

Regulating Single-Use Plastic Under Directive (EU) 2019/904 and Beyond: Lessons from Italy and Spain

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ABSTRACT: In the last years, the European Union has vigorously sought to curb the ever-spreading production and use of single-use plastic, underpinned by persistent concerns over its adverse environmental and health impacts. The instruments employed include Directive (EU) 2019/904 and, more recently, Regulation (EU) 2025/40 on plastic packaging. The former has not only triggered acute debate, but has also unveiled divergent approaches and standpoints across Member States. This paper hence illustrates its regulatory cornerstones and explores its transposition, as well as the regulation of plastic more broadly, in both Italy and Spain, with a particular focus on extended producer responsibility as a pivotal mechanism of circular economy.

KEYWORDS: single-use plastic; circular economy; extended producer responsibility; sustainability; waste management

SUMMARY: 1. Introduction — 2. The Regulatory Cornerstones of the SUP Directive — 3. Extended Producer Responsibility — 4. An Italian Outlook on Single-Use Plastic — 5. Lessons from Spain on Single-Use Plastic Regulation — 6. New Regulatory Perspectives under the PPWR and Final Remarks.

1. Introduction

The pervasive presence of single-use plastic in any corner of contemporary society is not just self-evident; it has always been a foregone conclusion. Since the 1960s, the strong industrial progress, together with the rise of a strong consumerist attitude centered on convenience, disposability, and accelerated needs, elevated plastic more and more to the modern material par excellence.¹ As a matter of fact, it offers countless advantages: versatility, accessible prices, insulation properties, lightness and hygiene to name a few. But above all, plastic is extremely durable. This is a fundamental attribute of its industrial success, that *logically* lends plastic to long-term, circular applications. Yet, it is exactly here that a structural contradiction of this material emerges, that is, its massive employment in items that are meant to be discarded almost immediately, thereby nullifying the very meaning of durability, and wasting its potential. Single-use plastic (SUP) products — like cups, cutlery, packaging and

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¹ J. STANLEY, D. CULLITON, A.J. JOVANI-SANCHO, A.C. NEVES, *The journey of plastics*, in *Eng*, 6(1) 2025, 17 <https://doi.org/10.3390/eng6010017>.

so forth — therefore become the utmost representation of our “throwaway society”,² marketed and sold as daily necessities and consumed so rapidly that they far outpace the environment’s capacity to absorb their consequences.

As it is common knowledge, several negative externalities are associated with the production, consumption and waste disposal of plastic. Its exponential rise in use has led to litter aggregation in natural environments, including soil and oceans, which poses a risk to plant, animals and human health.³ At the same time, its production mostly relies on fossil fuels, entailing consistent greenhouse gases (GHG) emissions; and its end-of-life management faces considerable issues, such as insufficient recycling rates, dispersion, and even unregulated export to less developed and developing countries.⁴ Likewise, the problem of microplastics contamination, especially from SUP items that are wrongfully reused multiple times, continues to raise concerns, especially in the food sector — which takes up most of plastic packaging use in the EU and is undergoing rapid consumption changes, steering more and more towards convenience⁵ and “ready to eat” (and dispose) options. For sure, the increase of SUP in any sector was further pushed by the CoViD-19 crisis, during which disposable products were rightfully associated with lesser contagion, but seemingly encouraged consumers, even after the pandemic, to privilege such products and look down on reusable ones as less safe or less practical, thereby entrenching harmful (and uneducated) habits.⁶

The institutional response to plastic pollution was, at EU level, the 2020 “Circular Economy Action Plan for a cleaner and more competitive Europe” (CEAP),⁷ a strategy spelled out in a Commission communication aiming at the establishment of a cleaner and more competitive Europe, via a shared commitment throughout the entire value chain. In line with the Green Deal,⁸ it plans to achieve a number of goals, including making all packaging reusable or recyclable by 2030 — a greatly ambitious target that will have consequences on many areas of law and business alike. In this sense, a circular economy should be understood as decoupling economic activity from finite resource consumption, a circular, self-regenerating system whereby waste and pollution are minimized, materials retain value through reuse, and ecosystem flourish again.⁹ This is also pursued by adhering to the hierarchical framework of waste management illustrated

² Y. CHEN, A.K. AWASTHI, F. WEI, Q. TAN, J. LI, *Single-use plastics: Production, usage, disposal, and adverse impacts*, in *Science of the Total Environment*, 752 (2021), 141772.

³ J. STANLEY et al, *op cit.* and L. DE SILVA, J. DOREMUS, R. TAYLOR, *The Plastic Economy*, in *Environmental Defense Fund - Economics Discussion Paper Series*, 21-05, 2021.

⁴ See Y. CHEN, et al; J. STANLEY, et al; and L. DE SILVA, *op cit.*

⁵ B. BOKOR, *Legal Analysis of EU Regulations on Circular Economy and Sustainability Principles in Plastic Food Packaging*, in *Cleaner Waste Systems*, 12, December 2025.

⁶ Among others, K. SYBERG, M. B. NIELSEN, L. P. W. CLAUSEN, G. CALSTER, A. WEZEL, *Regulation of plastic from a circular economy perspective*, in *Current Opinion in Green and Sustainable Chemistry*, 2021. L. COLELLA, *La strategia “plastic free” e i principi della direttiva europea 2019/904*, in *AmbienteDiritto.it*, 4, 2020, 73-95; and D. KASZNIK & Z. ŁAPNIEWSKA, *op cit.*

⁷ European Commission, *A new Circular Economy Action Plan: For a cleaner and more competitive Europe* (COM (2020) 98 final). Available at https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC_1&format=PDF. On this point, see further F. RASPADORI, *Il contributo dell’Unione europea alla ricostruzione della nozione di economia circolare*, in *Il Diritto dell’Unione Europea*, 2021.

⁸ European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions*. The European Green Deal. COM/2019/640 final.

⁹ *Ibidem.*



in Directive 2008/98/EC, which prioritizes waste prevention and reduction, then followed by reuse, recycling and recovery, and lastly, safe disposal.¹⁰

With this picture in mind, Russo egregiously spells out the four axes that compose, or should compose, the EU strategy for plastic, namely I) improve the economics and quality of plastic recycling; II) curb plastic waste and its abandonment in the environment; III) direct innovation and investments towards circular solutions; and IV) leverage global action.¹¹ In the second ax, he spots Directive (EU) 2019/904 (hereinafter “SUP Directive”) as the most trenchant measure amongst those proposed or approved at the time of his writing: because of its undeniably holistic character, its wide reach and targets, and its diversified approach, it can be considered as a true market disruptor that promptly accelerated stakeholder dialogue over plastic regulation and circular economy more generally. Already Art. 1 embraces a transversal approach, encompassing environmental protection (especially of aquatic environments), human health, circularity and internal market interests. Estimations predict extraordinary economic and ecological results,¹² which, however, shall first work their way through the complex reality of national implementation. In fact, as frequently occurs with directives, Member States’ transpositions often reveal noteworthy differences, both in regulatory choices and in underlying political objectives.¹³ Examples range from divergent approaches to deposit-return systems for beverage containers and the design of extended producer responsibility schemes, to broader discrepancies in plastic packaging rules and waste management.¹⁴ Henceforth, the central question is whether, and to what extent, divergent regulatory choices made by some EU Member States in transposing Directive (EU) 2019/904 and in regulating single-use plastics more broadly support or, conversely, risk undermining the EU’s green transition objectives and the smooth operation of the internal market. To provide an answer, the paper analyses the implementation of Directive (EU) 2019/904, and more generally of plastic and circular economy regulation, in the two countries (Italy and Spain), highlighting its regulatory cornerstones, its strengths and shortcomings, and the centrality of extended producer responsibility schemes in shaping successful governance models and effectively internalizing environmental accountability. Attention will be devoted also to the interplay of the SUP Directive with the new Regulation (EU) 2025/40 on packaging and packaging waste, whose entry into force will deeply affect the legal landscape. Finally, the paper will offer a comparative reflection and some concluding remarks on the evolving approach of Italy, Spain and the EU on single-use plastic and circular economy.

¹⁰ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, in OJ L 312, 22.11.2008, 3-30, ELI: <http://data.europa.eu/eli/dir/2008/98/oj>.

¹¹ D.S. Russo, *La “Strategia europea per la plastica nell’economia circolare”*, in *Rivista quadrimestrale di diritto dell’ambiente*, 2, 2019.

¹² European Commission, *Commission Staff Working Document Impact Assessment Reducing Marine Litter: action on single use plastics and fishing gear. Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment*, SWD/2018/254 final. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018SC0254>.

¹³ F. FERRARO, *L’evoluzione della politica ambientale dell’Unione: effetto Bruxelles, nuovi obiettivi e vecchi limiti*, in *Annali AISDUE “Atti convegni AISDUE”*, 9. <https://www.aisdue.eu/wp-content/uploads/2022/01/Ferraro-Bologna-3.pdf>.

¹⁴ Inter alia, European Parliamentary Research Service, *Initial Appraisal of a European Commission Impact Assessment - Packaging and packaging waste*, March 2023 https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2023/740245/EPRS_BRI%282023%29740245_EN.pdf and OECD, *Deposit-refund systems and the interplay with additional mandatory extended producer responsibility policies*, in *OECD Environment Working Paper*, 208, 2022.

Apart from their cultural, geographical, and legal proximity,¹⁵ the choice to examine Italy and to compare it with Spain stems from a number of reasons. They are both large, decentralised “regional” States,¹⁶ where the implementation of EU environmental law — including waste and plastics legislation — is significantly mediated by sub-national authorities.¹⁷ This makes them particularly suitable to observe how EU objectives are realistically filtered through complex multi-level governance arrangements, which may either positively influence upstream decisions, or dilute their ambitions. Second, despite comparable socio-economic¹⁸ and territorial conditions, the two countries appear to have followed partly diverging regulatory trajectories in the fields of waste management, packaging and single-use plastics, for instance with regard to the timing¹⁹ and content of the national measures accompanying the SUP Directive, the role assigned to bioplastics, and the use of economic instruments such as plastics taxes. Hence, the Spanish experience can offer a useful lens through which to detect potential shortcomings and solutions for the Italian regulatory framework. Lastly, the legal literature on the implementation of the SUP Directive has tended to focus on other Member States — such as France, Germany or Poland²⁰ — while paying comparatively less attention to Spain as a case study. Placing Italy and Spain side by side therefore not only fills this gap but also allows to draw more general lessons on how different national approaches may affect the coherence and effectiveness of EU plastics regulation.

2. The Regulatory Cornerstones of the SUP Directive

The environmental crisis caused by pollution from single-use plastics prompted the European Union to adopt, in the frame of the Plan for a Circular Economy, Directive (EU) 2019/904²¹ of the European Parliament and of the Council of 5 June 2019, marking a significant regulatory advancement in the fight against plastic waste both in the marine and terrestrial environment.

Indeed, the Single-Use Plastics Directive is an act of environmental policy, adopted on the basis of Article 192(1) TFEU, which implements the objectives laid down in Article 191 TFEU, i.e. the preservation,

¹⁵ Both being civil law countries that have experienced twentieth-century authoritarian regimes followed by democratic constitutional transitions and have subsequently integrated into Western legal and political structures, including the European Union and other international organisations.

¹⁶ Articles 5 and 114 Costituzione Italiana and Articles 2 and 143ss Constitución Española.

¹⁷ M. ALBERTON, L. CASADO CASADO, *La ricentralizzazione passa per l'ambiente: due esperienze europee a confronto. I casi italiano e spagnolo*, in *Rivista Di Documentazione E Giurisprudenza*, 3, 2020, 477-512.

¹⁸ S. PUIG, A. SÁNCHEZ, *Italy and Spain: a tale of two countries*, in *Real Instituto Elcano*, January 2017. Available at <https://www.realinstitutoelcano.org/en/commentaries/italy-and-spain-a-tale-of-two-countries/>.

¹⁹ Entry into force set for July 3, 2019 (20 days after its publication in the Official Journal) with key bans and restrictions taking effect on July 3, 2021 (deadline for MS transposition). See European Commission, *Single-use Plastic*, https://environment.ec.europa.eu/topics/plastics/single-use-plastics_en.

²⁰ For instance, inter alia, V. ROSS, J. VAN LEEUWEN, *Reducing the tide of single-use plastic pollution: How the EU's Single-Use Plastic Directive drives (and fails to drive) private company reflexivity*, in *Journal of Environmental Policy & Planning*, 27, 2025, Issue 1; A. SIMSTICH, *Bureaucratic politics in customized implementation of the EU Single-Use Plastics Directive in France and Germany*, in *Journal of Public Policy*, 45(3), 522-546, 2025; D. KASZNIK & Z. ŁAPNIEWSKA, *The end of plastic? The EU's directive on single-use plastics and its implementation in Poland*, in *Environmental Science & Policy*, 145, 2023.

²¹ 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, in *OJ L*, 155, 12.6.2019, 1-19, ELI: <http://data.europa.eu/eli/dir/2019/904/oj>.



protection and improvement of the quality of the environment, the protection of human health, the prudent and rational utilisation of natural resources, and the promotion of measures at international level to deal with regional or worldwide environmental problems. According to Article 4(2) let. e) TFEU and in line with the principle of conferral enshrined in Article 5 TEU, these provisions define a specific shared competence in the environmental field, whose exercise is further constrained by the principles of subsidiarity and proportionality.

