive \(EU\) 2015/1535](#) on Technical Regulations Information System.
- Some of the proposed obligations will impede the placing on the market of packaging that is fully compliant with the provisions of the EU packaging legislation currently in force, thus being contrary to Article 18 of the PPWD. Similarly, those obligations will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by Article 34 of the Treaty on the Functioning of the European Union (TFEU).

<sup>1</sup> The following minimum recycled plastic content targets are foreseen for these product categories: (1) Shrinkable sleeves, also called pallet sleeves or pallet cover sleeves; materials consisting of a plastic film that is placed on a product or series of products to be packaged. By means of a heat source, the sheet retracts shrinks and fits very tightly to the material to be packaged (25% by 2014 and 50% by 2026); (2) Plastic compost drums and bins, except for moving parts of the compost bin or compost barrel (80% by 2024 and 100% by 2026); (3) Plastic rolling containers for waste except the container body, lid, chassis and wheels (50% by 2024 and 80% by 2026); (4) Plastic nursery pots, nursery trays and plant trays used for the cultivation and packaging of flowers and plants (80% by 2024 and 100% by 2026); (5) Urban furniture with plastic parts, where the plastic parts have not been produced from recycled plastics, with the exception of plastic assembly elements intended to connect the different parts of the furniture into a single structural unit (80% by 2024 and 100% by 2026).

<sup>2</sup> The following products are listed in Annex 3: (1) Plastic confetti; (2) Plastic glitter; (3) Plastic sticks other than for medical applications; (4) Plastic skewers; (5) Plastic coffee, tea and herbal tea bags; (6) Single-use coffee capsules containing plastic or aluminium; (7) Cutlery and plates other than home compostable ones; (8) Laminated advertising cards.

- Several requirements in the Royal Decree do not find a legal basis in any of the currently enforced EU legislations or depart from already adopted EU laws.

If adopted, the Royal Decree will have negative economic impacts on economic operators without added environmental value.

### III. Bulgaria

#### TEXT

- *Постановление № 420 от 31 декември 2020 г. за изменение и допълнение на нормативни актове на Министерския съвет* - [Link](#)

#### ABOUT THE INITIATIVE

- Decree № 420 of 31 December 2020 amending and supplementing normative acts of the Council of Ministers implements the provisions of the Packaging and Packaging Waste Directive 2018.
- The Decree makes mandatory the use of the alphanumerical codes of [Decision 97/129/EC](#) and of a marking for recycling from 1<sup>st</sup> January 2022. Indeed, Article 5 requires producers (Article 14.1. of the [Waste Management Act](#)) to include on each package placed on the market:
  - 1) Identification number/abbreviation from Decision 97/129/EC
  - 2) Marking for recycling and the type of material from which it is made

#### STATE-OF-PLAY

- The Decree was not notified to the European Commission through TRIS. The requirements were set to apply from 1<sup>st</sup> January 2022.

#### IMPLICATIONS FOR THE SINGLE MARKET

- The Decree makes the use of material identification markings mandatory despite the voluntary framework in place, set by [Decision 97/129/EC](#).

### IV. France

#### a. Triman Decree

#### TEXT

- *Loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire (1), Article 17* - [Link](#)
- *Décret no 2021-835 du 29 juin 2021 relatif à l'information des consommateurs sur la règle de tri des déchets issus des produits soumis au principe de responsabilité élargie du producteur* - [Link](#)

#### ABOUT THE INITIATIVE

- The Triman Decree mandates the inclusion of the “Triman” symbol (below) in the labelling of any product placed on the market for household use and subject to the principles of EPR, excluding household glass

drinks packaging. The symbol informs the consumer that this product is subject to a sorting rule and must be accompanied with information specifying the methods for sorting or bringing in waste resulting from the product.



- The Decree also sets out the conditions for the establishment of symbols to inform consumers that the products are subject to a deposit system.

### STATE-OF-PLAY

- France notified its draft Triman Decree to the European Commission through TRIS (2020/410/F) on 30 June 2020, the standstill period ended on 1 October 2020. Following the submission of comments by Italy, Spain and Sweden, and of a detailed opinion by the European Commission, the standstill period was extended until 4 January 2021. On 29 June 2021, the final Decree was published in the French Official Journal.
- The adopted Decree establishes a mandatory standardised marking (Triman) for all products subject to EPR, including household packaging and graphic paper. Sorting information are required to be shown next to the Triman logo. Marking can be printed directly on pack or be affixed on packaging using a sticker. The Decree allows the dematerialisation of the marking and sorting instructions under certain conditions (for small packaging). An exemption is made for glass beverage containers, for which marking is not required. The Decree allows for the Triman symbol and sorting information to be replaced by an equivalent mandatory marking recognised by EU law or by the law of another Member State in application of the mutual recognition principle.
- French PROs (Packaging Recovery Organisations) had 3 months from the date of adoption of the Decree, i.e. until 30 September 2021, to develop and share their proposal of sorting instructions with the public authorities (Ministry of Economy and Finance and Ministry of Environment). They have finalised and shared the proposal during the summer 2021. On 9 September 2021, the authorities approved the PROs' proposal. From the approval date, companies will have 12 months to implement them. Additional 6 months are granted to companies to use the packaging in stock.

