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 (Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The high functionality and relatively low cost of plastic means that this material is increasingly ubiquitous in everyday life. While plastic plays a useful role in the economy and provides essential applications in many sectors, its growing use in short-lived applications, which are not designed for re-use or cost-effective recycling, means that related production and consumption patterns have become increasingly inefficient and linear. Therefore, in the context of the Circular Economy Action Plan laid down in the Communication of the Commission of 2 December 2015 entitled ‘Closing the loop – An EU action plan for the Circular Economy’, the Commission concluded in the European Strategy for Plastics laid down in its Communication of 16 January 2018 entitled ‘A European Strategy for Plastics in a Circular Economy’ that the steady increase in plastic waste generation and the leakage of plastic waste into the environment, in particular into the marine environment, must be tackled in order to achieve a circular life cycle for plastics. The European Strategy for Plastics is a step towards establishing a circular economy in which the design and production of plastics and plastic products fully respect re-use, repair and recycling needs and in which more sustainable materials are developed and promoted. The significant negative environmental, health and economic impact of certain plastic products calls for the setting up of a specific legal framework to effectively reduce those negative effects.

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(2) This Directive promotes circular approaches that give priority to sustainable and non-toxic re-usable products and re-use systems rather than to single-use products, aiming first and foremost to reduce the quantity of waste generated. Such waste prevention is at the pinnacle of the waste hierarchy enshrined in Directive 2008/98/EC of the European Parliament and of the Council[(4)]. This Directive will contribute to the achievement of United Nations (UN) Sustainable Development Goal 12 to ensure sustainable consumption and production patterns, which is part of the 2030 Agenda for Sustainable Development adopted by the UN General Assembly on 25 September 2015. By retaining the value of products and materials for as long as possible and generating less waste, the economy of the Union can become more competitive and more resilient, while reducing pressure on precious resources and the environment.

(3) Marine litter is transboundary in nature and is recognised as a growing global problem. Reducing marine litter is a key action for the achievement of UN Sustainable Development Goal 14 which calls to conserve and sustainably use the oceans, seas and marine resources for sustainable development. The Union must play its part in preventing and tackling marine litter and aim to be a standard setter for the world. In that context, the Union is working with partners in many international fora such as G20, G7 and the UN to promote concerted action and this Directive is part of the Union's efforts in that regard. In order for those efforts to be effective, it is also important that exports of plastic waste from the Union do not result in increased marine litter elsewhere.

(4) In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS)[(5)], the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 29 December 1972 ('London Convention') and its 1996 Protocol ('London Protocol'), Annex V to the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL), as modified by the Protocol of 1978 relating thereto, and the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal of 22 March 1989[(6)] and with Union waste legislation, namely Directive 2008/98/EC and Directive 2000/59/EC of the European Parliament and of the Council[(7)], Member States are required to ensure environmentally sound waste management to prevent and reduce marine litter from both sea and land sources. In accordance with Union water legislation, namely Directives 2000/60/EC[(8)] and 2008/56/EC[(9)] of the European Parliament and of the Council, Member States are also required to tackle marine litter where it undermines the attainment of good environmental status of their marine waters, including as a contribution to UN Sustainable Development Goal 14.

(5) In the Union, 80 to 85 % of marine litter, measured as beach litter counts, is plastic, with single-use plastic items representing 50 % and fishing-related items representing 27 % of the total. Single-use plastic products include a diverse range of commonly used fast-moving consumer products that are discarded after having been used once for the purpose for which they were provided, are rarely recycled, and are prone to becoming litter. A significant proportion of the fishing gear placed on the market is not collected for treatment. Single-use plastic products and fishing gear containing plastic are therefore a particularly serious problem in the context of marine litter, pose a severe

risk to marine ecosystems, to biodiversity and to human health and damage activities such as tourism, fisheries and shipping.

(6) Proper waste management remains essential for the prevention of all litter, including marine litter. Existing Union legislation, namely Directives 2008/98/EC, 2000/59/EC, 2000/60/EC and 2008/56/EC and Council Regulation (EC) No 1224/2009[(10)], and policy instruments provide some regulatory responses to address marine litter. In particular, plastic waste is subject to overall Union waste management measures and targets, such as the recycling target for plastic packaging waste laid down in European Parliament and Council Directive 94/62/EC[(11)] and the objective in the European Strategy for Plastics to ensure that by 2030 all plastic packaging placed on the Union market is re-usable or easily recycled. However, the impact of those measures on marine litter is not sufficient and there are differences in the scope and the level of ambition amongst national measures to prevent and reduce marine litter. In addition, some of those measures, in particular marketing restrictions for single-use plastic products, could create barriers to trade and distort competition in the Union.

(7) To focus efforts where they are most needed, this Directive should cover only those single-use plastic products that are found the most on beaches in the Union as well as fishing gear containing plastic and products made from oxo-degradable plastic. The single-use plastic products covered by measures under this Directive are estimated to represent around 86 % of the single-use plastics found, in counts, on beaches in the Union. Glass and metal beverage containers should not be covered by this Directive as they are not among the single-use plastic products that are found the most on beaches in the Union.

(8) Microplastics do not fall directly within the scope of this Directive, yet they contribute to marine litter and the Union should therefore adopt a comprehensive approach to that problem. The Union should encourage all producers to strictly limit microplastics in their formulations.

(9) Terrestrial pollution and contamination of soil by larger items of plastic and resulting fragments or microplastics can be significant and such plastic can leak into the marine environment.

(10) This Directive is a *lex specialis* in relation to Directives 94/62/EC and 2008/98/EC. In the event of a conflict between those Directives and this Directive, this Directive should prevail within the scope of its application. That is the case for restrictions on placing on the market. In particular with regard to consumption reduction measures, product requirements, marking requirements and extended producer responsibility, this Directive supplements Directives 94/62/EC and 2008/98/EC and Directive 2014/40/EU of the European Parliament and of the Council[(12)].