It perfectly fits the requirements of a high level of environmental protection and the improvement of the quality of the environment be integrated into the policies of the Union, under Article 37 of the Charter of Fundamental Rights of the European Union (CFREU) and ensured in accordance with the principle of sustainable development. At the same time, other rights of the CFREU shall be carefully balanced when implementing this and similar directives, such as the protection of health (Article 35) and the freedom to conduct a business (Article 16), with the latter possibly being restricted where justified and proportionate in view of overriding environmental interests.²²

Prima facie, the peculiarity of the SUP Directive lies in its aim to address the plastic waste emergency from the origin, that is, actively regulating the placing on the market of certain products rather than their life and disposition. But actually, it does much more: by combining a preventive approach with requirements for more sustainable product design and extended producer responsibility (hereinafter “EPR”), the Directive embodies not only the preventive principle of environmental law, but also the “polluter pays” principle and the “principle of environmental integration”²³ enshrined as mandatory standards in Article 191(2) TFEU — alongside precaution and correction at source — and operationalised through the horizontal clause in Article 11 TFEU.

Although recycling and waste management *per se* are mostly left out of the scope of SUP Directive, the circular economy approach still represents the framework in which the Directive develops, as circular approaches are promoted exactly by minimizing the availability of disposable plastic products and thus prioritizing “sustainable and non-toxic re-usable products and re-use systems”.²⁴

While the measures deriving from the SUP Directive shall be coordinated with those already established under waste law and food law, namely the extended producer responsibility (Article 8 Directive 2008/98/EC), recycling and recovering targets for packaging waste, separate collection systems, safety of food packaging, it is interesting to notice that this directive is labelled as *lex specialis* in relation to

²² This likewise applies to the application of art. 34 and 36 TFEU. On the role of the CJEU in the evolution of the Union's environmental policy, see also, as examples, *Procureur de la République v ADBHU*, Case 240/83, ECLI:EU:C:1985:59; *PreussenElektra AG v Schleswag AG*, Case C-379/98, ECLI:EU:C:2001:160; *Bluhme*, Case C-67/97, ECLI:EU:C:1998:584.

²³ S. KINGSTON, V. HEYVAERT, A. ČAVOŠKI, *European environmental law*, Cambridge, 2017 and L. ARISTEI, *A Plastic World. Ups and Downs in the National Application of Directive 2019/904/EU*, in *Italian Journal of Public Law*, 14(2) 2022, 490-520 <https://www.ijpl.eu/wp-content/uploads/2023/02/11.-Aristei-A-plastic-world.pdf>.

²⁴ Recital 2 Directive (EU) 2019/904.

Directives 94/62/EC²⁵ and 2008/98/EC²⁶. This means it shall prevail in case of conflicts within its scope of application.²⁷

It is also clear from the recitals that driving the enactment of the SUP Directive was mainly the concern for marine litter, a growing transboundary problem that requires coordinated action across EU, national and UN institutions. Drawing on empirical data, the legislator in fact highlights the tendency of specific single-use plastic items and fishing gear to be improperly discarded and to become the main source of litter on European beaches. Correlatively, it also acknowledges the collateral effect of microplastics contamination in the soil.

More in depth, the Directive sets in Article 1 an ambitious and transversal objective, encompassing environmental protection and preservation, the protection of human health, the promotion of a more and more innovative circular economy, as well as the enhancement of the internal market. Though it may seem overachieving at first, this spirit perfectly fits the requirements for the constitution of a sustainable economy, that may be respectful of both human and environmental needs while also guaranteeing economic viability through multi-stakeholder engagement. Having clarified the theoretical intentions, the following articles take on some more practical definitory issues, which have generated some interpretative disputes in Member States.²⁸

With the exception of “natural polymers that have not been chemically modified”, Article 3 defines as “plastic” any “material consisting of a polymer [...],²⁹ to which additives or other substances may have been added, and which can function as a *main structural* component of final products”. This latter criterion shall be interpreted as purely generic, as it does not affect neither the type of product nor the amount of polymer employed. Still, the definition unequivocally covers plastic manufactured from modified natural polymers or from fossil, bio-based, or synthetic starting substances that do not occur naturally. In other words, the European legislator considers both biobased and biodegradable plastics as plastic,³⁰ which is an important hint given that bioplastics are not EU-regulated thus far.

Then, “single-use plastic product” is described as a product made wholly or partly from plastic and which is “not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations [...]”, without any chance of reuse. Again, the wording “wholly or partly” is particularly meaningful, as it does not establish minimum plastic content thresholds, therefore, determining whether a product qualifies as single-use or not depends solely on a qualitative evaluation. In this respect, the Commission Guidelines,³¹ despite not having binding character nor the power to modify the text of the act,

²⁵ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste in OJ L 365, 31.12.1994, 10-23, ELI: <http://data.europa.eu/eli/dir/1994/62/oj>.

²⁶ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, in OJ L, 312, 22.11.2008, 3-30, ELI: <http://data.europa.eu/eli/dir/2008/98/oj>.

²⁷ Recital 10 Directive (EU) 2019/904.

²⁸ *Symphony Environmental Technologies and Symphony Environmental v Parliament and Others*, Case T-745/20, ECLI:EU:T:2024:45.

²⁹ The definition of polymer follows Art. 3(5) of the Regulation (EC) no. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

³⁰ Recital 11 Directive (EU) 2019/904.

³¹ European Commission, *Commission guidelines on single-use plastic products in accordance with Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products*

constitute an authoritative interpretative tool that may assist judges, States and economic operators by limiting ambiguities. In this case, the guidelines clarify those composite products, like paper-based products coated with a plastic layer — added to shield it for instance from water or grease — do not enjoy any particular exception, contrary to what initially suggested in the Commission's proposal.³² It would actually seem reasonable, at least at the beginning, to grant some flexibility to those manufacturers that invest in highly performative products while also managing to reduce the plastic content, especially in light of plastic's unique advantages in terms of food safety, shelf life, and transport; but, in this case, the bolder breadth of scope of the directive might ultimately prove much more effective in pursuing the announced environmental objectives.

The SUP Directive follows a differentiated strategy for product categories, favouring a proportional approach based, at least in theory, on the availability of sustainable alternatives and the level of environmental impact.

Mirroring the order of the provisions, the Directive first mandates a measurable quantitative decrease between 2022 and 2026 in the consumption of plastic products (listed in Part A of the Annex) that do not have viable alternatives yet, such as cups for beverages and ready-to-eat food containers,³³ leaving uncovered containers of food that necessarily needs further preparation. A multitude of options are expressly *advised*, including charging such items at the point of sale on the final consumer, adopting national consumption targets, or offering re-usable alternatives, bearing into consideration that any measure shall be adequately reported to the Commission and updated. Still, one may agree with those authors that reckon an explicit European-wide target would have been more effective than such a vague "reduction",³⁴ given on one side the urgency of the environmental crisis and, on the other, the risk of inconsistency and underperformance stemming from diverging national approaches, which would in turn benefit from a firmer stance.

Secondly, Article 5 introduces a revolutionary total ban, effective from 2021, on a series of single-use products that are considered more easily replaceable and are enumerated in Part B of the Annex, namely cotton bud sticks, cutlery, plates, straws, beverage stirrers, balloons sticks, and food and beverage containers made of expanded polystyrene or oxo-degradable plastics. Considering pre-SUP EU waste legislation, which had primarily relied on quantitative reduction targets and recycling thresholds instead of tout-court market bans³⁵ — thus leveraging surely but only lightly on prevention as a form of waste management —, this measure seems an excellent landing. In fact, reflecting heightened awareness and scientific progress, the Directive replaces "milder" objectives with obligations that apply upstream in the

on the environment (2021/C 216/01). Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_216_R_0001.

³² Nonetheless, as some Authors point out, this may generate substantial confusion for consumers: a composite cup should be thrown in undifferentiated waste, while biodegradable plastic products should be thrown in organic waste, and not in plastic waste. Please refer to R. STUPAZZINI, A. MARTINI, *Il ciclo di vita dei prodotti di plastica nell'era dell'economia circolare: uno studio giuridico sistematico*, in *Il diritto dell'economia*, 69(112), 2023, 225-326. Since these technical aspects are particularly important for packaging users and producers, the guidelines' clarifications could have been better included in the text of the Directive rather than in a supplementary, non-binding document.

³³ Further aid in product classification is available in the recitals of the Directive (e.g. Recital 12) and in the Commission guidelines.

³⁴ L. ARISTEI, *op cit.*

³⁵ E.g. Directive 94/62/EC on packaging or Directive (EU) 2015/720 on lightweight plastic carrier bags.

production chain, finally recognising the primary role of prevention as originally displayed in the waste hierarchy. The shift not only facilitates the transition toward a circular economy,³⁶ but actually serves as a precedent for bolder future EU interventions by demonstrating that outright market bans on entire product categories can effectively address plastic pollution upstream.³⁷ The novelty lies also in the disruptive implementation of the principle of integration: the protection of the environment³⁸ allows the adoption of measures interfering — though minimally — in the internal market, confirming a path already anticipated by EU jurisprudence.³⁹ From a more practical perspective, some of the forbidden items can still be found on the market, either as remaining stocks or sold under the label “reusable” (which clearly amounts to greenwashing when the items are in fact disposable), but infringements are generally rare and of small scale. The SUP indeed brought about a wide phase-out of such items and, as the paper will unveil, also triggered some Member States to go beyond its ambitions, identifying additional market restrictions and measures to redress pollution.⁴⁰

Thirdly on the Directive’s mandate, product requirements apply to other categories, notably the infamous obligation to place on the market bottles and similar containers with attached caps and lids; and to manufacture polyethylene terephthalate (PET) bottles with a minimum amount of recycled plastic (25% from 2025 and 30% from 2030).

Under Article 9, Member States also agree to partake in separate collection objectives to promote recycling, i.e. to sort at least 77% of the total amount of single-use plastic bottles placed on the market in a given year by weight by 2025, and to increase that percentage to 90% by 2029.⁴¹ In this regard, deposit-refund (or container deposit) systems, which essentially consist in charging a small extra fee on the price of the product which will then be refunded when the consumer returns the container, have abundantly been referred to as the optimal (and least costly) choice to achieve said targets. As Syberg et al. put it, these mechanisms “give value to the plastic in the waste phase”, and thus incentivize people to collect and recycle plastic, even if the economic gain is just “apparent”.⁴² It therefore will not be surprising if the majority of Member States will finally embrace this model, even those that have historically been more reluctant, like Italy. Besides the evident environmental benefits, such value also stems from the consequent increase in the availability of recycled plastic, which intends to enhance closed-loop recycling of PET beverage bottles. Although the prospect of checking (at least) two of the objectives imposed by the SUP Directive is certainly appealing, intricate challenges persists, which go beyond the scope of this discussion.⁴³

³⁶ K. SYBERG, *et al*, *op cit*.

³⁷ An approach apparently validated also by Regulation (EU) 2025/40 on packaging and packaging waste.

³⁸ Article 191 Treaty on the Functioning of the European Union.

³⁹ E.g. in *PreussenElektra AG v Schleswag AG*, Case C-379/98, ECLI:EU:C:2001:160.

⁴⁰ Rethink Plastic Alliance, *Evaluation of the Single-Use Plastics Directive*, 2024. Available at <https://rethinkplasticalliance.eu/wp-content/uploads/2024/12/Evaluation-report-SUP-final-text.pdf>.

⁴¹ Article 9 Directive (EU) 2019/904.

⁴² K. SYBERG *et al.*, *op cit*.

⁴³ As a reference, C. PICUNO, S. GERASSIMIDOU, W. YOU, O. MARTIN, E. IACOVIDOU, *The potential of Deposit Refund Systems in closing the plastic beverage bottle loop: a review*, in *Resources, Conservation and Recycling*, 212, 2025, 107962.



Finally, other disposable products that do not fall in the above categories must respect some detailed marking requirements⁴⁴ as established in Article 7: pads, tampons, wet wipes, tobacco products and cups for beverages must in fact display a “conspicuous, clearly legible and indelible marking” that may inform consumers both on the correct waste management of such items and on the negative impact of their inappropriate disposal. Special regard is given to tobacco filters in Recital 16 too, which underscores their massive environmental impact and calls for innovation and product development to deliver more sustainable alternatives, alongside Member States’ duty to curb post-consumption litter.⁴⁵ On this last point, a parliamentary question⁴⁶ was raised by EU parliamentarian Ripa (PPE), who pointed out how unevenly Member States have been taking action, hardly contributing to a real reduction of waste and leaving cities and municipalities to bear high disposal costs. In light of this, she emphasized the alleged failure of the SUP Directive in bringing about substantial improvements, therefore urging the adoption of rather bolder bans and stricter requirements — such as mandating the use of biodegradable alternatives — in order to achieve more enduring results. In response,⁴⁷ on September 4th, 2025, the Commission prudently reaffirmed its intention to assure “coordinated and consistent implementation” of the directive and to carefully follow up on Member States’ transpositions and reports, basically putting off the first effective assessment until July 2027, when the official evaluation is due.