### IMPLICATIONS FOR THE SINGLE MARKET

- The following concerns were raised in the European Commission's detailed opinion:
  - o By forcing economic operators to affix the Triman symbol to their products, the instructions or the packaging, the French authorities are imposing different labelling requirements on products from other Member States, which entails additional packaging costs and restricts the marketing of those products. It is highly likely that this measure violates Article 34 TFEU.
    - *NB: Article R. 541-12.20 of the final Decree allows the Triman symbol and sorting information to be replaced by an equivalent mandatory marking recognised by EU law or by the law of another Member State in application of the mutual recognition principle. However, not all Member States nor the EU have equivalent mandatory markings. Therefore, despite this addition, the Triman Decree still entails additional packaging costs and restrict the marketing of products from other Member States.*

- The Commission raised doubts about the proportionality of making it compulsory to affix the Triman symbol and the sorting rules to the product, its instructions or its packaging. It questioned the resulting balance between the movement of goods and environmental protection.
  - The Commission noted that only 50 % of the French population is covered by a harmonised system of sorting rules, which casts doubt on the effectiveness of the information symbol among consumers. The Commission also stressed it is unsure about the added value that the mandatory information symbol brings compared with other approaches that can lead to increased recycling, such as improved collection systems, simpler sorting and citizen engagement initiatives.
  - The Commission also noted that making it compulsory to affix the Triman symbol to the product, its instructions or its packaging rather than publishing it electronically not only entails additional costs for economic operators, but may also have counterproductive effects. This is the case for relatively small products – having to have the information symbol affixed to the packaging undermines the efforts made by industry to reduce packaging sizes and thus the quantity of waste produced. It therefore questioned the obligation to affix the symbol from an environmental point of view given that there is a whole category of products that are too small for the Triman symbol.
  - *NB: In its final Decree, France included special conditions for small packaged products. It allows:*
    - *the dematerialisation of the marking (Triman + sorting information) if the surface of the largest side of the product or its packaging is less than 10 cm<sup>2</sup> and no other document is supplied with the product.*
    - *the dematerialisation of the sorting instructions if the surface of the largest side of the product or its packaging is between 10 cm<sup>2</sup> and 20 cm<sup>2</sup>. However, in this case, the Triman logo remains mandatory on the product or its packaging.*
  - Finally, given the Decree's stated aim of encouraging and simplifying sorting, the Commission questioned the reasons for excluding glass drinks packaging from the scope of the Triman symbol.

## b. Green Dot Decree

### TEXT

- *Loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire (1), Article 62 - [Link](#)*
- *Arrêté du 30 novembre 2020 relatif aux signalétiques et marquages pouvant induire une confusion sur la règle de tri ou d'apport du déchet issu du produit - [Link](#)*
- *Arrêté du 25 décembre 2020 portant modification de l'arrêté du 29 novembre 2016 relatif à la procédure d'agrément et portant cahier des charges des éco-organismes de la filière des emballages ménagers – [Link](#)*

### ABOUT THE INITIATIVE

- The Decree establishes the phase-out of the Green Dot on all packaged goods marketed in France from 1<sup>st</sup> January 2021. From 1<sup>st</sup> January 2021, the use of the Green Dot is subject to penalties.
- The Green Dot is the financing symbol for the organisation of recovery, sorting and recycling of sales packaging. When the Green Dot symbol appears on packaging, it means that for such packaging, a financial contribution has been paid to a qualified national packaging recovery organisation.



## STATE-OF-PLAY

- The French law No 2020-105 of 10 February 2020 on the fight against waste and on the circular economy was not notified to the European Commission through TRIS, nor was the so-called Green Dot Decree.
- In March 2021, a consortium of French industry associations filed a complaint on the text to the French Council of State (*Conseil D'État*), which ruled in favour of temporarily suspending the execution of the two decrees until the judge makes a decision on their legality as the measures with respect to EU principles of free circulation of goods and proportionality.

## IMPLICATIONS FOR THE SINGLE MARKET

- The use of the “Green Dot” logo is penalised in France. However, this logo is allowed to be used in other Member States and, to date, is even mandatory in Spain. This means manufacturers would need to develop national-specific packaging or use stickers to cover the “Green Dot”.

### c. Single-Use Plastics (SUP) Decree

#### TEXT

- *Décret n° 2020-1828 du 31 décembre 2020 relatif à l'interdiction de certains produits en plastique à usage unique* - [Link](#)

#### ABOUT THE INITIATIVE

- The Decree mainly implements Article 77 of the Law 2020-105 of 10 February 2020 on waste prevention and the circular economy (*Loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire*). However, it also implements other provisions of the Law on Circular Economy which establish a gradual reduction and ultimately a ban on SUP products. This is the case of:
  - o Article 66, which reduces by 50% the number of SUP beverage bottles placed on the market by 2030,
  - o and of Article 7, which bans all SUP packaging from the French market by 2040.
- Article 77 (and this Implementing Decree) bans several products, some of which are packaging. It provides that, as of 1 January 2022, unprocessed fresh fruit and vegetables displayed for sale will be displayed without packaging made up in whole or in part of plastic. Article 77 also prohibits as of 1 January 2022 the placing on the French market of non-biodegradable plastic tea and herbal tea bags.

## STATE-OF-PLAY

- France notified this draft text to the European Commission through TRIS on 26 June 2020 (2020/401/F), the standstill period ended on 28 September 2020. Following the submission of comments by Czech Republic and Denmark, and of a detailed opinions by the European Commission and Italy, the standstill period was extended until 28 December 2020.
- France adopted the Decree, which entered into force in January 2021.

- Following a complaint filed by different associations (Plastalliance, Polyvia, Elipso, etc.) challenging the list of fruits and vegetables which would be temporarily exempted from the ban, on 9 December 2022 the French Council of State announced its decision to annul the list of fruits and vegetables adopted by the French executive, considering that the latter exceeded its powers: the AGECE law gave the government the task of listing the fruits and vegetables that would be at risk of deterioration if sold in bulk, in order to exempt them from the plastic packaging ban permanently.

#### IMPLICATIONS FOR THE SINGLE MARKET

- Article 18 of the Packaging and Packaging Waste Directive obliges Member States to allow the placing on the market of their territory of packaging which satisfies the provisions of the Directive. By prohibiting SUP products which are allowed in other Member States, the text creates unjustified obstacles to trade between Member States of the EU and a barrier to the free movement of goods.
- Article 1 of the SUP Directive provides that “[t]he objectives of this Directive are to prevent and reduce the impact of certain plastic products on the environment, in particular the aquatic environment, and on human health, as well as to promote the transition to a circular economy with innovative and sustainable business models, products and materials, thus also contributing to the efficient functioning of the internal market”. While the objective of preserving the environment implies avoiding to a large degree the disposal of plastic (or any other non-degradable substance) in nature, it does not necessarily require a ban on all SUP products.
- Furthermore, Article 1 of the SUP Directive indicates that while protecting the environment is important, this should not be done in disregard of the rules of the TFEU establishing the internal market. A measure as far-reaching as a complete ban on types of products not listed in the SUP Directive impedes the functioning of the internal market.

