

ECF comments on TRIS notification 2022/827/B (Belgium)
Draft Royal Decree to limit the placing on the market of single-use products harmful to the environment

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.

Article 7 of the draft Royal Decree specifically prohibits the placing on the Belgium market of the single-use products listed in Annex 3, including the following coffee Single Serve Units (SSU): plastic coffee bags and single-use coffee capsules containing plastic or aluminium.

The European Coffee Federation contests the lawfulness of the above-mentioned measure given the following arguments:

- The provision in the Royal Decree **pre-empts the forthcoming revision of the Directive 94/62/EC on Packaging and Packaging Waste (PPWD)**, 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 (TRIS)¹.
- Article 4(3) of the Treaty of the European Union (TEU) specifies that in line with the principle of sincere cooperation, **a Member State should refrain from adopting legislation to address an issue which can only be adequately resolved at EU level and in a field which the EU intends to harmonise.**
- The requirements in the draft Royal Decree **do not find a legal basis in any of the currently enforced EU legislations or already adopted EU laws.**
- If adopted, the Royal Decree will have **negative economic impacts on economic operators without effective environmental value should the SSU be recycled or composted.**

Article 7 requirements

The SUP Directive stipulates that only single-use plastic products listed in Part B of its Annex are subject to restrictions on placing on the market. The Royal Decree requirement, therefore, over-transposes the SUP Directive while not having a legal basis in any of the provisions currently enforced at EU level.

The Royal Decree is specifically banning SSU's which would be lawfully marketed in other Member States, creating unsubstantiated barriers to trade. The measure is not justified by the attainment of the SUP Directive environmental objectives so can't be upheld by the *lex specialis* principle set in art 4 of the SUP Directive, nor is compliant with Article 18 of the PPWD when referring, as an example, to empty after use single serve units.

¹ Article 6 (3) of Directive (EU) 2015/1535 on TRIS states: "[...] Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU

Economic impact

Over the years SSU's have achieved a premium positioning due to the strong investment made in innovation to ensure maximum performance, quality and efficient resource usage.

Only in 2020, 24% of global coffee innovation corresponded to the SSU category. Since 2016 SSU's have experienced a 32% increase in volume, with an annual growth of 5.72%² over the past 5 years. In 2022, Coffee Single Serve Units represented, 15%³ of the European coffee category volume and 40% of the value. Moreover, in Belgium the category represents 32% of the volume⁴ and 47% of the value⁵. Thus, a prohibition of the category in the Belgium market would have a devastating effect on the already shaken coffee sector.

Additionally, coffee capsule machines have penetrated 80%⁶ of Belgium households, resulting in approximately 4.2 million perfectly functioning machines to be disposed of with no further consideration.

Should SSU's containing plastic or aluminium, be banned, economic operators that have been investing over the past decade in new packaging designs to improve the recyclability of their products will see all their efforts and investments jeopardized. As a concrete example of what has been achieved, kindly allow us to refer to the recent announcement made by the Belgian Extended Producers Organisation, Fost Plus⁷, regarding the possibility, as from January 2023, to sort all coffee capsules in the Blue Bag (PMC: plastic bottles and containers).

Today, the overall environmental performance of SSU's vs coffee brewed using other systems is comparable⁸. Because of the high extraction efficiency, less roast & ground coffee is required to brew the cup, compared to filter or espresso coffee. Due to the reduced use of coffee, the greenhouse gas (GHG) emissions of a SSU brewed cup is comparable to any other brewing systems, also reducing the amount of coffee waste.

Therefore, until there is a system clearly prepared to ensure an appropriate end of life of any given material, ECF and its members will continue to work at maximizing the materials capacity to enable full circularity and maximization of resource efficiency, in line with the policy objectives of the European Green Deal and the new Circular Economy Action Plan (CEAP). There is a strong sector commitment, having as previously mentioned, heavily invested in different proprietary and collective approaches that have been implemented on a national level in many Member States.

In conclusion, we believe that the solution to the circularity of SSU's does not lie in Member States imposing unilateral requirements which pre-empt forthcoming EU legislation and create barriers to trade.

The European Coffee Federation (ECF) is the representative organisation for the European coffee trade and industry, speaking for over 750 companies ranging from SMEs to internationally operating companies, representing approximately 35% of the world coffee trade volume. ECF offers its members a forum for exchange, identifying industry-wide issues of common interest in the areas of food safety, sustainability and international trade.

^{2, 3} Euromonitor, Passport data (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden)

⁴ Euromonitor, Passport data

⁵ Euromonitor, Passport data

⁶ GSF, 2022

⁷ Public announcement: <https://fostplus.prezly.com/a-partir-du-1er-janvier-2023-toutes-les-capsules-de-cafe-pourront-etre-triees-dans-le-nouveau-sac-bleu>

⁸ Quantis LCA on coffee consumption: <https://lyonspc2019.files.wordpress.com/2019/03/pac0680-full-lca.pdf>