Ripa, however, also drew attention to the inadequacy of the “Awareness raising measures” introduced under Article 10. Transversally to different product categories previously described, this provision obliges Member States to encourage responsible consumer behaviour so as to minimize the negative externalities derived from single-use plastic, spreading information on the more sustainable options available and on the tragic impact of littering and inappropriate waste disposal. This is generally pursued by means of public information campaigns, educational programs, deposit-refund systems, labelling and engagement with the private sector, but the Directive does not express any specific option. Interestingly though, unlike most articles displaying similar statements of intent, the wording of Article 10 is particularly precise and comprehensive, thereby stressing the pivotal role of consumers in driving meaningful change over plastic pollution. In the Author’s view, this provision should have been recognized much more relevance, as citizenship awareness arguably constitutes the true foundation not only of a long-standing normative success, but also and foremost of the social and cultural transformation that the SUP Directive — and the whole *corpus* of EU environmental law — aims to bring about. On this point, Aristei reinforces the idea that policies are effective when they “start with citizens”, as proven more and more by local authorities and municipalities who, being closer to communities and in-site waste management, have relied on the

⁴⁴ See also Commission Implementing Regulation (EU) 2020/2151 of 17 December 2020 laying down rules on harmonised marking specifications on single-use plastic products listed in Part D of the Annex to Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment ELI: http://data.europa.eu/eli/reg_impl/2020/2151/oj

⁴⁵ For further insight, K. NIKITARA, I. LAGOU, Z. PLYTA, K. MOCANU, & C. VARDAVAS, *The EU single-use plastics directive and its impact on tobacco products: A policy analysis*, in *Public Health Toxicology*, 2(3), 2022, 1-4.

⁴⁶ European Parliament, *Parliamentary question E-002262/2025. Plastic cigarette filters — Inadequate implementation of Directive (EU) 2019/904 and lack of progress regarding prevention, alternatives and education*. Available at https://www.europarl.europa.eu/doceo/document/E-10-2025-002262_EN.html.

⁴⁷ European Parliament, *Parliamentary question E-002262/2025 (ASW). Answer given by Ms Roswall on behalf of the European Commission*. Available at https://www.europarl.europa.eu/doceo/document/E-10-2025-002988-ASW_EN.html.

potential of behavioural change much more than Member States.⁴⁸ Strengthening consumers' understanding of their role in the green transition — a goal explicitly pursued by the EU through instruments such as the Directive (EU) 2024/825 on the empowerment of consumers for the green transition⁴⁹ — would also create an indirect yet powerful incentive for businesses. The latter would be further encouraged to internalize sustainability within their production processes in order to accommodate the increasingly sensitive market demands.⁵⁰ Beyond the SUP Directive's sphere of application, the broader difficulty remains in aligning once and for all the profoundly different environmental consciousnesses across the Union. It is hard in fact to carry out comprehensive and equally effective measures that may work on consumers' habits and behaviours when the "starting points" are so distant: the 27 Member States differ deeply in their historical, cultural and socioeconomic perceptions of the environmental crisis — both in its characterization and in its urgency — , leading some of them to cultivate virtuous policies while others face structural and political barriers (and further confirmation of this has been the late transposition of the SUP Directive by states like Bulgaria and Romania, among others).⁵¹ And again, it is extremely complicated to arbitrarily shape a State's agenda when other issues like unemployment, immigration, or public health are perceived as *more* urgent.

On a more theoretical note, Article 10 might reveal an intriguing normative paradox: consumers are undeniably ascribed significant agency and responsibility, as they are, as a matter of fact, able to steer demand and production patterns through informed choices. Even so, the Directive couples such consumer empowerment with highly paternalistic instruments like the absolute market bans of Article 5, which strongly restricts the freedom of choice by taking a very interventionist stance. While this opens debate

⁴⁸ L. ARISTEI, *op cit.*

⁴⁹ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, in OJ L, 2024/825, 6.3.2024, ELI: <http://data.europa.eu/eli/dir/2024/825/oj>, very recently transposed in Italy with Decreto Legislativo, 20 febbraio 2026, n. 30. On the Directive's role in tackling greenwashing and in using consumer law as a driver of sustainable consumption, see European Parliamentary Research Service, *Briefing EU Legislation in Progress — Empowering consumers for the green transition*, 2022 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733543/EPRS_BRI\(2022\)733543_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733543/EPRS_BRI(2022)733543_EN.pdf), and European Commission, *Behavioural Study on Consumers' Engagement in the Circular Economy — Executive Summary*, October 2018 DOI 10.2818/92159.

⁵⁰ L. ARISTEI, *op cit.*

⁵¹ Bulgaria adopted Постановление № 354 от 26 октомври 2021 г. за приемане на Наредба за намаляване на въздействието на определени пластмасови продукти върху околната среда, Държавен вестник [Author's transl. Decree No 354 of 26 October 2021 adopting the Ordinance on the reduction of the impact of certain plastic products on the environment], 91, published on 02 November 2021, 3-18; Romania implemented the provisions by Ordonanța Guvernului nr.6/2021 privind reducerea impactului anumitor produse din plastic asupra mediului [Author's translation Government Ordinance nr.6/2021 on the reduction of the impact of certain plastic products on the environment], Monitorul Oficial al României, 828 ; published on 20 August 2021, 9-16 and Legea nr. 150/2025 pentru aprobarea Ordonanței Guvernului nr. 6/2021 privind reducerea impactului anumitor produse din plastic asupra mediului [Author's translation Law No 150/2025 approving Government Order No 6/2021 on reducing the impact of certain plastic products on the environment], Monitorul Oficial al României, 946, published on 13 October 2025. See, on this aspect, L. ARISTEI, *op cit.* The Member States complying with the 3 July 2021 deadline are France, Estonia, Ireland, Greece, and Sweden. National transposition measures communicated by states can be consulted by the links provided in the EUR-Lex webpage at <https://eur-lex.europa.eu/legal-content/IT/NIM/?uri=CELEX:32019L0904>.



on whether such an approach — which is not an isolated case — is conceptually coherent, it reflects the constant attempt to reconcile liberal economic principles with environmentally sustainable practices.⁵²

3. Extended Producer Responsibility

Overall, the Directive's regulatory framework is structured across different classes of measures: marketing bans, consumption reduction commitments, separate collection obligations, design requirements, marking requirements and of course continuous data reporting by Member States. This “toolkit” approach reflects the complexity of the phenomenon and the need for interventions tailored to the specificities of each product category. A further tool has however been left out in the above *excursus*: under Article 8 of the SUP Directive, by 2024.⁵³ Member States had to put in place the so-called “Extended Producer Responsibility” (EPR), a system whereby producers of SUP products listed in part E of the Annex are expected to cover, *inter alia*, the costs

- of waste collection for products “that are discarded in public collection systems, including the infrastructure and its operation, and the subsequent transport and treatment of that waste”;
- of cleaning up litter;
- and of awareness raising measures.

In essence, whoever creates waste, pollution, or environmental damage must proportionally bear the financial and organizational burden deriving from its subsequent management.⁵⁴ Indeed, EPR is repeatedly presented as a direct application of the “polluter pays principle”,⁵⁵ but it may offer an unexpected interpretive lens: here the polluter is not the entity directly causing pollution, but the “economic agent” capable of avoiding pollution upstream⁵⁶ — arguably joining two fundamental environmental principles

⁵² This paradox has actually been investigated in several areas of law, starting from the definition of “average consumer” provided for by the Court of Justice. Literature, on this aspect, is extremely wide, since it covers any field of regulation. Just to mention a few, N. ZORZI, *Il consumatore medio ed il consumatore vulnerabile nel diritto comunitario*, in *Contratto e impresa. Europa*, 2010, 2, 549-617; R. CATERINA, *Architettura delle scelte e tutela del consumatore*, in *Consumatori, diritti e mercato*, 2, 2012, 73-80; V. RUBINO, *L'evoluzione della nozione di “consumatore” fra tutela dei diritti della persona, economia collaborativa e futuro del mercato interno dell'Unione europea*, in *Dialoghi con Ugo Villani*, Cacucci, 2017, 363-369; S. CARMIGNANI, *Sulla persistente validità del consumatore medio*, in *Dir. Agroalim.*, 2020, 3, 693-790; S. PAGLIANTINI, *In memoriam del consumatore medio*, in *Europa e diritto privato*, 2021, 1, 1-30; F. FERRETTI, *The Consumer Image under EU law: average, rationally bounded, dispositionally vulnerable. What prospects for protection in digital markets?*, in *CMLR*, 62, 2025, 121 – 146; *Id.*, *Mercato digitale ed empowerment del consumatore: verso la necessità di una nuova interpretazione del consumatore ‘medio’. Implicazioni per la regolamentazione del mercato interno dell'Unione europea*, in *Riv. trim. dir. econ.*, 1(suppl.), 2024, 184-210.

⁵³ Note how Article 17 sets a much later transposition date for EPR schemes compared to the majority of other SUP Directive provisions.

⁵⁴ OECD, *Extended Producer Responsibility: Basic facts and key principles*. OECD Environment Policy Paper No. 41, 2024 <https://doi.org/10.1787/4ae4a6b6-en>; and K. KULAK-KRZYŚIAK, *The concept of extended producer responsibility: the example of deposit-return system, in Opole Studies in Administration and Law*, 19(2) 2021, 117-130

⁵⁵ On this principle, please refer to M. MELI, *Le origini del principio “chi inquina paga” e il suo accoglimento da parte della Comunità europea*, in *Riv. giur. amb.*, 1989, 217; P. SANDS, *Principles of international environmental law*, in *Cambridge University Press*, II, 2003, 281.

⁵⁶ European Commission, DG Environment. *Development of Guidance on Extended Producer Responsibility (EPR) (Final Report)*, 2014. Available at https://ec.europa.eu/environment/pdf/waste/target_review/Guidance%20on%20EPR%20-%20Final%20Report.pdf.

under the same regulatory umbrella (*preventive and polluter-pays*). Given the context, for manufacturers of plastic products with a very short life span, EPR entails taking care *ex ante* and *ex post* of the *whole* life-cycle, since these products are inherently destined to become waste almost immediately after use. It goes also without saying that this form of responsibility is called “extended” precisely because it transcends the intervention of a third party, i.e. the consumer, and imposes duties that reach far beyond the time and space where the products were actually under the producer’s direct control. In the words of Maitre-Ekern, EPR “reverses the underlying rights and duties in the product chain and changes the default rule for how waste is managed”,⁵⁷ while abstractly shifting costs from taxpayers and municipalities to private businesses. In addition, it enhances circular economy models⁵⁸ by contributing to more efficient separate collection, to the increase of recycling, and to the creation of high-quality secondary raw materials.⁵⁹ EPR as a concept was first introduced in the EU legislative sphere in the early 1990s, through the Packaging and Packaging Waste Directive 94/62/EC, as a voluntary or industry-led environmental policy approach useful in achieving waste management targets.⁶⁰ Over the following years, with the End-of-Life Vehicles Directive 2000/53/EC, the Waste Electrical and Electronic Equipment Directive 2002/96/EC and the Battery Directive 2006/66/EC, EPR schemes spread to strategic waste streams and gradually gained structure, both at Union and national level, in terms of infrastructures, compliance mechanisms and organizational matters.⁶¹ Yet, the true turning point for the consolidation of EPR was the Waste Framework Directive (WFD), which in order to “strengthen the re-use and the prevention, recycling and other recovery of waste”,⁶² finally spelled out key definitions and instructions (though still leaving EPR implementation voluntary). For instance, “producer of the product” comes to be defined as “any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products”; and Member States are advised to take due consideration of the technical and economic viability, of the internal market interests and of the overall environmental, human health and social impacts while setting up extended producer responsibility.

With the amendment that established general minimum requirements for EPR schemes under Article 8a, the WFD further posed itself as the point of reference, or better, as the legal basis for subsequent legislation, and became a horizontal instrument of EU environmental action. *Inter alia*, the minimum requirements listed — and applying *mutatis mutandis* to the SUP Directive as well — encompass accurate roles

⁵⁷ E. MAITRE-EKERN, *Re-thinking producer responsibility for a sustainable circular economy*, in *Journal of Cleaner Production*, 286, 2021.

⁵⁸ R. STUPAZZINI & A. MARTINI, *op cit.*

⁵⁹ E. WATKINS, S. GIONFRA, J.P. SCHWEITZER, M. PANTZAR, C. JANSSENS, P. TEN BRINK, *EPR in the EU plastics strategy and the circular economy: a focus on plastic packaging*, in *Institute for European Environmental Policy (IEEP)*, 2017. https://zerowasteurope.eu/wp-content/uploads/2019/11/zero_waste_europe_IEEP_EEB_report_epr_and_plastics.pdf.

⁶⁰ “Whereas it is essential that all those involved in the production, use, import and distribution of packaging and packaged products become more aware of the extent to which packaging becomes waste, and that in accordance with the polluter-pays principle they accept responsibility for such waste; whereas the development and implementation of the measures provided for in this Directive should involve and require the close cooperation of all the partners, where appropriate, within a spirit of shared responsibility”; from Directive (EC) 94/62.

⁶¹ E. WATKINS et al, *op cit.*

⁶² Article 8 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

and duties allocation, bridging from producers to proxies and from waste operators to authorities; fixing targets, reporting systems and self-control mechanisms; respecting the equal treatment of producers; information obligations; and stakeholder dialogue.

Today, the concrete implementation of EPR schemes tends to be structured across different instruments, remaining highly fragmented from one Member State to another. According to a general overview however, producers exert their responsibilities either collectively or individually. The latter option sees the single producer in charge of its own post-consumption “waste”, which is more conducive in situations where its products are sold just to a limited number of clients or when there is strong market concentration.⁶³ Given the evident complexity and logistical hurdles of creating personalized take-back systems with each consumer, collective responsibility constitutes the most frequent option across European producers. In such a case, Producer Responsibility Organizations (PROs) are set up — either by law or private initiative — to represent all, or the majority, of producers within the same product group or waste stream (without any internal distinction), and to fulfil the required recycling and recovery obligations on behalf of the adhering companies, though still in an independent manner. PROs also manage the relative data and supervise the activities.⁶⁴

This configuration basically rests on the equal contribution and responsibility of all the parties involved, meaning that PROs collect standardized fees from producers and therewith finance the gathering and treatment of waste, regardless of the specific recovery characteristics of each product.⁶⁵ At the same time, the benefits reached by a single manufacturer through product improvement are transmitted to all producers belonging to the same PROs.