(11) Single-use plastic products can be manufactured from a wide range of plastics. Plastics are usually defined as polymeric materials to which additives may have been added. However, that definition would cover certain natural polymers. Unmodified natural polymers, within the meaning of the definition of ‘not chemically modified substances’ in point 40 of Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council[(13)], should not be covered by this Directive as they occur naturally

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in the environment. Therefore, for the purposes of this Directive, the definition of polymer in point 5 of Article 3 of Regulation (EC) No 1907/2006 should be adapted and a separate definition should be introduced. Plastics manufactured with modified natural polymers, or plastics manufactured from bio-based, fossil or synthetic starting substances are not naturally occurring and should therefore be addressed by this Directive. The adapted definition of plastics should therefore cover polymer-based rubber items and bio-based and biodegradable plastics regardless of whether they are derived from biomass or are intended to biodegrade over time. Paints, inks and adhesives should not be addressed by this Directive and therefore these polymeric materials should not be covered by the definition.

(12) In order to clearly define the scope of this Directive, the term 'single-use plastic product' should be defined. The definition should exclude plastic products that are conceived, designed and placed on the market to accomplish within their life span multiple trips or rotations by being refilled or re-used for the same purpose for which they are conceived. Single-use plastic products are typically intended to be used just once or for a short period of time before being disposed of. Wet wipes for personal care and domestic use should also be within the scope of this Directive, whereas industrial wet wipes should be excluded. To further clarify whether a product is to be considered a single-use plastic product for the purposes of this Directive, the Commission should develop guidelines on single-use plastic products. In view of the criteria set out in this Directive, examples of food containers to be considered as single-use plastic products for the purposes of this Directive are fast-food containers or meal, sandwich, wrap and salad boxes with cold or hot food, or food containers of fresh or processed food that does not need further preparation, such as fruits, vegetables or desserts. Examples of food containers that are not to be considered as single-use plastic products for the purposes of this Directive are food containers with dried food or food that is sold cold requiring further preparation, containers containing food in more than single-serve portions or single-serve portion-sized food containers sold in more than one unit.
Examples of beverage containers to be considered as single-use plastic products are beverage bottles or composite beverage packaging used for beer, wine, water, liquid refreshments, juices and nectars, instant beverages or milk, but not cups for beverages as these are a separate category of single-use plastic products for the purposes of this Directive. As they are not among the single-use plastic products that are found the most on beaches in the Union, glass and metal beverage containers should not be covered by this Directive. However, the Commission should, in the context of the review of this Directive, evaluate, inter alia, caps and lids made of plastic used for glass and metal beverage containers.

(13) Single-use plastic products covered by this Directive should be addressed by one or several measures, depending on various factors, such as the availability of suitable and more sustainable alternatives, the feasibility of changing consumption patterns, and the extent to which they are already covered by existing Union legislation.

(14) For certain single-use plastic products, suitable and more sustainable alternatives are not yet readily available and the consumption of most such single-use plastic products is expected to increase. To reverse that trend and to promote efforts towards

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more sustainable solutions, Member States should be required to take the necessary measures, for example by setting national consumption reduction targets, to achieve an ambitious and sustained reduction in the consumption of those products, without compromising food hygiene, food safety, good hygiene practices, good manufacturing practices, consumer information, or traceability requirements set out in Regulations (EC) No 178/2002[(14)], (EC) No 852/2004[(15)] and (EC) No 1935/2004[(16)] of the European Parliament and of the Council and other relevant legislation related to food safety, hygiene and labelling. Member States should have the highest possible ambition for those measures, which should induce a substantial reversal of increasing consumption trends and lead to a measurable quantitative reduction. Those measures should take into account the impact of products throughout their life cycle, including when they are found in the marine environment, and should respect the waste hierarchy.

Where Member States decide to implement that obligation through marketing restrictions, they should ensure that such restrictions are proportionate and non-discriminatory. Member States should encourage the use of products that are suitable for multiple use and that are, after having become waste, suitable for preparing for re-use and recycling.

(15) For other single-use plastic products, suitable and more sustainable alternatives that are also affordable are readily available. In order to limit the adverse impact of such single-use plastic products on the environment, Member States should be required to prohibit their placing on the market. By doing so, the use of those readily available and more sustainable alternatives as well as of innovative solutions towards more sustainable business models, re-use alternatives and substitution of materials would be promoted. The restrictions on placing on the market introduced in this Directive should also cover products made from oxo-degradable plastic, as that type of plastic does not properly biodegrade and thus contributes to microplastic pollution in the environment, is not compostable, negatively affects the recycling of conventional plastic and fails to deliver a proven environmental benefit. Furthermore, in view of the high prevalence of expanded polystyrene litter in the marine environment and the availability of alternatives, single-use food and beverage containers and cups for beverages made of expanded polystyrene should also be restricted.

(16) Tobacco product filters containing plastic are the second most found single-use plastic items on beaches in the Union. The huge environmental impact caused by post-consumption waste of tobacco products with filters containing plastic, discarded directly into the environment, needs to be reduced. Innovation and product development are expected to provide viable alternatives to filters containing plastic and need to be accelerated. Extended producer responsibility schemes for tobacco products with filters containing plastic should also encourage innovation leading to the development of sustainable alternatives to tobacco product filters containing plastic. Member States should promote a wide range of measures to reduce litter from post-consumption waste of tobacco products with filters containing plastic.

(17) Caps and lids made of plastic which are used for beverage containers are among the single-use plastic items that are found the most on beaches in the Union. Therefore, beverage containers that are single-use plastic products should only be allowed to be