#### d. 3R Decree

##### TEXT

- *Décret n° 2021-517 du 29 avril 2021 relatif aux objectifs de réduction, de réutilisation et de réemploi, et de recyclage des emballages en plastique à usage unique pour la période 2021-2025 – [Link](#)*

##### ABOUT THE INITIATIVE

- The so-called “3R Decree” (Reduction, Recycling, Reuse) implements Article L541-10-17 of the French Environmental Code.
- The text establishes that by 31 December 2025, the share of single-use plastic packaging placed on the French market should be reduced by 20%, and 50% of this 20% reduction must be achieved through packaging reuse.
- The Decree stresses that the ultimate objective is to achieve a 100% reduction of single-use plastic packaging that are useless (“*emballages en plastique à usage unique inutiles*”). Useless single-use plastic packaging is defined in the text as packaging that does not have an essential technical use, such as a protection and preservation purpose, a health and safety purpose, a transportation purpose, or an information purpose.

##### STATE-OF-PLAY

- The Decree came into force in April 2021 and is applicable until 31 December 2025. It was not notified to the European Commission prior to its adoption.

## IMPLICATIONS FOR THE SINGLE MARKET

- Article 18 of the Packaging and Packaging Waste Directive obliges Member States to allow the placing on the market of their territory of packaging which satisfies the provisions of the Directive. A ban on some SUP products which are allowed in other Member States creates unjustified obstacles to trade between Member States of the EU and a barrier to the free movement of goods.
- A definition of “useless SUP packaging” might contradict existing EU rules and disregard Essential Requirements set out in the PPWD.
- This text reflects an increasing trend of national targets that risk creating a multiplication of diverging legal requirements and consequent Single Market barriers. This also risks undermining the upcoming revision of the PPWD, which is looking at ways to boost reuse through harmonised measures at EU level.

### e. Reuse Decree

#### TEXT

- *Projet de Décret relatif à la proportion minimale d’emballages réemployés à mettre sur le marché annuellement* (Draft) - [Link](#)

#### ABOUT THE INITIATIVE

- The draft Decree is part of the implementation of the French Circular Economy Bill (Law on the fight against waste and the circular economy) adopted on 10 February 2020.
- The text defines “reused packaging” as a packaging which is subject to at least a second use that is identical to its first use (for which it was designed), and for which the reuse or recovery is organised by or on behalf of the producer. It adds that “reused packaging” can also be a package that is the subject to at least a second use by being filled at the point of sale as part of bulk sale, or at home in the case of a refilling device organised by the producer.
- The draft Decree sets the minimum proportion of reused packaging to be placed on the French market annually, from 2022 to 2027, as follows:
  - o 1.5% in 2022;
  - o 5% in 2023;
  - o 6% in 2024;
  - o 7% in 2025;
  - o 8% in 2026;
  - o 10% in 2027.
- The reuse obligations only apply to producers responsible for placing on the market at least 10,000 units of packaged products per year and declaring an annual turnover exceeding the following values:
  - o EUR 50 million until 31 December 2024;
  - o EUR 20 million from 1 January 2025 until 31 December 2025;
  - o From 1 January 2026, the annual turnover criterion shall apply without a threshold.

## STATE-OF-PLAY

- The draft Decree was notified to the European Commission via TRIS on 27 July 2021. The notification's standstill period will run until 28 October 2021. The Decree was set to come into force on 1<sup>st</sup> January 2022 but it has not yet been officially published.

## IMPLICATIONS FOR THE SINGLE MARKET

- Producers exporting products to France would need to create an entire new logistic chain to be able to comply with the reuse targets, which puts them at a competitive disadvantage compared with locally established producers (not exporting outside of France) for whom it will be easier to comply.
- Unilateral national targets risk undermining the upcoming revision of the PPWD, which is looking at ways to boost reuse through harmonised measures at EU level.

### f. Fruits & Vegetables Plastic Packaging Decree

#### TEXT

- *Décret n° 2021-1318 du 8 octobre 2021 relatif à l'obligation de présentation à la vente des fruits et légumes frais non transformés sans conditionnement composé pour tout ou partie de matière plastique* - [Link](#)

#### ABOUT THE INITIATIVE

- On 8 October 2021, France published a Decree announcing the **obligation to sell fresh unprocessed fruit and vegetables without packaging made up entirely or partly of plastic**. The obligation is set to apply from 1st January 2022.
- The Decree stems from Law No 2020-105 of 10 February 2020 on the fight against waste and on the circular economy and Article L541-15-10. III (16th paragraph) of the French Environment Code.
- Article L541-15-10. III provides that from 1<sup>st</sup> January 2022, unprocessed fruits and vegetables should not be sold in packaging made entirely or partly of plastic. Temporary exemptions to this ban apply to fruits and vegetables that risk being damaged if sold in bulk, with different set dates depending on the products. The ban does not apply to fruits and vegetables sold in bundles of 1.5kg and more.
- Decree n. 2021-1318 lists all fruits and vegetables that risk being damaged if sold in bulk and details the timeline for their exemption.
  - o **Exemption until 30 June 2023 for:** ribbed tomatoes, elongated tomatoes, cherry or cocktail tomatoes (small varieties), Brussels sprouts, green beans, spring onions, new turnips, grapes, peaches, nectarines, and apricots
  - o **Exemption until 31 December 2024 for:**
    - endives, asparagus, broccoli, mushrooms, early potatoes, early carrots, and baby carrots
    - salad, lamb's lettuce, young shoots, herbs, spinach, sorrel, edible flowers, mung bean sprouts
    - cherries, cranberries, lingonberries, and gooseberries
  - o **Exemption until 30 June 2026 for:**
    - Ripe fruits, whose packaging is mentioning that the fruits are ripe and sold as fully ripen
    - Sprouted seeds
    - raspberries, strawberries, blueberries, blackberries, currants, elderberries, cloudberries and gooseberries, blackcurrants, and kiwai.