As one could foresee, compared to individual EPR, which is quite complex but effective in exposing producers with the real costs of waste handling, the drawback of collective responsibility is that it provides only little incentive to purposefully foster more sustainable product design. By mutualizing the responsibilities of different actors and averaging expenses, individual efforts take a massive backseat,⁶⁶ as PROs' activities partially conceal both operative and environmental costs. Meanwhile, eco-incentives are further eroded whenever companies decide to increase sale prices rather than internalize such costs, leaving those with decisive power over product design even more unaffected. To offset this problem, deposit-refund systems and modulated fees for different materials (e.g. requiring producers of single-use or low-value products to pay a higher contribution) have often been advised by experts,⁶⁷ yet their implementation still faces complicated challenges.

All in all, Extended Producer Responsibility undoubtedly suffers some limitations, but remains a crucial tool to organically link diverse stakeholders and pursue both environmental and economic sustainability objectives. These schemes really have the potential to give fresh impetus to the EU circular economy, especially in the plastic sector, with the SUPD being perhaps the catalyst of the process. However, legislators must commit to prevent EPR from degenerating into a waste management financing system,

⁶³ E. MAITRE-EKERN, *op cit.*

⁶⁴ *Ibidem* and German Environment Agency, *EU Single-Use Plastics Directive. Analysis of provisions and potential measures regarding extended producer responsibility*, 2022. <https://www.umweltbundesamt.de/publikationen/eu-single-use-plastics-directive-analysis-of>.

⁶⁵ *Ibidem.*

⁶⁶ European Commission, DG Environment *op cit.*

⁶⁷ E. WATKINS et al, *op cit.*

changing the narrative from “polluter pays” to “how much to pay to pollute”. Only then, to borrow Watkins’s phrasing, good EPR implementation will “ensure that plastic and its value stay *in* the economy and *out* of the environment”.⁶⁸

What is now left to observe, is the manner and extent in which the Directive has been able to drive change and promote new economic models across the European Union through its specific instruments.

4. An Italian Outlook on Single-Use Plastic

In Italy, public debate on EU environmental measures has often been highly politicised, and has occasionally focused on symbolic or highly mediatised issues (such as tethered caps), with a tendency to overshadow broader policy discussions.⁶⁹ Still, Italy has succeeded in developing, over the years, quite a respectable stance towards plastic, packaging and waste regulation.

The foundational instrument for environmental protection is the *Testo Unico Ambientale (TUA)*,⁷⁰ a corpus encompassing norms of both national and European derivation, ranging from soil and water protection to waste management and environmental evaluation procedures. It also incorporated the waste hierarchy and the “polluter pays principle” into Italian law. In the aftermath of some partially unsatisfactory attempts to address the ecological repercussions of single-use plastic, like the 2007 Budget Law,⁷¹ the TUA has gradually served, over the years, as a useful framework for a number of sector-specific measures: with the explicit aim to promote green economy, Law n. 221/2015 set up an experimental and voluntary deposit-refund system for water and beer containers sold in restaurants and hotels by adding Art. 219-bis; while Law n. 123/2017 finally marked the ban on plastic bags on one side, and the sustained reduction in the use of ultra-light plastic bags (common for fruits and vegetables) on the other.⁷² The latter objective has been pursued by coupling the promotion of biodegradable plastic with the prohibition on distributing such bags free of charge⁷³ — although one might question the meaning of levying even minimal additional costs when no real alternatives to their use are available (for now). Later, the 2018 Budget Law banned the production and commercialization of plastic cotton buds and cosmetics containing microplastics, and imposed marking requirements on packaging for proper disposal.

Other relevant measures include a 36% tax credit for companies purchasing products made from the separate collection of plastic materials, or from biodegradable and compostable packaging or derived from

⁶⁸ *Ibidem*.

⁶⁹ The mainstream, most popular example is probably the Instagram post about EU “surreal eco-norms” by Minister Matteo Salvini in May 2024.

⁷⁰ Decreto Legislativo 3 aprile 2006, n. 152 *Norme in materia ambientale* (“Testo Unico Ambientale”).

⁷¹ Legge n. 296/2006 introduced the progressive ban on the commercialization of single-use, non-biodegradable plastic bags, but by the time of its full implementation in 2011, neither the material of new bags nor sanctions for wrongdoers were defined. When these were clarified by Decreto Legge n. 2/2012, the law encountered further legislative hurdles, until the EU approval in 2013 and the final entry into force in 2014.

⁷² Servizio Studi della Camera dei Deputati, *Le norme nazionali sulla commercializzazione dei sacchetti di plastica non biodegradabile (shoppers)*, 2016. Available at <https://www.camera.it/temiap/t/news/post-OCD15-10929>

⁷³ Art. 226-ter TUA.

the separate collection of paper and aluminium.⁷⁴ In the eye of SUP reduction, the “Climate Decree”⁷⁵ tried to incentivize reuse by formalizing, for the first time, the possibility for consumers to bring their own containers when buying foodstuff, while still allowing vendors to refuse them on hygiene grounds. Moreover, the Italian green economy received further impetus thanks to a plan of public investments and a fund financed by the selling of CO2 quotas, instituted under 2020 Budget Law,⁷⁶ which also laid the basis for a much-debated plastic tax.⁷⁷

For clarity, the Italian plastic tax does not interfere with the EU plastic “tax”: such a measure, which should less misleadingly be called “plastics own resource”, entered into force in 2021 to sustain the 2021-2027 EU budget, and consists of a national contribution based on the quantity of non-recycled plastic packaging waste at a rate of €0.80 per kilogram.⁷⁸ According to Azzurro, given a release of 2.315 Mt of plastic packaging and a declared recycling rate of 45.5%, the cost for Italy, net of the flat-rate quota, should be around €900 million/year.⁷⁹

The subjects affected by the Italian levy instead, which amounts to €0.45 per kilogram of plastic, are not Member States but the producers of the so-called “MACSI” (*Manufatti Con Singolo Impiego*), i.e. disposable plastic plates, cutlery, cups, bags, bottles, Tetra Pak containers, and films, as well as semi-finished products used in the production thereof. For the taxpayer, which could be the manufacturer or the importer from a non-EU country, the obligation arises upon production or importation and is due upon release for consumption,⁸⁰ but it is highly likely that the ultimate bearers of rising prices will be once again the consumers. Anyway, the plastic tax has yet to prove its benefits (or flaws), as legislative and political debate led by powerful industry associations has *repeatedly* put off its entry into force, with the latest deferment being in the 2026 Budget Planning Document, which suggests a possible start-date no earlier than 2027.

What is of particular interest however is that compostable SUP products (together with medical devices and other instances) will be excluded from the scope of application of the tax. In fact, the self-evident fil rouge linking almost all of the aforementioned measures has been the continuous support to compostable

⁷⁴ Legge 30 dicembre 2018, n. 145 *Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2021*. (18G00172).

⁷⁵ Decreto-Legge 14 ottobre 2019, n. 111, *Misure urgenti per il rispetto degli obblighi previsti dalla direttiva 2008/50/CE sulla qualità dell'aria e proroga del termine di cui all'articolo 48, commi 11 e 13, del decreto-legge 17 ottobre 2016, n. 189, convertito, con modificazioni, dalla legge 15 dicembre 2016, n. 229*. (19G00125).

⁷⁶ Legge 27 dicembre 2019, n. 160, *Bilancio di previsione dello Stato per l'anno finanziario 2020 e bilancio pluriennale per il triennio 2020-2022* (19G00165).

⁷⁷ An honourable mention also goes to the “Legge Salva Mare” (Legge 17 maggio 2022, n. 60/2022, *Disposizioni per il recupero dei rifiuti in mare e nelle acque interne e per la promozione dell'economia circolare* (22G00069)), which among other things allowed fishermen to hand in accidentally fished waste with no sanctions, provided incentives for voluntary cleaning campaigns and instituted “aree ecologiche” in ports.

⁷⁸ For further insight, see European Commission, *Plastic own resource*. Available at https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027/revenue/own-resources/plastics-own-resource_en and S. GÖTZ REICHERT, S. SCHWIND, A. DE PETRIS, M. JOUSSEAUME, *The “EU Plastic Tax”: Greenwashing new revenue for the EU budget*, in *Centres for European Policy Network*, 3, 2021.

⁷⁹ P. AZZURRO, *Dalla riduzione del monouso in plastica alla riduzione del monouso: indicazioni per il recepimento della direttiva SUP in Italia*, in *Documento per Greenpeace Italia*, 2021. <https://www.greenpeace.org/static/planet4-italy-stateless/2021/04/c9c8f418-direttiva-sup-greenpeace.pdf>.

⁸⁰ *Ibidem*.

and biodegradable plastic: though it might be incorrect to refer to this as a “policy” approach, given its long-standing duration that certainly cuts across left- or right-wing agendas, it clearly signals a consistent attempt to steer the market toward certain alternatives over others.

It was therefore no surprise when the Italian version of the SUP Directive assumed the same features, even if in contrast with the declared EU intentions. Legislative Decree 196/2021 transposing the Directive indeed displayed a couple of legal anomalies that soon drew the attention of the Commission, so much so that an infringement procedure⁸¹ under Art. 258 TFEU was launched on May 23, 2024. The initial letter of formal notice addressed, in the first place, the arbitrary modification of the definition of plastic, which in the Italian version excludes “materials such as paints, inks, adhesives and plastic coatings weighing less than 10 percent of the total weight of the product and which do not constitute a main structural component of the finished products”.⁸² This provision introduces items and quantitative thresholds not envisaged by the Directive, unilaterally modifying the scope of application of the original act. Criticism was raised also with regard to Art. 4(7) that, in the framework of consumption reduction, promotes the purchase and use of alternative products through tax credits equal to 20% of the documented expenses. Furthermore, the Commission disputed the exemptions for biodegradable and compostable products established in Art. 5, as the Italian legislator decided to allow their commercialization as long as they comply with European standard UNI EN 13432 or UNI EN 14995 and their percentage of renewable raw materials is equal to or greater than 40% and, from January 1, 2024, at least 60%. This applies in some determined cases, namely

- a) where the use of reusable alternatives to SUP products intended to come into contact with food is not possible;
- b) where use is expected in controlled circuits that deliver waste, through separate collection, to public waste collection services such as canteens, healthcare facilities, and social care homes;
- c) where such alternatives, given the specific circumstances of time and place, do not provide adequate guarantees in terms of hygiene and safety;
- d) considering the particular type of food or beverage;
- e) in circumstances involving a large number of people;
- f) where the environmental impact of the reusable product is worse than that of single-use biodegradable and compostable alternatives, based on a life cycle analysis by the manufacturer.

This provision directly conflicts with Recital 11 of the Directive, which expressly includes biodegradable plastics within its scope of application. Moreover, in principle the Directive does not delegate to Member States the assessment of the existence of viable alternatives to SUP products, as it is an integral part of the assessments already conducted at the European level, preparatory to the drafting of the Directive.⁸³ This means that the instances listed in Art. 5 of L.D. 196/2021, though meaningful and understandable, go beyond Italy’s mandate and, in a way, pose hurdles to a uniform and correct implementation. The rest of the act instead appears quite plain, with no particular divergences or advancements.

⁸¹ Dipartimento per gli Affari Europei. Presidenza del Consiglio dei Ministri. INFR(2024)2053 <https://www.affari.eu-rop.eu.gov.it/it/attivita/procedure-dinfrazione/stato-delle-infrazioni/23-mag-24/>.

⁸² Art. 3 (1) (a) Legislative Decree 196/2021.

⁸³ P. AZZURRO, *op cit.*



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When confronted with these discrepancies, the National Coordination Group for the Bioeconomy⁸⁴ rebutted with counter-observations. First, they argued that the quantitative assessment introduced in the definition of plastic is functional to an accurate evaluation of whether a said component is “main” and “structural”; while the fact that oxo-degradable products were prohibited exactly by virtue of their inadequate biodegradability, implicitly justified the exclusion from the market ban of biodegradable and compostable products. Both arguments present some technical fallacies convincingly clarified by other authors,⁸⁵ though they might offer an interesting perspective too.

The news broke recently that the Commission, dissatisfied with the GCNB’s answer, has decided to proceed with the infringement procedure by sending a reasoned opinion to Italy.⁸⁶ It thereby reiterates the country’s failure to correctly transpose some provisions of the SUP Directive and expresses concern — in addition to the points just mentioned — over a limitation of producers’ responsibility to cover costs of waste collection. Coherently with the ideas emerging in these pages, it is stated that “such a restriction of scope risks undermining the Directive’s preventive approach”, besides leading, potentially, to increased releases of plastic and microplastics into the environment. Furthermore, Italy apparently violated procedural rules,⁸⁷ as it adopted the Decree before the expiry of the three-month standstill period established. In this context, if within the next two months the Commission does not receive a satisfactory response, it may decide to defer the case to the Court of Justice of the EU.

It is certainly true that Member States have the possibility to tailor, by definition, the transposition of directives according to their domestic circumstances and preferences, inasmuch as a common goal is achieved.⁸⁸ Under Article 288 TFEU, as further shaped in Italy by Law No 234/2012, they have autonomy over the choice of form and methods. Nevertheless, the substitution of SUP products with single-use products of other materials, though successful in recruiting plastic use overall, appears only partially aligned with the Directive’s objective to reduce marine litter⁸⁹ and waste generation, let alone to foster sustainable consumption patterns. It follows that despite the flexibility granted to achieve greater effectiveness at national level, Italy should gradually redirect its efforts towards waste prevention in both consumption and business models, through elimination and reusable alternatives over replacement with bioplastic counterparts.

⁸⁴ Gruppo di Coordinamento Nazionale per la Bioeconomia (GCNB).

⁸⁵ R. STUPAZZINI, A. MARTINI, *op cit.*

⁸⁶ European Commission, *March infringements package: key decisions. Commission calls on Italy to comply with the Single-Use Plastics Directive and the EU procedural rules on transparency in the internal market*. 1th March 2026. Available at https://ec.europa.eu/commission/presscorner/detail/en/inf_26_431.

⁸⁷ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, in OJ L 241, 17.9.2015, pp. 1–15, ELI: <http://data.europa.eu/eli/dir/2015/1535/oj>.

⁸⁸ To explore further, see D.G. DIMITRAKOPOULOS, *The Transposition of EU Law: ‘Post-Decisional Politics’ and Institutional Autonomy*. *European Law Journal*, 7, 2001, 442-458.

⁸⁹ The theoretical advantages of commercial bioplastics are limited: they do not degrade so effectively in the marine environment, as natural conditions (temperature, oxygen, microbial presence) differ from those of industrial composting processes. It follows that the designation “biodegradable” or “compostable” does not imply that the material will quickly disappear if dispersed in the sea. Available at Consiglio Nazionale delle Ricerche, *La filiera delle plastiche e la gestione sostenibile delle risorse e dei rifiuti plastici*, Roma 4 giugno 2024. https://www.cnr.it/sites/default/files/public/media/attivita/editoria/9788880806752_testo.pdf.

Against this background, the Italian implementation of collective EPR schemes stands out as a relatively effective example of circular economy in practice. In line with European overarching goals, Art. 178 TUA envisages a waste management system based on the principles of precaution, prevention, sustainability, proportionality,⁹⁰ free competition, and cooperation of all the subjects involved in the chain; and respectful of transparency obligations and economic feasibility. In Italy, this translates into a complex consortia-based model,⁹¹ headed by *Consorzio Nazionale Imballaggi* (CONAI) — the no-profit PRO established with Legislative Decree 22/1997 in compliance with the aforementioned Directive 94/62/EC — and structured across different material-specific consortia, like Corepla for plastic. Following the Framework Agreement with *Associazione Nazionale Comuni Italiani* (ANCI) instituted by law in 1997,⁹² and renovated ever since, CONAI guarantees to the adhering Italian municipalities the coverage of costs⁹³ deriving from separate collection of packaging waste, together with a number of related services. On the edge of CONAI's web, other autonomous systems exist, like Erion Packaging and Erion Care (for tobacco products), both headed by the joint-venture Pronexa.

The concept of shared responsibility between consumers, authorities and companies is at the core of CONAI's system, in which each stakeholder plays a crucial role. In a continuous loop, citizens take on the duty to separate litter into different bins, then municipalities organize and carry out the collection of source-segregated plastic waste, and receive financial compensation from the PRO, with payments adjusted downward according to the increasing level of impurities.⁹⁴

The self-financing system is in turn based on the "environmental contribution" or fee paid to the PRO by the 2.426 member companies, who are charged a minimum of 40 euro per tonne of plastic packaging introduced in the market to a maximum of 790 euro.⁹⁵ The variation (*diversificazione contributiva*), which is constantly updated, depends on the *fascia* attributed to each material according to its origin (industrial or household), recyclability and sortability: the easier the packaging is to dispose, the cheaper it will be for the company. This diversified system was officially introduced in 2018, making Italy a frontrunner (second only to France's Eco-Emballages) in actively incentivizing ecological design,⁹⁶ while also promoting innovation of industrial supply chains to move products into more favourable categories.

Corepla's activities are miscellaneous. Besides supporting and compensating municipalities directly when it comes to domestic litter, it contributes in achieving recovery targets by ensuring that collected packaging waste is properly directed to mechanical recycling and energy recovery; and performs a subsidiary market function by assisting recycling companies in gathering plastic waste from private commercial

⁹⁰ The transposing act of the SUP specified that the costs incurred by producers are to be established in proportion to the weight of the plastic component over that of the whole product.

⁹¹ See also Art. 237 TUA.

⁹² Decreto Legislativo 5 febbraio 1997, n. 22, *Attuazione delle direttive 91/156/CEE sui rifiuti, 91/689/CEE sui rifiuti pericolosi e 94/62/CE sugli imballaggi e sui rifiuti di imballaggio* ("Decreto Ronchi") and then in the TUA.

⁹³ Latest data report contributions to municipalities amounting to 450 million euros for 7.396 affiliated municipalities. Available at <https://www.corepla.it/>.

⁹⁴ S.A. BASSI, A. BOLDRIN, G. FARACA, T.F. ASTRUP, *Extended producer responsibility: How to unlock the environmental and economic potential of plastic packaging waste?*, in *Resources, Conservation and Recycling*, 162 (2020), 105030.

⁹⁵ CONAI. *Contributo diversificato plastica*. Available at <https://www.conai.org/imprese/contributo-ambientale/contributo-diversificato-plastica/>.

⁹⁶ E. WATKINS *et al*, *op cit*.

premises.⁹⁷ Additionally, Corepla leads awareness-raising initiatives addressed to citizens and stakeholders, all while annually reporting to CONAI and the competent ministries the list of its members and the results achieved.⁹⁸ Overall, the Italian EPR model shows a high degree of compliance with the criteria set in EU legislation, although some points remain somewhat unaddressed, e.g. there is no explicit legal requirement for publishing data on consortium ownership, composition or contributions, nor does an independent supervisory authority or a formalized multi-stakeholder dialogue platform exist.⁹⁹

Yet, it can be affirmed that Italy's circular economy performance remains among the best in Europe. According to the European Commission's indicators, Italy ranks first among the five largest EU economies, with a score of 45, followed by Germany (38) and France (30).¹⁰⁰ In 2023, 20.8% of the materials used by industry came from waste recycling, almost double the European average. All supply chains outperform EU recycling targets (paper, glass, aluminium, wood and bioplastics), though plastic still lags slightly behind the 50% goal for 2025, according to the latest available data.¹⁰¹

Another particularly relevant aspect in the analysis of both Italy and Spain is of course the regional and local dimension of environmental protection, which materially shapes the application of SUP measures as well as EPR obligations.

Although the protection of the environment and the ecosystem falls within the State's exclusive legislative competence under Article 117(2)(s) of the Italian Constitution, a number of "functionally connected matters"¹⁰² — such as health protection, civil protection, land-use planning and waste management — are indeed subject to concurrent competence, with the State laying down fundamental principles and the Regions exercising residual regulatory powers, subject to the principle of subsidiarity.¹⁰³ The TUA further clarifies that the Region is responsible for the preparation, adoption and updating (after consulting the provinces, municipalities and local authorities) of the regional waste management plans:¹⁰⁴ pursuant to Art. 199(3), the latter shall contain, inter alia, information on the criteria for identifying sites and the capacity of future disposal or large-scale recovery facilities, as well as the criteria for the identification, by the provinces, of suitable and unsuitable areas for the siting of waste recovery and disposal facilities.

Despite this formally decentralised architecture, the system still displays substantial rigidity and centralisation, as confirmed by the Italian Constitutional Court in 2021.¹⁰⁵ In his analysis of the ruling, Bifulco argued that while environmental protection justifies the establishment of uniform safeguards, it should

⁹⁷ For plastic waste of commercial or industrial origin, Corepla provides companies with dedicated platforms for free waste disposal.

⁹⁸ COREPLA. *Responsabilità Estesa del Produttore (EPR)*. Available at <https://www.corepla.it/responsabilita-estesa-del-produttore-epr/>; and *Rapporto di Sostenibilità 2023*. Available at https://www.corepla.it/wp-content/uploads/2024/11/COREPLA_Rapporto-di-sostenibilita-2023.pdf.

⁹⁹ *Ibidem*.

¹⁰⁰ Circular Economy Network (CEN), *6° Rapporto sull'Economia Circolare in Italia, 2024*. <https://circulareconomynetwork.it/wp-content/uploads/2024/05/CEN2024-Impagina-TOT-DEF.pdf>.

¹⁰¹ Fondazione per lo Sviluppo Sostenibile, *Il riciclo in Italia, 2024*, https://www.fondazionevilupposostenibile.org/wp-content/uploads/dlm_uploads/il-RICICLO-in-ITALIA-2024.pdf.

¹⁰² M. MEZZANOTTE, L'autonomia differenziata in materia ambientale: confini e limiti dell'art. 116, comma 3, Cost., in *Consulta Online Studi*, fasc. 1/2024 <https://giurcost.org/contents/media/posts/24486/mezzanotte6.pdf>; and M. ALBERTON, L. CASADO CASADO, *op cit*.

¹⁰³ Article 118(1) Costituzione Italiana.

¹⁰⁴ Article 199 TUA.

¹⁰⁵ Corte cost. 7 ottobre 2021, n. 189.

not exclude Regions from redistributing administrative functions at the local level, nor prevent them more generally from exercising a truly determining role in waste management organisation.¹⁰⁶ As a matter of fact, the CJEU has repeatedly emphasised that “it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of”,¹⁰⁷ and in *Commission v Italy* — concerning Campania's waste crisis —, the Court held that regions bear direct responsibility for establishing adequate waste infrastructure under the proximity principle, and that the central State cannot invoke regional non-compliance to justify EU law breaches.¹⁰⁸

The Campania waste crisis inevitably brings into focus a larger debate, for a different forum, concerning the “essential levels of services” (Livelli Essenziali delle Prestazioni) that the State is constitutionally required to determine:¹⁰⁹ while in theory these should secure homogeneous minimum environmental standards nationwide, in reality, their incomplete definition in several sectors — beyond those already implicit in existing legislation — continues to contribute to evident persistent territorial disparities.

Rooted in the proximity of local entities to the population, decentralization has however triggered, in some cases, greater virtuosity in plastic pollution reduction compared to national or EU efforts, precisely due to the fact that municipalities and Regions are the first subjects bearing the burden of waste management.¹¹⁰ Praiseworthy regulatory interventions have indeed arisen at the regional level in Italy, both preceding and exceeding national measures: Emilia Romagna¹¹¹ for example, decided to steer the regional economy towards circularity and sustainable consumption through the “Carrello verde” qualification system, which since 2015 distinguishes retailers and stores that actively commit to reduce waste and unnecessary packing.¹¹² Four years later, it launched the #PlasticFreeER Strategy,¹¹³ with the purpose to comprehensively embrace the circular economy by engaging institutions, business operators, associations and individuals through ad hoc financing and campaigns.¹¹⁴

¹⁰⁶ A. BIFULCO, *Limiti alle competenze regionali in materia di gestione dei rifiuti*, in *Rivista giuridica dell'ambiente*: 4, 2021, 891-906. https://editorialescientifica.it/wp-content/uploads/2022/06/RGA-4_2021.pdf For a different opinion, see G. VIVOLI, *Tutela dell'ambiente e gestione dei rifiuti: la Corte costituzionale tra “materia naturalmente trasversale”, disposizioni regionali programmatiche e riserva di amministrazione*, in *Federalismi.it*, 31, 2022: “La necessità di riservare certe decisioni allo Stato, con la conseguente inevitabile compressione dell'autonomia regionale anche su scelte strategiche che possono rappresentare una nitida espressione di competenze costituzionalmente riconosciute quali il governo del proprio territorio, può essere letta anche quale applicazione del principio di sussidiarietà giustificata dal fatto che soltanto a livello centrale è possibile acquisire e valutare tutte le informazioni utili in modo che la decisione sia la più adeguata a massimizzare l'interesse collettivo e realizzare finalità di riequilibrio socio-economico tra le varie aree del territorio nazionale”.

¹⁰⁷ *Commission v Belgium (Walloon Waste)*, Case C-2/90, ECLI:EU:C:1992:310, par. 34.

¹⁰⁸ *Commission v Italy*, Case C-297/08, ECLI:EU:C:2010:115.

¹⁰⁹ Article 117(2)(m) Costituzione Italiana.

¹¹⁰ L. ARISTEI, *op cit.*

¹¹¹ *Ibidem.*

¹¹² Regione Emilia-Romagna, *Carrello Verde — Accordo con la GDO*. Available at <https://ambiente.regione.emilia-romagna.it/it/rifiuti/comunicazione/archivio/rifiuti/accordi-di-filiera-settore/accordo-con-gdo/carrello-verde/carrelloverde>.

¹¹³ Regione Emilia Romagna, *Strategia PlasticFreeER*. Available at <https://ambiente.regione.emilia-romagna.it/it/rifiuti/rifiuti/economia-circolare/strategia-plasticfreer-1>.

¹¹⁴ Regione Emilia Romagna, *Rifiuti, siti contaminati e servizi pubblici ambientali*. Available at <https://ambiente.regione.emilia-romagna.it/it/rifiuti>.