- The Decree states that all fruits and vegetables produced or imported into France prior to 1<sup>st</sup> January 2022 can still be sold in packaging made entirely or partly of plastic within 6 months following the date of the Decree to finish packaging stocks.

## STATE-OF-PLAY

- France notified this draft text to the European Commission through TRIS on 12 March 2021 (2021/149/F), the standstill period ended on 14 June 2021. Following the submission of comments by Spain and the European Commission, and of a detailed opinions by Spain, the standstill period was extended until 13 September 2021. France eventually adopted the Decree, which entered into force in January 2022.
- On 9 December, the Council of State announced its [decision](#) to annul the list of fruits and vegetables adopted by the French government, considering that the latter exceeded its powers: the AGEC law gave the government the task of listing the fruits and vegetables that would be at risk of deterioration if sold in bulk, in order to exempt them from the plastic packaging ban permanently.
- On 14 December 2022, France notified to the TRIS portal a [Decree on the obligation to present unprocessed fresh fruit and vegetables for sale without packaging made entirely or partly of plastic](#). The draft decree defines the list of fruit and vegetables that present a risk of deterioration when sold in bulk and which are therefore exempted from this obligation. The end of the standstill period is on 15 March 2023. In parallel, a national [public consultation](#) is open from 15 December 2022 to 12 January 2023.
  - o **The list, defined in Article 1, includes the following items:** *lamb's lettuce, young shoots, aromatic herbs, edible flowers, mung bean sprouts; sprouted seeds; ripe fruit; cranberries, lingonberries, physalis, blueberries, raspberries, strawberries, blackberries, redcurrants, elderberries, lingonberries and gooseberries, blackcurrants and kiwi; chicories; mushrooms; baby carrots; spinach and sorrel.*
  - o **Article 2 foresees a measure for the exhaustion of packaging stocks**, whereby the following fruit and vegetables may be displayed for sale with packaging made entirely or partly of plastic until 31 December 2023: *ribbed tomatoes, elongated tomatoes in the heart segment, cherry or cocktail tomatoes (miniature varieties); asparagus; broccoli; and early potatoes and early carrots; lettuce; spring onions; early turnips; Brussels sprouts, green beans; cherries; grapes; peaches, nectarines, and apricots.*

## IMPLICATIONS FOR THE SINGLE MARKET

- Article 18 of the Packaging and Packaging Waste Directive obliges Member States to allow the placing on the market of their territory of packaging, which satisfies the provisions of the Directive. By prohibiting packaging types that are allowed in other Member States, the text creates unjustified obstacles to trade between Member States of the EU and a barrier to the free movement of goods, which are not proportionate as to the intended environmental protection goal.
- Furthermore, the Decree risks to have unintended negative environmental impacts, in the form of increase of food loss and waste of unprocessed fruits and vegetables.

## g. Decree on the Prohibition of Certain Single-Use Plastic Food Containers made of Expanded or Extruded Plastics

### TEXT

- (Projet de) Décret relatif à l'interdiction de certains récipients pour aliments en plastique à usage unique constitués de plastique expansé ou extrudé - [Link](#)

### ABOUT THE INITIATIVE

- On 18 March 2022, the French government notified to the European Commission a Draft Decree on the Prohibition of Certain Single-Use Plastic Food Containers made of Expanded or Extruded Plastics.
- The Draft Decree prohibits the provision of single-use plastic food containers consisting entirely or partly of extruded polystyrene, expanded or extruded polypropylene and intended for on-site or nomadic consumption. This text, according to the French legislator, aims to limit the possibility of circumvention of the provisions of the AGEC<sup>3</sup> law which previously forbid expanded polystyrene containers or receptacles for on-site or on-the-move consumption.
- The provisions of this Draft Decree are set to enter into force on 1<sup>st</sup> July 2022. Six additional months, until 31 December 2022, are granted to enable the exhaustion of stocks.

### STATE-OF-PLAY

- France notified this draft text to the European Commission through TRIS on 18 March 2022 (2022/167/F), the standstill period is set to end on 20 June 2022.

### IMPLICATIONS FOR THE SINGLE MARKET

- The measures adopted by the French government infringe TFEU provisions on Single Market and EU legislation.
- In line with Article 4 of the EU Single-Use Plastics Directive (SUPD), single-use plastic food containers for immediate use or take away are subject to consumption reduction measures, which may include marketing restrictions in derogation of Article 18 of Directive 94/62/EC on Packaging and Packaging Waste (PPWD). However, Article 4 clearly states that measures adopted pursuant to this paragraph shall be proportionate and non-discriminatory. This is because, in addition to pursuing the objective of reducing the impact of certain plastic products on the environment, measures proposed in application of the SUPD shall also contribute to the efficient functioning of the internal market (SUPD, Article 1).
- Contrary to the above, the Draft French Decree creates unjustified barriers to the trade of goods between Member States which are not justified by the attainment of the SUPD environmental objectives. Bans are the most extreme form of obstacle to trade possible. France has not established that such a significant restriction is justified nor needed to fulfil the SUPD objectives, as it would be required by Article 36 TFEU. While the protection of the environment is indeed a legitimate aim, the Draft Decree falls short to justify how a full-fledged ban (and not, for instance, additional investments for the appropriate collection, sorting and recycling of those applications, or awareness raising campaigns) is suitable to achieve this objective.
- In practice, the Draft Decree will translate into a ban for most single-use plastic food containers for immediate or on-the-go consumption, which will be applicable in France only, making producers

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<sup>3</sup> [Loi n° 2020-105](#) du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire

established outside France unable to market their products in a single EU Member State. This constitutes a measure equivalent to a quantitative restriction on imports, prohibited by Article 34 TFEU. In addition to deviating from harmonised provisions set out in the SUPD and PPWD, this unilateral action undermines the legal certainty of economic operators, who will bear the costs of complying with divergent national transpositions.