Similarly, Marche Region Law 27/2019 took the SUP Directive and expanded its scope by, *inter alia*, prohibiting the smoking on coastlines in the absence of adequate containers for its waste; and by funding and promoting industrial research and experimental projects to replace unsustainable plastic products.¹¹⁵ Also, the experiences of Puglia and Campania contribute to the idea of regional proactivity, with several “plastic-free” initiatives across different municipalities.¹¹⁶ On other occasions, local enthusiasm has clashed with the limits of administrative competences, as exemplified by a 2021 ruling by the Consiglio di Stato¹¹⁷ concerning a Teramo’s mayor’s ordinance banning the sale of non-biodegradable and non-compostable SUP products. In such a case, the Court established that although the measure sought to bring about a change in citizens’ consumption habits, it was neither sustained by an extraordinary or urgent situation, nor consistent with the existing legal framework, given the overlap with the SUP Directive — at the time in the process of transposition — and its gradual rather than abrupt phase-out of SUP items. As highlighted by other authors,¹¹⁸ the common denominator of these Regions cannot go unnoticed. Marine and beach conservation as prompts for stronger and more effective regulation inevitably work better in areas where the sea is considered a component of society and thus where struggles with plastic accumulation are felt closer to citizens and institutions. It is therefore reasonable to assert (again) that, on a bigger scale, regulatory intervention is tightly linked to one’s perception of the problem and of its urgency, which in turn influences the political will and the choice of instruments.

All in all, to quote Amendola, Italy’s derogations to the Directive display an immature, anthropocentric understanding of environmental protection, a type of “*sostenibilità all’italiana*” that can be realized only if functional to the economy and not vice versa.¹¹⁹ While this might be regarded as true, given the scattered and sometimes only weakly endorsed environmental initiatives, to enrich the debate one could also see this stance as quite forward-thinking: privileging bioplastics may generate a pioneer’s advantage, both at regulatory and industrial level, in a field that is bound to expand. Concurrently, CONAI has laid excellent foundations for an integrated circular model that could position Italy as a point of reference. A circular economy that never ceases to attract institutional attention (positive or negative), as shown by Vice-Minister Gava’s recent announcement of an imminent “*tavolo plastiche*” to reassess compostable packaging rules and Italy’s progress toward EU recycling targets.¹²⁰ In the end, the national approach appears fragmented but still somewhat coherent in its diversification, notwithstanding the evident need to nurture collective awareness and civic responsibility, from institutions down to consumers, to make such measures actually meaningful.

¹¹⁵ Articles 4 and 7 Legge Regionale Marche 1 agosto 2019, n. 27, *Norme per la riduzione dei rifiuti derivanti dai prodotti realizzati in plastica*.

¹¹⁶ L. COLELLA, *op cit.*

¹¹⁷ Sentenza n. 4174 del 31 maggio 2021 Consiglio di Stato (Sezione IV) https://mdp.giustizia-amministrativa.it/vi-sualizza/?nodeRef=&schema=cds&nrg=202003359&nomeFile=202104174_11.html&subDir=Provvedimenti .

¹¹⁸ L. ARISTEI, *op cit.*

¹¹⁹ G. AMENDOLA, *Ambiente in genere. La normativa all’italiana contro le plastiche monouso*, in *Lexambiente*, 2022, <https://www.osservatorioagromafie.it>

¹²⁰ Ministero dell’Ambiente e della Sicurezza Energetica, *Plastica, il MASE convoca gli operatori e associazioni per accelerare la Strategia circolare*. Available at https://www.mase.gov.it/portale/-/plastica-il-mase-convoca-gli-operatori-e-associazioni-per-accelerare-la-strategia-circolare?p_l_back_url=%2Fportale%2Fricerca%3Fr%3Dplastica

5. Lessons from Spain on Single-Use Plastic Regulation

To deepen the understanding of Italy's approach, rather than with isolated observation, a comparative glance at Spain proves particularly revealing. As large regional States where EU environmental law implementation involves complex multi-level governance, and despite sharing similar socio-economic profiles, they have pursued distinct regulatory and political strategies on several aspects.

Spain was among the 16 Member States receiving a letter of formal notice from the Commission in January 2022 urging the country to transpose the Directive, which eventually entered the Spanish legal framework in April 2022 (approximately nine months after the European deadline). With *Ley 7/2022 de 8 de abril, de residuos y suelos contaminados para una economía circular*,¹²¹ Spain embraced circular economy with an unprecedented vehemence, transposing the objectives of both the SUP and Directive (EU) 2018/851: in the pursuit of preventing and reducing the generation of waste and its impact, and enhancing efficiency in the use of resources, this lengthy piece of law manifestly adheres to the *jerarquía de residuos* and to the polluter pays principle,¹²² but also intends to promote change in production and consumption patterns through measures that — compared to the Italian example — really pushed the boundaries of existing (plastic) policy. Blasco Hedo observes that prevention is part of the object as much as it is of the purpose, which demonstrates its increasing relevance.¹²³

In particular, worthy of mention are the “Prevention measures” of Art. 18, that include, *inter alia*, the obligation for HoReCa establishments to always offer to their customers tap water free of charge; the obligation for food retailers with a surface area of 400 square meters or more to dedicate an area to bulk sale or sale without primary packaging; as well as broader aims such as facilitating the reincorporation into value chains of by-products, materials, and so on that have ceased to be waste. Other themes like food waste and human health — which should always be taken into account within a holistic strategy — are addressed too, as evidenced by the prohibition of phthalates and bisphenol A and the promotion of food donations.

The richness in both content and scope of Ley 7/2022 has resulted in a complex and transversal framework that requires a high degree of specialization and coordinated implementation across all levels of administration, the private sector, and consumers alike.¹²⁴ This level of commitment however is not an isolated case, but rather represents the culmination of a normative evolution that from the end of the dictatorship and especially from the entry into the EU, has progressively covered environmental interests. In this regard, the “*España Circular 2030*” strategy approved in 2020 laid the basis for an efficient, competitive,

¹²¹ Ley 7/2022, de 8 de abril, de residuos y suelos contaminados para una economía circular. BOE n. 85, de 09/04/2022. ELI: <https://www.boe.es/eli/es/l/2022/04/08/7/con>

¹²² Ministerio para la Transición Ecológica y el Reto Demográfico, *Responsabilidad ampliada del productor*. Available at <https://www.miteco.gob.es/es/calidad-y-evaluacion-ambiental/temas/prevencion-y-gestion-residuos/flujos/responsabilidad-ampliada.html#envases-domesticos-comerciales-e-industriales-de-un-solo-uso>

¹²³ E. BLASCO HEDO, *Ley 7/2022, de 8 de abril, de residuos y suelos contaminados para una economía circular*, in *Actualidad Jurídica Ambiental*, n. 123, 2022. <https://www.actualidadjuridicaambiental.com/wp-content/uploads/2022/05/2022-05-16-Blasco-Ley-residuos.pdf>.

¹²⁴ *Ibidem*.



carbon-free, circular economy by setting specific targets and by instituting a Circular Economy Council composed of members from all economic sectors, social agents, waste managers etc.¹²⁵

More notably, Title VII of the law envisages — beyond the obligations explicitly arrayed in the Directive — two economic instruments to guarantee the circular economy's advancement: first, a tax on the disposal of waste, and secondly, the “*impuesto especial sobre los envases de plástico no reutilizables*”, i.e. the tax affecting SUP packaging, which has largely been the object of discussion among scholars. The former is configured as an indirect state tax on the delivery of waste for disposal in landfills, for disposal or energy recovery in incineration, or co-incineration facilities, whether publicly or privately owned, calculated based on the waste's weight, type and destination. It applies throughout the Spanish territory, and its proceeds are to be transferred to the Autonomous Communities — on the basis of existing agreements on regional financing or through new ad hoc amendments —, which in turn shall use such resources to improve waste management and reinforce priority options over less sustainable ones. For the legislator, this system indeed presupposes not just an economic enhancement, but also a key incentive for waste prevention, reuse and repair and for the mitigation of greenhouse gas emission.¹²⁶

As a matter of fact, this tax on waste was already in force in many *Comunidades Autónomas*, but the “lack of harmonization” produced consistent difficulties in meeting EU objectives, besides weakening the overall effectiveness of the measure.¹²⁷

It shall be recalled that Spain's 1978 Constitution establishes environmental protection as a concurrent competence structured through “framework legislation” (*leyes marcos*): Article 149(1)(23) reserves to the central State exclusive basic rulemaking, while Article 148(1)(9) permits Autonomous Communities to manage the “*protección del medio ambiente*”, meaning to develop further implementing legislation and stricter standards, de facto creating a residual environmental title interwoven with sector-specific competences (water, forests, land-use) that generates complex “grey zones” requiring cooperation between the two levels.¹²⁸ Unlike Italy's rigid centralisation established by the 2001 constitutional reform, Spain maintains its original 1978 framework — progressively strengthened through *Estatutos de Autonomía*¹²⁹ — where 17 regional waste plans operate within national boundaries set by laws like the *Ley 7/2022*, balancing uniformity with regional executive freedom.¹³⁰ This system permits policy variation (e.g. different EPR models across regions) while still preserving a rather strong (and sometimes conflictual) central

¹²⁵ European Environment Agency, *Spain profile on municipal and packaging waste management*, 2025; and D.F. DI GATTA SÁNCHEZ, *Avances en la economía circular: nueva legislación sobre residuos y plásticos*, in *Actualidad Jurídica Ambiental*, 108, 2021. <https://www.actualidadjuridicaambiental.com/wp-content/uploads/2021/01/2021-01-11-Fernandez-Econom%C3%ADa-circular-pl%C3%A1sticos-residuos.pdf>.

¹²⁶ Art. 16. Medidas e instrumentos económicos *Ley 7/2022*.

¹²⁷ “Este tipo de figura impositiva que recae sobre los residuos destinados al depósito o incineración está ya vigente en varias comunidades autónomas. Sin embargo, la falta de armonización en los elementos configuradores de los diversos impuestos autonómicos y el hecho de que algunas comunidades autónomas hayan hecho uso de estas figuras impositivas y otras no, debilita la efectividad de este instrumento de cara al cumplimiento de los objetivos fijados por la Unión Europea e implica un incremento de los costes indirectos para los contribuyentes, dificultando la aplicación de las normas” From Preámbulo XII *Ley 7/2022*.

¹²⁸ M. ALBERTON, L. CASADO CASADO, *op cit.*

¹²⁹ For an interesting insight, check *Ley Orgánica 2/2007*, de 19 de marzo, de reforma del Estatuto de Autonomía para Andalucía, Articles 195-206.

¹³⁰ M. ALBERTON, L. CASADO CASADO, *op cit.*

State power. More specifically, the reform of Art. 135, which established budgetary stability as constitutional principle, has in practice partly limited autonomous environmental policies by setting stringent deficit and debt targets, affecting Communities' spending capacity, and by reinforcing State control over the budget.¹³¹

Still, Spanish regions have made fruitful use of their regulatory autonomy to step forward in the green transition, probably even further than their Italian counterparts: many adopted normative frameworks that anticipated the SUP Directive logic,¹³² while even earlier precedents, like Cataluña's in 2008, followed by Andalucía, Cantabria and the Principado de Asturias, had opened the path to fiscal measures imposed on plastic as means for environmental protection. In parallel, both the Balearic and Canary Islands examined, as early as 2012, the introduction of levies on non-returnable beverage containers to encourage reusable and eco-designed packaging.¹³³ More recently, as highlighted by the European Environmental Agency,¹³⁴ circular governance gained momentum in a number of regional binding instruments: Law 3/2023 on the circular economy in Andalusia integrated circularity criteria into public procurement, product design and service provision; Law 5/2022 of the Comunitat Valenciana establishes a comprehensive framework for waste prevention and management, setting up the "*Agencia Valenciana de Residuos y Economía Circular*" and an Environmental Fund to finance circular projects. In the Balearic Islands, *Ley 3/2022 de medidas urgentes para la sostenibilidad y circularidad del turismo* also stands out by introducing quantitative targets for waste reduction, recycling and reuse in the tourism sector, and so on;¹³⁵ while in 2024 Cataluña completely banned SUP food packaging and became the first region in the world to provide free, reusable menstrual products. Of course, not all that is said is also done, but the efforts perpetuated surely align with, and sometimes precede, the overarching EU's circularity goals.

Focusing on the second type of tax introduced by *Ley 7/2002*, and the most comparable to the heavily debated one in Italy, this consists of an indirect tax levied on the use of non-reusable packaging containing plastic, at the moment of manufacture, import, or intra-Community acquisition. A favourable derogation exists for the recycled plastic rate in products that fall within the scope of the tax, but the observations preceding the adoption of said Law made reference to *other* more sustainable options too. More specifically, in the *Memoria de Análisis de Impacto Normativo*, but also in the public consultation phase, products made of resin (which is fossil-based, but also water-soluble, biodegradable, compostable, and non-toxic), single-material polypropylene (easily recyclable), durable plastic products, and — not unexpectedly — bioplastic, were included among those that could have been exempted from the scope of the tax due to their lower environmental impact. However, the response was that such a differentiation would provoke an unbearable degree of complexity, which would in turn hamper the management of the tax and ultimately the achievement of the set objectives. With striking irony, Cobos Gómez actually compares and elevates the Italian approach on the Italian plastic tax as "fully in line" with its original purpose, because

¹³¹ *Ibidem*.

¹³² e.g. *Ley 8/2019 de residuos y suelos contaminados de las Illes Balears*, *Ley Foral de Navarra 14/2018 de Residuos y su Fiscalidad*, and *Decreto 55/2019 por el que se aprueba la revisión del Plan integral de residuos de la Comunitat Valenciana*.