- The Draft Decree's ban is therefore disproportionate as additionally restrictive measure are imposed unilaterally to limit the circumvention of an already enacted ban. This, even before the effectiveness of the SUPD, and therefore of an EU-wide approach to marine littering, is assessed in 2027.
- In addition to the Single Market implications mentioned above, the Draft Decree is more restrictive than requirements provided for in the SUPD, which exclusively forbid the placing on the market of food containers made of expanded polystyrene in Article 5 and related Annex. The Draft French Decree goes beyond the requirements established at EU level and is therefore in open contradiction with the underlying purposes of the legislative procedure, wherein the European legislators provided for an exhaustive list of banned single-use plastic applications in Annex - Part B to the SUPD. This list reflects the scientific evidence identified by the impact assessment that accompanied the legislative proposal.

#### **h. Order specifying the substances contained in mineral oils prohibited for use on packaging and for printed matter distributed to the public**

##### **TEXT**

- *(Projet d') Arrêté précisant les substances contenues dans les huiles minérales dont l'utilisation est interdite sur les emballages et pour les impressions à destination du public - [Link](#)*

##### **ABOUT THE INITIATIVE**

- The AGECE law<sup>4</sup> foresees that the use of mineral oils on packaging is prohibited from 1<sup>st</sup> January 2022 and on printed products for the general public from 1<sup>st</sup> January 2025. Contrary to the scope of the AGECE law, which covers mineral oils on printed products and packaging, this draft Order notified through TRIS focuses on prohibiting mineral oils (produced from feedstocks derived from petroleum hydrocarbons) that are used in the manufacture of inks.
- The substances concerned by the prohibition are: (1) Mineral oil aromatic hydrocarbons (MOAH) consisting of 1 to 7 aromatic cycles; (2) Mineral oil saturated hydrocarbons (MOSH) consisting of 16 to 35 carbon atoms.
- The ban on the use of mineral oils applies to:
  - o mineral oil aromatic hydrocarbons (MOAH), where the mass concentration in ink of the above substances is greater than 0.1 %, and from 1 January 2025, up to a limit of one part per billion (ppb) for compounds of 3 to 7 aromatic cycles;
  - o mineral oil saturated hydrocarbons (MOSH), where the mass concentration in ink of the above substances is greater than 1 %, and from 1 January 2025, where that concentration is greater than 0.1 %.
- The provisions of the draft Order are set to enter into force on 1<sup>st</sup> January 2023. The draft Order specifies that packaging and printed products manufactured or imported before 1 January 2023 will be granted an additional period of 12 months for the exhaustion of stocks.

<sup>4</sup> [Loi n° 2020-105](#) du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire

## STATE-OF-PLAY

- France notified this draft text to the European Commission through TRIS on 6 January 2022 (2022/4/F), the standstill period is set to end on 7 April 2022.

## IMPLICATIONS FOR THE SINGLE MARKET

- Article 18 of the Packaging and Packaging Waste Directive obliges Member States to allow the placing on the market of their territory of packaging, which satisfies the provisions of the Directive. By prohibiting mineral oils in certain applications that are allowed in other Member States, the text creates unjustified obstacles to trade between Member States of the EU and a barrier to the free movement of goods.
- The draft Order also impedes the placing on the market of packaging that meets the essential requirements as laid down in Article 9 of the PPWD. Moreover, the proposed ban on mineral oils goes beyond the preventive measures mentioned in Article 4.1 of the PPWD, which are to be implemented by Member States to prevent generation of packaging waste and to minimise the environmental impact of packaging.

## V. Italy

### TEXT

- *Decreto Legislativo 3 settembre 2020, n. 116; Attuazione della direttiva (UE) 2018/851 che modifica la direttiva 2008/98/CE relativa ai rifiuti e attuazione della direttiva (UE) 2018/852 che modifica la direttiva 1994/62/CE sugli imballaggi e i rifiuti di imballaggio - [Link](#)*

### ABOUT THE INITIATIVE

- Legislative Decree 116/2020 made it mandatory, from 26 September 2020, **1)** to provide consumers with information about the final destinations of the packaging ‘*appropriately in accordance with the procedures laid down in the applicable [UNI technical standards](#)*’, and **2)** to label all packaging with the material identification markings (alphanumeric code) laid down in [Decision 97/129/EC](#):
  - 1) “*All packaging products must be duly labelled in accordance with the applicable UNI technical provisions and in conformity to the EU Commission determinations, in order to facilitate the collection, reusage, recovery and the recycling of the packaging as well as to properly inform the consumers on the final disposal of the packaging*” and
  - 2) “*All packaging producers must also provide, in order to identify and classify the packaging, the composition of the packaging materials, as set forth in the Decision 97/129/CE of the EU Commission*”.
- The Decree was not notified to the European Commission through TRIS.

### STATE-OF-PLAY

- The above two requirements were introduced by the Decree with immediate effect in September 2020. Following the adoption of subsequent Decrees, the entry into force of the requirements was suspended until 31 December 2021.
- In December 2021, Italy further postponed the entry into force of its labelling decree to 30 June 2022. The postponement was introduced in Article 11 of [Decree n.228](#) published in the Italian Official Journal on 30

December 2021. Italy notified Decree n.228 through the TRIS notification system on 14 January 2022 (2022/18/l).

- In April 2022, Italy notified through the TRIS notification system [Decree n.114](#) adopting the Guidelines on the labelling of packaging. The guidelines mention that additional modification to Article 11 of Decree n.228 have been adopted with Law 25 February 2022, n. 15, including the suspension of the labelling requirement until 31 December 2022. Additionally, all packaging put on the market or already labelled before 1 January 2023 can be sold without the required marking until the exhaustion of stocks.
- In response to the notification, the EU Commission had issued comments requesting Italy to further underline in the guidelines the possibility to use digital channels to convey sorting rules to final consumers.
- Based on Legislative Decree 116/2020, and in response to the EU Commission comments, the Italian Ministry of Environment has adopted [Decree n.360 of 28 September 2022](#) on guidelines for the labelling of packaging, according to Art. 219 paragraph 5 of Legislative Decree 152/2006 and subsequent modifications and integrations.
- The technical guidelines will enter into force on 1 January 2023, along with the Italian marking requirements, and will be periodically updated thereafter. The document specifies that it is possible to make available the marking information through digital channels to be chosen (e.g. App, QR code, website), as an alternative to the physical affixing of the labelling on packaging.
- On 8 November 2022, CONAI released a “Manual for the use of digital channels in the environmental labelling of packaging”. The manual aims at supporting companies in using digital channels to meet their labelling obligations in Italy. The document is available [here](#) and it remains open to stakeholders’ feedback until 30 November 2022.

## IMPLICATIONS FOR THE SINGLE MARKET

- The Legislative Decree 116/2020 makes the use of material identification markings and inclusion of sorting instructions on the labelling mandatory despite the voluntary framework in place, set by [Decision 97/129/EC](#).
- Sorting instructions are not harmonised across the EU, such obligations at national level create a barrier to the free movement of goods.

## VI. Luxembourg

### TEXT

- *Law amending the Act of 21 March 2017 on packaging and packaging waste ([Loi du 9 juin 2022 modifiant la loi du 21 mars 2017 relative aux emballages et aux déchets d'emballages](#))*
- *Law amending the amended law of 21 March 2012 on waste ([Loi du 9 juin 2022 modifiant : 1° la loi modifiée du 21 mars 2012 relative aux déchets ; 2° la loi modifiée du 31 mai 1999 portant institution d'un fonds pour la protection de l'environnement](#))*
- *Law on the reduction of the impact of certain plastic products on the environment ([Loi du 9 juin 2022 relative à la réduction de l'incidence de certains produits en plastique sur l'environnement](#))*

### ABOUT THE INITIATIVE

- The three new laws published by Luxembourg on 9 June 2022 stem from the Luxembourg Circular Economy Package, itself adopted on 27 April 2022. The three laws came into force on 14 June 2022.
- These texts are transposing the 2018 Packaging and Packaging Waste Directive, 2018 Waste Framework Directive, and Single-Use Plastics Directive, although some measures seem to go beyond the scope of these EU laws.
- Article 10 of the Law amending the Act of 21 March 2017 on packaging and packaging waste introduces an obligation to label packaging with an indication of the nature of the materials used in accordance with Commission Decision 97/129/EC.
- Article 9 of the Law amending the amended law of 21 March 2012 on waste:
  - o Introduces that from 1 January 2025, containers, trays, plates and cutlery used in the context of a home delivery service or a take-away service shall be reusable and subject to take-back. The article also introduces an obligation for entities subject to EPR to submit to the administration by 1 January 2024 a roadmap for deploying the “targeted products” that are in scope of this provision.
  - o Introduces the prohibition of certain single-use products and packaging in parties and events open to the public, which are detailed in Annex VI, including (non-exhaustive):
    - From 1 January 2023: single-use plastic cups, mugs, glasses and bottles.
    - From 1 January 2025: single-use cups, mugs, glasses, bottles (glass bottles are exempted), beverage cans and beverage cartons.
- Article 5 of the Law on the reduction of the impact of certain plastic products on the environment introduces the prohibition from 1 July 2023 of packaging made entirely or partly of plastics for the sale of fruits and vegetables listed in Annex II of the law. This obligation does not apply to fruits and vegetables sold in batches of more than 1.5 kg. (NB: This provision was not included in the notified text)

## STATE-OF-PLAY

- The three texts were notified via the TRIS notification system back on 30 July 2020 ([2020/485/L](#), [2020/487/L](#), [2020/486/L](#)). The end of the standstill period of the three notifications was set on 3 November 2020.
- The three laws and their provisions entered into force on 14 June 2022, including the new packaging labelling obligations.

## IMPLICATIONS FOR THE SINGLE MARKET

- The proposed measures will impede the placing on the market of packaging that is fully compliant with the provisions of the EU packaging legislation, thus being contrary to Article 18 of the PPWD.
- The obligations will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by Article 34 of the TFEU.

## VII. Portugal

### TEXT

- *TRIS Notification 2021/118/P, draft Decree-Law (fifth amendment) amending Decree-Law No 152-D/2017 of 11 December 2017, as amended by Law No 69/2018 of 26 December 2018 and Law No 41/2019 of 21 June 2019, by Decree-Law No 86/2020 of 14 October 2020, and amended and republished by Decree-Law No 102-D/2020 of 10 December 2020.* - [Link](#)

### ABOUT THE INITIATIVE

- This draft text, if adopted, would set an obligation to use the alphanumeric codes of [Decision 97/129/EC](#) and to include sorting instructions, in particular the colour of the recycling bin: *“In order to promote the correct separation of waste and to increase the levels and quality of recycling, recyclable packaging placed on the market shall be marked with appropriate sorting instructions, in particular the colour of the recycling bin in which they should be placed, in accordance with the terms to be determined by the Ordinance of the members of the Government responsible for economic and environmental matters”*. The obligation would apply two years after the entry into force of the Decree-Law.
- The text also puts forward a ban of the “Tidy man” logo (below) on recyclable packaging.



### STATE-OF-PLAY

- Portugal notified the European Commission of its draft Decree through the TRIS notification system (2021/118/P) on 23 February 2021. The European Commission, Estonia and Sweden submitted comments on the draft notified text. The notification’s standstill period ended on 25 May 2021. The Decree-Law is set to enter into force on the following date of its publication. It is for the moment unclear if Portugal will go ahead and adopt the draft Decree, and in what form.

### IMPLICATIONS FOR THE SINGLE MARKET

- These requirements would require specific packaging for the Portuguese market, therefore creating a barrier to the free movement of goods. Sorting instructions and colour codes of bins are not harmonised across the EU, this information could be confusing for consumers in other Member States.
- In its comments, the European Commission raised several concerns with regards to the Single Market compatibility of the proposed labelling requirements from Portugal, including the decision to ban the use of the Tidy-man symbol, and their impacts on free movement of goods across the EU.
  - o The Commission stressed that national rules that lay down requirements (such as those relating to presentation, labelling, packaging) to be met by goods coming from other Member States where they are lawfully manufactured and marketed, represent obstacles to free movement of goods and constitute measures of equivalent effect prohibited by Article 34 TFEU.
  - o It added that the marking of recyclable packaging with appropriate sorting instructions such as those established under the notified draft would require the organisation of specific production and



compliance procedures only for the Portuguese market, resulting in an economic and regulatory burden for economic operators, and would be counterproductive and going against the efforts of industry to reduce the size of the packaging and, therefore, the amount of waste produced.