¹³³ J.M. COBOS GÓMEZ, *El impuesto sobre envases de plástico no reutilizables y otras medidas fiscales*, in *Crónica Tributaria*, 178, 2020, 11–60.

¹³⁴ European Environment Agency, *Circular economy country profile 2024 - Spain. ETC-CE Report 2024/Spain*.

¹³⁵ *Ibidem*.



it promotes the production and use of ecological alternatives — while he considers the Spanish efforts not only too restrictive, but also insufficient: Ley 7/2022 does not modulate the tax, nor does it foresee a gradual introduction (which would have possibly favoured a smoother and thus more stable and longstanding compliance), nor concedes a corporate income tax credit as in Italy. Such omissions, though originally led at streamlining the administrative apparatus, “debilitan el carácter ambiental del impuesto y parecen acentuar la finalidad meramente recaudatoria”.¹³⁶

But regardless of which country theorized the best instrument, as of today, only Spain succeeded in implementing the plastic tax. The absence of an applicable Italian equivalent not only hinders a useful practical assessment, but also reveals quite a meaningful gap between conceptual design and regulatory execution in these areas of law. Broadly speaking, perhaps the motivation lies in the influence that left- and right-wing agendas may have had, and still have, on the prioritization and implementation of certain policies, both at national and local level. As a matter of fact, the National Recovery and Resilience Plans (NRRPs) of both Italy and Spain were engineered, in the early aftermath of the Covid crisis, by centre-left political coalitions that were in power at the time, namely by the Conte II Government (which obtained the highest volume of EU funds of all MS) on one side, and the Sánchez II Government on the other. While both plans allocated a substantial share of resources to climate objectives (39% and 40%)¹³⁷ and set ambitious objectives, later developments displayed some discrepancies: over the years, Spain benefited from a *relatively* stable progressive political support, enabling the consolidation of green commitments and the enactment of new waste laws, and climate-related binding instruments. Post-pandemic Italy instead, in 2022 experienced a sudden political turnover to the far right, which resulted in an inevitable recalibration of the originally agreed project to reflect the priorities of the new executive — which still rules to this date. The unexpected robustness of the last Government has contributed to maintaining the efficiency of preexisting systems and to creating a comprehensive policy scheme, exemplified by the “*Strategia Nazionale per l’Economia Circolare*”, while also strengthening centralization. Nevertheless, the whole framework proved to be hardly transformative, if not totally “stagnant”, as it largely favours traditional infrastructures and shows only negligible climate impact.¹³⁸

Taking now a closer look at extended producer responsibility, Ley 7/2022 essentially echoes the text of the SUP Directive, enlarging the previous regime to new waste streams, assigning additional costs to producers, and enhancing the role of local authorities around agreements negotiation with PROs.¹³⁹ As in Italy, Spanish producers, in collaboration with municipalities, may take on either purely financial or financial and organizational responsibility, often leaning on the activities of EPR collective systems (SCRAP or SIG).

¹³⁶ J.M. COBOS GOMEZ, *op cit.*

¹³⁷ European Commission, *Spain’s recovery and resilience plan*. Available at https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility/country-pages/spains-recovery-and-resilience-plan_en and *Italy’s recovery and resilience plan*. Available at https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility/country-pages/italys-recovery-and-resilience-plan_en.

¹³⁸ M. LEONARDI, F. BELLISAI, *Italy’s National Recovery and Resilience Plan’s climate impact*, in *Real Instituto Elcano*, ARI 107 (2021). <https://www.realinstitutoelcano.org/en/analyses/italys-national-recovery-and-resiliency-plans-climate-impact/>.

¹³⁹ J.J. PERNAS GARCÍA, *Responsabilidad ampliada del productor del producto*, in *Monografías de la Revista Aragonesa de Administración Pública*, XXI, 2022, 387-479.

Compared to the almost-unitary CONAI model however, there are numerous systems currently in force in Spain, created under specific legislation for each waste stream, which make the market for waste management much more competitive. Still, at least for domestic waste (SUP, light packaging, paper etc. excluding glass), Ecoembes has always occupied a dominant position: established in 1996 as a non-profit joint stock company, it has often been criticized as operating as a de facto monopoly, and because of its inherent conflict of interest.¹⁴⁰ In particular, its operational shortcomings have been linked to the fact that its board of directors includes executives from large corporations like Deoleo, Mercadona, L'Oréal and others,¹⁴¹ meaning that the very actors placing packaging on the market also control the system responsible for its management. This structure raised concerns that Ecoembes is economically motivated to fuel, rather than reduce, the generation of waste; that its model is largely profit-driven; and that it works with limited transparency, misreporting results while engaging in greenwashing practices. Further investigations have also documented the export of plastic waste to third countries, which increasingly questions the environmental integrity of the system.¹⁴² In a few words, EPR schemes in Spain so far have appeared quite flawed, falling short on targets and deadlines (e.g. the EPR decree on tobacco was only adopted in October 2024)¹⁴³, which makes its reorganization a true challenge.¹⁴⁴

Likewise, critiques have been moved also to CONAI, whose public narrative has leveraged on seemingly good results to oppose upstream packaging reduction measures and to prioritize recycling over prevention and reuse,¹⁴⁵ thus basically cherry-picking the sustainability commitments of the SUP Directive and other legislation in favour of economic interests.

Italy's stagnation in this sense clashes again with Spain's willingness to introduce measures that go beyond the minimum requirements of the Directive, as confirmed by the decision to establish a national deposit-refund system for plastic bottles (*Sistema de Depósito Devolución y Retorno (SDDR)*) after failing to reach the intermediate recycling targets set for 2023.¹⁴⁶ Such a majestic system, which will likely manage about 18 million packages per year, is scheduled to start in November 2026, although different stakeholders

¹⁴⁰ A. DE LA VARGA PASTOR, *La responsabilidad ampliada del productor como instrumento para lograr una economía circular*, in *Revista de Direito Econômico e Socioambiental*, 12(1), 2021.

¹⁴¹ ECOEMBES. Consejo de Administración. Available at <https://www.ecoembes.com/es/consejo-de-administracion>.

¹⁴² Greenpeace España, *Ecoembes miente: desmontando los engaños de la gestión de residuos de envases*, 2020. Available at <https://es.greenpeace.org/es/sala-de-prensa/informes/informe-ecoembes-miente/>; Changing Markets Foundation, *More Trash, More Cash: quién sale ganando con la crisis del plástico en España*, 2021. Available at <https://changingmarkets.org/press-releases/la-mala-gestion-de-los-residuos-de-envases-cuesta-a-los-espanoles-hasta-744-millones-de-euros-anuales-segun-un-informe/>.

¹⁴³ Rethink Plastic Alliance, *op cit.*

¹⁴⁴ J.J. PERNAS GARCÍA, *op cit.*

¹⁴⁵ Greenpeace Italia, *Plastica, Italia Campione del Riciclo? Cinque motivi (più uno) per cui non dovremmo esserne così sicuri*, 2024. Available at <https://www.greenpeace.org/static/planet4-italy-stateless/2024/11/8ca4eeb0-core-pla-report-2.pdf>; and *Visioni a confronto sul ruolo del Deposito Cauzionale: un convegno alla Camera promosso dal Vicepresidente Sergio Costa*. A Buon Rendere. 15/10/2024. <https://buonrendere.it/2024/10/15/visioni-a-confronto-in-un-convegno-alla-camera-sul-ruolo-del-deposito-cauzionale-promosso-dal-vicepresidente-sergio-costa-2/>

¹⁴⁶ This after the Ministry disclosed the actual data related to waste management, which were far lower than those initially communicated by Ecoembes, arguably with the intent to derail the DRS. Retrieved from Rethink Plastic Alliance, *op cit.*



have suggested to postpone or have utterly opposed it given the high associated costs¹⁴⁷ and the fact that it will inescapably alter the activities — and thus the profit — of the existing PROs. Similar arguments have been advanced in Italy, to the point that the country remains the only Member State where the Government, the competent Ministry and major beverage producers collectively resist the introduction of a national DRS, despite the empirical evidence that it could be the only instrument capable of achieving the 90% collection and recycled-content targets mandated by the SUP Directive.¹⁴⁸ For completeness, it is true that the anticipated expenses as well as the inadequate infrastructures, especially in the south, add on to the implementation difficulty, but a deposit-refund system would really be crucial to make a qualitative leap, also with respect to consumer engagement.

Overall, a careful scrutiny of EEA circular economy reports from 2024¹⁴⁹ reveals that Spain and Italy demonstrate different policy maturity in their circular economy and SUP management frameworks. Italy presents waste sorting, plastic recycling and circular material use rates that are well above the European average, but it also produces an exorbitant amount of packaging waste (232 kg/cap over the 186 kg/cap average); while in Spain some additional efforts are still needed, e.g. to offset its substantial reliance on landfilling (50% rate compared to Italy's 18%). Both countries exhibit great strength points, such as long-term national strategies with dedicated monitoring bodies and a relatively balanced distribution of central and regional competences concerning environmental matters. At the same time, one cannot help noticing how Italy continues to rely on its historical solid performances and the stability of its plastic waste management system as a justification to resist legislative and scientific innovation. The case of bioplastics illustrates this point well: although the sector offers promising economic and ecological opportunities, it also risks further entrenching the country's defensive stance vis-à-vis prevention and reuse. By contrast, Spain's Ley 7/2022 brilliantly demonstrated how the transposition of a directive can provide an opportunity for systemic domestic innovations. Extended producer responsibility, and the polluter pays principle more in general, have been adapted to the Spanish context through precise measures like the plastic tax and the upcoming DRS, meaning that it has "taken up the challenge" to actually innovate itself. Such a proactive alignment with EU requirements could serve as an example to other MS, like Italy, that would start from a comparatively stronger operational baseline, to attain even greater objectives. What instead appears is that the Bel Paese only launches environmental reforms in order to match EU conditionalities, rather than out of genuine domestic ideological push, ultimately reconfirming the familiar "*sostenibilità all'italiana*" modus operandi.

¹⁴⁷ *España diseña el sistema SDDR más grande y complejo de Europa*, de Inés Oria. El Economista. 10/10/2025. <https://www.economista.es/infraestructuras-servicios/noticias/13586627/10/25/espana-disena-el-sistema-sddr-mas-grande-y-complejo-de-europa.html> .

¹⁴⁸ TOMRA, *Introduzione di un sistema di deposito cauzionale - DRS per gli imballaggi per bevande monouso in Italia*. Available at <https://documenti.camera.it/leg19/documentiAcquisiti/COM08/Audizioni/leg19.com08.Audizioni.Memoria.PUBBLICO.ideGes.7830.13-06-2023-12-09-48.pdf> .

¹⁴⁹ European Environment Agency, *Circular economy country profile 2024 - Spain. ETC-CE Report 2024/Spain*. Available at https://www.eea.europa.eu/en/topics/in-depth/circular-economy/country-profiles-on-circular-economy/circular-economy-country-profiles-2024/spain_2024-ce-country-profile_final.pdf/@@download/file and *Circular economy country profile 2024 - Italy. ETC-CE Report 2024/Italy*. Available at https://www.eea.europa.eu/en/topics/in-depth/circular-economy/country-profiles-on-circular-economy/circular-economy-country-profiles-2024/italy_2024-ce-country-profile_final.pdf/@@download/file .

6. New Regulatory Perspectives under the PPWR and Final Remarks

Before approaching the conclusions of this paper, some space will be dedicated to the forthcoming Regulation (EU) 2025/40 on packaging and packaging waste (PPWR).¹⁵⁰ In fact, to illustrate the content and effects of the SUP Directive without taking into account the implications that the PPWR will have on plastic regulation in the EU (and beyond?), would not only be anachronistic, but necessarily incomplete.

On February 11th 2025, the Regulation repealing Directive 94/62/EC and amending the SUP Directive as well as Regulation (EU) 2019/1020 on market surveillance and compliance of products, finally entered into force after a tumultuous process, characterized, even in its latest stages, by strong ideological contrapositions. Building on the legal basis of internal market harmonization (instead of environmental protection ex Art. 192 TFUE),¹⁵¹ from August 2026, the PPWR will introduce consistent innovation in terms of reduction targets, recyclability requirements, chemicals, minimum recycled content and reuse obligations that will substantially reshape the regulatory landscape for packaging across the EU. Being a regulation, its provisions will be directly enforceable by Member States with remarkable uniformity, so as to limit interpretative disparities.

For example, EU countries committed to separately collect at least 90% of single-use plastic bottles and metal beverage containers by 2029, with mandatory deposit return schemes required for those that fail to meet such a target for three consecutive years.

Correlatively, Art. 6 mandates that “all packaging placed on the market shall be recyclable”, meaning it is designed in a way that enables both its efficient collecting, without affecting other waste streams, and a successful material recycling producing qualitative secondary raw materials.

The regulation also mandates minimum recycled content ranging from 10% to 35% by 2030 and increasing to 25%-65% by 2040 depending on packaging type, and requires all packaging to be “designed for material recycling” from 2030, achieving at least 70% recyclability to access the EU market, with this threshold rising to 80% by 2038. Moreover, from 2030, all packaging must be “minimized” in terms of weight and volume, and a progressive reduction of packaging waste generated per capita shall be achieved.¹⁵²

The reading of the recitals and of the articles unequivocally underscores the role of reuse, refill, and information duties — now harmonized by a universal and understandable labelling system for waste sorting — as new driving forces, suggesting a long-awaited shift from top-down regulation of single-use products, to perhaps an approach that disincentivizes overconsumption by leveraging on consumer awareness.