- The Commission questioned in its comments the added value of compulsory labelling requirements for recyclable packaging, compared to other types of factors having an impact on the increase in the recycling rate, such as improving the collection system or awareness raising actions with citizens.
- It stressed that in the absence of Union harmonisation legislation on the 'Tidy-man' symbol, such prohibition would result in banning from the Portuguese market packaging where the above-mentioned symbol is affixed and this might result in banning packaging that is lawfully marketed in other EU Member States, again in violation of Article 34 TFEU.

## VIII. Slovenia

### TEXT

- *Uredba o embalaži in odpadni embalaži, stran 3176* - [Link](#)

### ABOUT THE INITIATIVE

- In April 2021, Slovenia adopted a Decree on Packaging and Packaging Waste implementing the provisions of the Packaging and Packaging Waste Directive 2018.
- Article 9 of the Decree sets an obligation to use the alphanumeric codes of [Decision 97/129/EC](#). The text states the following:
  - (1) In order to facilitate collection, re-use and recovery, including recycling, the packaging manufacturer or packager should indicate on the packaging the types of packaging materials used pursuant to Commission Decision of 28 January 1997 establishing a packaging material identification system in accordance with the European Parliament Directive and Council 94/62 / EC on packaging and packaging waste (97/129 / EC) (OJ L 50, 20.2.1997, p. 28; hereinafter: Decision 97/129 / EC).
  - (2) The marking of the packaging material must be placed on the packaging itself or on the label attached to the packaging, and it must be clearly visible and clearly legible. The label must be permanent and durable even after opening the packaging.
  - (3) The acquirer of packaging may import only packaging marked in accordance with the first and second paragraphs of this Article.
  - (4) The markings of packaging materials referred to in the first paragraph of this Article are intended for collectors, processors and disposers of waste for the identification of packaging materials and for the classification of waste packaging.

### STATE-OF-PLAY

- According to the Decree, the marking obligation is set to enter into force in 1 January 2022. Slovenia notified a draft of the Decree to the European Commission via TRIS (2020/699/SI) on 10 November 2020, the notification's standstill period ended on 11 February 2021.
- On 14 September 2021, Slovenia notified another draft text to the European Commission via TRIS (2021/597/SI), amending the Decree on Packaging and Packaging Waste that had been formerly notified (2020/699/SI). The notification's standstill period ended on 15 December 2021.



- Article 2 of the new draft amends Article 9 of the Decree on Packaging and Packaging Waste and sets that the requirement on labelling of packaging with labels of packaging materials evolves from mandatory to voluntary.
- Article 2 states that “in the event that the packaging is made of packaging materials listed in Decision 97/129/EC and the manufacturer or packer chooses to label it, the packaging materials identification system provided for in Decision 97/129/EC shall be used for the labelling.”
- Article 2 of the Decree was set to apply from 1 January 2022.

## IMPLICATIONS FOR THE SINGLE MARKET

- The Decree adopted in April 2021 makes the use of material identification markings mandatory despite the voluntary framework in place, set by [Decision 97/129/EC](#). The ban on imported packaging not bearing the marking constitutes a barrier to trade. The newly notified text would however solve the issue as it does not mandate the indication of packaging materials on labelling.

## IX. Spain

### a. [Draft Royal Decree on Packaging and Packaging Waste](#)

#### TEXT

- *Proyecto de Real Decreto de Envases y Residuos de Envases* - [Link](#)

#### ABOUT THE INITIATIVE

The draft Royal Decree introduces the following measures and targets:

- To achieve a 13% packaging waste reduction in weight by 2025, and a 15% reduction by 2030, compared to 2010 levels.
- To achieve a 20% reduction in the number of single-use plastic beverage bottles placed on the market by 2030.
- Prohibition of packaging for fruit and vegetables in retail stores. This prohibition would not apply to batches of more than 1.5 kg or to fruits and vegetables at risk of deterioration when sold in bulk (exemptions to be determined by the Spanish Agency for Food Safety and Nutrition, in coordination with the Ministry of Agriculture, Fisheries and Food).
- Reuse targets and measures, as follows:
  - For beverage containers in the HORECA sector (in sales units or equivalent units):
    - Bottled water: reuse of 30% by 2025 and 50% by 2030;
    - Beer: reuse of 80% in 2025 and 90% in 2030;
    - Soft drinks: reuse of 70% in 2025 and 80% in 2030;
    - Others: reuse of 25% in 2025 and 30% in 2030.
  - For beverage containers marketed in the domestic channel (in sales units or equivalent unit):
    - A minimum of 10% reuse by 2030.
  - For other packaging applications:

- The proportion of reusable containers marketed in the retail sector with respect to the total of containers by weight of this category should be 5% in 2030 and 10% in 2035.
  - The proportion of commercial packaging and reusable industrial packaging, with respect to the total of packaging by weight for each of these categories, should be 20% in 2030 and 30% in 2035.
- It is also required that retail food establishments offer at their points of sale, and depending on the size of their commercial area, a certain number of beverage references in reusable packaging.
- It sets out an obligation for producers to ensure that the plastic packaging they place on the market, and which is not made of compostable plastic, meets the following minimum recycled plastic content requirements:
  - By 2025, packaging made from PET must contain at least 25% recycled plastic, calculated as an average of all PET packaging placed on the market;
  - By 2025, plastic packaging not subject to the obligation above must contain at least 20% recycled plastic, calculated as an average of all such packaging placed on the market;
  - By 2030, plastic packaging should contain at least 30% recycled plastic, calculated as an average of all plastic packaging it places on the market.
- The text also establishes specific recycled content objectives to be achieved by 2030 across different packaging segments:
  - 35% for plastic bottles, demijohns and similar articles of up to 5 litres capacity, including their caps and lids;
  - 15% for jars, tubs, trays, baskets and other similar articles of plastic;
  - 15% for plastic films used in primary packaging applications, including, but not limited to, bags, liners, peel-off lids or wrappings;
  - 30% for plastic films used in secondary or tertiary packaging applications such as, but not limited to, shrink wrapping, liners, sacks, bubble packs, envelopes, among others;
  - 60% for pallets, crates, drums and wholesale storage containers and other similar plastic.
- A number of measures on labelling:
  - the use, on a voluntary basis, of the alphanumerical codes regulated by Decision 97/129/EC to indicate the material composition of the packaging;
  - the obligation to indicate that a packaging is “reusable” and display the symbol associated with the relevant deposit, return and refund system or accrediting the participation to an EPR scheme;
  - the prohibition to mark packaging with the claim “environmentally friendly” or equivalent labels;
  - the obligation for household packaging to indicate the fraction or container in which said packaging waste must be deposited;
  - In addition to this, Article 21 (3) - which established general obligations for EPR schemes - states that accreditation symbols shall be clear and unambiguous and not mislead consumers. In this regard, Article 21 (3) also indicates that the “Green Dot” is considered to be misleading to consumers.

## STATE-OF-PLAY

- On 6 May 2022, Spain notified a draft Royal Decree on packaging and packaging waste to the TRIS portal. The standstill period initially ended on 8 August 2022, yet it was extended to 7 November 2022 following the issuing of comments and opinions from the EU Commission, Sweden and the Czech Republic.
- On 28 December 2022, the [Royal Decree on Packaging and Packaging Waste](#) was adopted and entered into force, repealing the Packaging Decree of 1997. When compared with the text initially notified to the TRIS portal, the following changes have been implemented (non-exhaustive, see [here](#) a detailed analysis):
  - > Both waste prevention and reuse targets are voluntary. The aforementioned targets and measures for the use of reusable beverage containers in the HORECA sector have also been revised and reduced (Art. 8.1(a))
  - > The recycled content targets reported above are also voluntary.
  - > Regarding fruits and vegetables without packaging, the text introduces additional time for the authorities to adopt the list of exemptions - from 3 to 6 months - with an additional six months for retailers to adapt to the new measures (previously, 4 months).
  - > The use of EPR schemes symbols is voluntary (incl. the Green Dot) but the Decree mandates the use of a label to indicate packaging reusability, as well as to indicate the fraction or container in which the packaging waste shall be deposited (Art. 13.2).
  - > Packers/fillers of single-use household packaging must comply through either an authorised individual program or a single PRO. The same limitation is applied to packers/fillers of commercial/industrial packaging, unless the product is packaged in primary packaging and destined to different economic activities. Packers/fillers of reusable packaging may opt for a combination of multiple options (Art. 17.3).
  - > Packers/fillers of commercial packaging used (for the initial marketing) for agricultural, forestry, fishing and aquaculture activities products may conclude voluntarily agreements with end-users to take-over the producer obligations by setting up themselves the corresponding EPR systems (Art. 35.3).
  - > Separate targets collection targets are newly added for ferrous metals and aluminium household packaging. The separate collection targets for household waste packaging are to be met by the PROs in addition to meeting the recycling targets (set as per the EU Directive).
  - > A previous exemption from the deposit for bottled beverages marketed domestically by the HORECA sector (whereby the producer maintains ownership of the container and assigns the right of use through a paid agreement) has been removed (Art. 46.1(a)). Moreover, a further exemption is provided for reusable household containers whose reuse system depends on the refilling of the container by the user/consumer through products packaged in single-use containers (Art. 46.11).

## IMPLICATIONS FOR THE SINGLE MARKET

- The proposed measures will impede the placing on the market of packaging that is fully compliant with the provisions of the EU packaging legislation, thus being contrary to article 18 of the PPWD.
- Most obligations will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by article 34 of the TFEU.

## b. Law on Waste and Contaminated Soils for a Circular Economy

### TEXT

- *Law 7/2022 on waste and contaminated soils for a circular economy* - [Link](#)

### ABOUT THE INITIATIVE

- Title V of the preliminary draft law on Waste and Soil Protection is dedicated to single-use plastic products. This title details measures to reduce the consumption of certain single-use plastic products by means of quantitative reduction targets, market introduction restrictions on new lines of plastic products and products containing plastic microbeads, measures related to product line design and marking requirements, and consumer awareness measures to reduce littering. For plastic bottles, the text sets out two different timelines for separate collection targets.
- Furthermore, the text governs the adoption of extended responsibility schemes for certain plastic products, indicating the costs that producers of these products must cover.

### STATE-OF-PLAY

- The Spanish preliminary draft law on Waste and Soil Protection was partially notified to the European Commission through TRIS on 20 October 2020 (2020/658/E), the notification's standstill period ended on 21 January 2021.
- Following the submission of a detailed opinion on the text by Portugal, the notification's standstill period was extended until 21 April 2021.
- On 8 April 2022, [Law 7/2022 on waste and contaminated soils for a circular economy](#) has been adopted, transposing the draft law on Waste and Soil Protection. The legislation aims to prevent and reduce waste generation, along with preventing and reducing the impact of certain plastic products, specifically SUPs, on human health and the environment. Part V of the legislation concerns the reduction SUP consumption, as well as its waste management, transposing EU Directive 2019/904 on the reduction of the impact of certain plastic products on the environment.

### IMPLICATIONS FOR THE SINGLE MARKET

- The original proposal aimed to introduce a differentiated tax system for recycled plastic content (Article 68) originating from Spain (exempted) and from other EU Member States (not exempted), as well as the obligation for producers established in another Member State to designate a representative in Spain for the purposes of fulfilling their EPR obligations (Article 37(6)).
- The European Commission commented on the text, raising the incompatibilities of the EPR obligations with the Waste Framework Directive and Single Market, however, it did not comment on the differentiated tax system because Article 68 was not part of the draft text notified through TRIS.
- Spain eventually dropped the proposal of a differentiated tax system, which could have resulted in a barrier to developing a Single Market for recycled plastic.

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