The novelty also lies in including bioplastics and biodegradable options in the discourse: although they are not comprehensively regulated yet,¹⁵³ and display considerable perplexities, the PPWR orders the Commission to publish, within three years of its entry into force, “a review of the state of technological

¹⁵⁰ Regulation (EU) 2025/40 of the European Parliament and of the Council of 19 December 2024 on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, in OJ L, 2025/40, 22.1.2025, ELI: <http://data.europa.eu/eli/reg/2025/40/oj>.

¹⁵¹ This meaning that, according to the legislator, the new rules on packaging shall be implemented primarily to guarantee its smooth movement across the internal market, rather than to achieve sustainability purposes. From R. STUPAZZINI & A. MARTINI, *op cit*.

¹⁵² Artt. 50, 6, 7, 43 of Regulation (EU) 2025/40 of the European Parliament and of the Council of 19 December 2024 on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC.

¹⁵³ Except for the 2022 “EU policy framework on biobased, biodegradable and compostable plastics”.



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development and environmental performance of biobased plastic packaging”,¹⁵⁴ and accordingly present a legislative proposal when the latter may be functional to the achievement of targets. Besides, it introduces relevant definitions and conditions for compostable packaging, biobased plastic and so on, while also imposing, by way of derogation, that tea and coffee bags and sticky labels affixed to fruit and vegetables shall be compostable by 2028.¹⁵⁵

In relation to extended producer responsibility, the Regulation mandates standardization and consistency among MSs, introducing eco-modulation fees based on recyclability, reusability, and recycled content, and imposing strict transparency and financial traceability criteria. The idea is to transform EPR schemes into the paramount drivers of circular economy while simultaneously creating a level playing field for businesses.¹⁵⁶

As one can imagine, the intersections of this new Regulation on packaging with the SUP Directive are numerous. The latter is a *lex specialis* in relation to the PPWR, so in the event of a conflict between the two, the Directive should prevail within the scope of its application. The Regulation however also amends the SUP in some points: for instance, under Art. 67, from 2029 shrink-wrap used in airports, chips of polystyrene and other plastics that are used to protect packed goods during transport and handling, and multi-pack plastic rings used as grouped packaging will be added to the items subject to market bans. The PPWR sets forth further measures too, such as the notable use restrictions on SUP packaging for unprocessed fresh fruit and vegetables (trays, nets etc.), for foods and beverages filled and consumed within the premises in the HORECA sector, for single servings (condiments, sauces, coffee creamers etc., with some exceptions), and miniature hotel toiletries, *inter alia*.¹⁵⁷

Examining the PPWR in full would necessitate a dedicated work, but overall, it can be affirmed that while the Directive had been framed as a turning point, this Regulation may be a genuine revolution. To corroborate this, as mentioned earlier, is the heated and polarized political debate that sprung around its adoption: in Italy, this saw national institutions, part of the packaging and recycling industry and agricultural associations on the one hand, and environmental NGOs, progressive municipalities and several regional authorities on the other. The former group portrayed the PPWR as an ideologically driven threat to a well-established, high-performing recycling sector, contending that penalizing single-use packaging *in toto* would actually cause more harm than good, especially as to CO₂ emissions, energy use and health and hygiene requirements, besides the elevated associated costs. In addition, the PPWR appears to gloss over Life-Cycle-Assessment and environmental education, two fundamental aspects whose marginalization allegedly reinforces the idea that innovation should be led by industry, instead of politics.¹⁵⁸ Also the post-adoption phase showed to be contentious, as several actors have announced legal action before the EU

¹⁵⁴ Rec. 39 and Art. 8 Regulation (EU) 2025/40.

¹⁵⁵ Art. 9 *ibidem*.

¹⁵⁶ B. BOKOR, *op cit.*

¹⁵⁷ Annex V Regulation (EU) 2025/40.

¹⁵⁸ *Perché l'Italia si oppone al regolamento europeo sugli imballaggi?* *Economiacircolare*. 13/04/2023. <https://economiacircolare.com/regolamento-imbballaggi-opposizioni-italia/>; and *Una lettura politica del regolamento sugli imballaggi e dell'Ue che verrà.* *Economiacircolare*. 30/04/2024. <https://economiacircolare.com/regolamento-imbballaggi-italia-reazioni/>

Court of Justice, claiming that the Regulation breaches, among other things, the principle of proportionality and the freedom to conduct a business.¹⁵⁹

On the opposing side, the PPWR's proposal was warmly welcomed, but it is difficult to determine "who is right": after all, the final text has been described as a "compromise", de-powering the Green Deal and allowing quite a high amount of flexibility to Member States and operators (to the delight of Italy), while also pioneering drastic measures. What is sure, and most important, is that the Regulation certainly stimulated a rich debate, and that a meaningful evaluation of its provisions will only be possible after its implementation. Until then, some countries have proven to be on the right track already: Spain for instance, adopted a ban on SUP packaging for fresh fruits and vegetables under 1.5 kg, with exceptions for easily damaged products, and both Spain and Italy have put forward measures to promote tap water.¹⁶⁰

Taking into account all that has been said thus far, the Directive on Single-Use Plastic represents a milestone of environmental protection that radically reshaped the regulatory landscape. Being a relatively recent act, it is not possible to assess its effects in the long term, nor can it be said that it will solve all the problems linked to plastics, but it is surely feasible to observe how different legal systems and institutions have reacted. Having clarified its innovative content, with a closer look at extended producer responsibility as a key element for the achievement of circular economy objectives, the analysis of two Mediterranean countries' approaches to the regulation of single-use plastic has provided interesting and not always predictable insight. Rethink Plastic Alliance explains that Spain had one of the highest effective implementation rates of the SUPD (except for Art. 8 and 10), while Italy was listed among the countries where "the situation remains unchanged compared to 2022", with its transposition of the Directive displaying significant gaps (Art. 4, 8, 9, 10), or even being "ineffective" (Art. 5, as illustrated in Chapter IV). This is partially disappointing, since the two years prior to the entry into force of the Directive should have served exactly to adjust our production and structures before the provisions became operational.¹⁶¹ Still, its overall approach appears coherent with a system that privileges economic viability and respects the political agenda, although investments in circularity, technology and consumer awareness would not only contribute more effectively to environmental protection, but would also guarantee a long-term economic payoff. Conversely, Spain's vigour, both from a regulatory and circularity perspective, can reasonably be added to the drivers of its recent massive economic growth, providing a useful model for future initiatives.

Zooming out from national experiences — which stand on the application of the principle of subsidiarity — Directive (EU) 2019/904 can be considered as a holistic instrument, embracing multiple approaches and ideas that gave Member States the opportunity to redefine their systems and drive (hopefully) long-term efforts in the fight against plastic pollution and environmental disruption. Nonetheless, a few criticalities might come to surface. *In primis*, some authors argue that not enough space has been dedicated to consumer awareness, as there is no clear guidance on how it should have been implemented, and generally seems to spark very little interest among national regulators; despite the fact that educating citizens on their pivotal impact on the environment, and especially on the consequences of improper use

¹⁵⁹ Action brought on 14 April 2025 — *Ecoplastica v Parliament and Council* (Case T-247/25) <https://curia.europa.eu/juris/document/document.jsf?jsessionid=8C47645B50D0C70C27735CC5FF8734E8?text=&docid=301072&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=2893127>.

¹⁶⁰ Rethink Plastic Alliance, *op cit*.

¹⁶¹ G. AMENDOLA, *op cit*.



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and disposal of plastic, would in fact make a substantial difference. In addition, companies would be encouraged to attract eco-sensitive customers by adopting more sustainable practices and designs.¹⁶² Of course, actively engaging communities still represents a challenge, more so where individual, or rather, national sensibilities are so varied like in the context of the European Union, but the SUPD (and other directives) offered a helpful and harmonized starting point for strengthening consumer awareness — one that, probably, has not been given the prominence it deserves.

Then, other sources point out that the overall scope of the SUP Directive may actually be too limited, “as the single-use pollution and waste crisis extends beyond plastics, and generates broader impacts that surpass a top 10 items list”.¹⁶³ In other words, the current set of reduction obligations and market restrictions represents only a modest step in a larger, global issue that calls for much greater efforts, and that risks damaging the competitiveness of European producers if the regulatory response is not comprehensive enough. Likewise, the targets included in its provisions have been deemed quite weak, considering that private certification schemes and multinationals’ internal targets have been proving not only more ambitious, but also swifter than legislators.¹⁶⁴ Equally relevant is the fact that interpretative loopholes and diverging domestic approaches stemming from a “loose” wording may always generate negative repercussions on the smooth functioning of the internal market: the same admits that “the regulatory failure is aggravated by market failures, such as environmental externalities, fragmented markets and poorly performing labelling”.¹⁶⁵

A broader reflection by Azzurro and other scholars stresses instead a structural issue underlying the Directive, i.e. the logic of “single-use”. Legislators should indeed support actions that keep resources circulating at their highest value for as long as possible, shifting from disposable to reusable products as part of a systemic transition to a circular economy.¹⁶⁶ This goes as far as to say that Member States should effectively adopt a “material-neutral approach”¹⁶⁷ with respect to all single-use products, setting aside differentiated restrictions that will inevitably lead to an increase in the (single) use of, for instance, paper and cardboard. Indeed, a literal interpretation of “sustainability” (capacity of an action to be sustained) suggests to us that any single-use product is “intrinsically unsustainable”, as it is its application, and not its material, that defines its sustainability.¹⁶⁸

¹⁶² L. ARISTEI, *op cit.* and T. HERBERZ, C. Y. BARLOW, M. FINKBEINER, *Sustainability assessment of a single-use plastics ban*, in *Sustainability*, 12(9), 2020.

¹⁶³ Rethink Plastic Alliance, *op cit.*

¹⁶⁴ Z. DIANA et al., *Voluntary commitments made by the world’s largest companies to address the plastics crisis*, in *One Earth*, 5(11) 2022, 1286-1306.

¹⁶⁵ European Commission, *Executive Summary of the Impact Assessment Report – Accompanying the document Proposal for a Regulation of the European Parliament and the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020, and repealing Directive 94/62/EC*, SWD(2022) 385 final <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0385>.

¹⁶⁶ P. AZZURRO, *op cit.*

¹⁶⁷ Rethink Plastic Alliance, *op cit.* and T. KIESSLING, M. HINZMANN, L. MEDERAKE, S. DITTMANN, D. BRENNECKE, M. BÖHM-BECK, K. KNICKMEIER & M. THIEL, *What potential does the EU Single-Use Plastics Directive have for reducing plastic pollution at coastlines and riversides? An evaluation based on citizen science data*, in *Waste Management*, 2023, 164, 106-118.

¹⁶⁸ T. HERBERZ et al, *op cit.*

In this context, along with moderate market bans and consumer awareness, EPR can once again be regarded as the main upstream strategy, but with a novel character: it would “extend” producer’s responsibility to include first, a reduction in quantity of the items produced, and secondly, their sustainable design (with an emphasis on safety, reusability and durability) — thus truly fostering waste prevention.¹⁶⁹ Only then, attention shall be turned toward waste disposal, management and recycling. Needless to say, it is also fundamental for the different actors involved to operate efficiently and transparently within each waste stream, meaning that PROs in particular should be regulated and supervised more closely, given that they handle large sums of money (despite being non-profit entities) and often represent contradictory interests.¹⁷⁰

But ultimately, what does this all really mean?

After navigating a field far too wide and complicated to be fully grasped without an interdisciplinary expertise, it is fair to affirm that today there is still no definite solution to the plastic emergency, nor any viable alternative to completely rule out plastic. Yet building a *lesser* plastic-reliant society is possible (and increasingly necessary): Colella suggests to pass first through the shift from a linear to a circular economy; then the universal recognition of the right to a healthy environment; and finally, the advent of a new lifestyle inspired by integrated ecology.¹⁷¹

In this view, albeit some shortcomings, the SUP Directive offered a concrete example of the “environmental integration principle”,¹⁷² touching upon several areas and across measures. It marked not just a paradigmatic shift from waste regulation to product regulation in Europe, but also produced a remarkable ripple effect beyond its borders, influencing policy and laws around the world.¹⁷³ More recently, new hopeful initiatives have indeed appeared to sustain this trajectory: the EU “Circular Economy Act”, set for 2026 and aiming at the establishment of a single market for secondary raw materials;¹⁷⁴ the Clean Industrial Deal,¹⁷⁵ Italy’s draft law proposal introducing a deposit-return scheme¹⁷⁶ and the public consultation and call for evidence launched by the Commission for Dir. (EU) 2019/904,¹⁷⁷ all signal a thriving, forward-looking debate.

A sustainable circular economy — one that the SUP Directive and Regulation (EU) 2025/40 began to outline — should gradually replace or complement a system based on *efficiency* — producing more with fewer resources — with *sufficiency*, i.e. an approach centred on consuming and producing fewer, more

¹⁶⁹ A. DE LA VARGA PASTOR, *op cit.*

¹⁷⁰ *Ibidem.*

¹⁷¹ L. COLELLA, *op cit.*

¹⁷² S. KINGSTON et al., *op cit.*

¹⁷³ Rethink Plastic Alliance, *op cit.*

¹⁷⁴ European Commission, DG Environment. Circular Economy. Available at https://environment.ec.europa.eu/strategy/circular-economy_en#:~:text=Due%20for%20adoption%20in%202026,these%20materials%20within%20the%20EU.

¹⁷⁵ European Commission, *A Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation* (COM (2025) 85 final)

¹⁷⁶ Roggiani ed altri: “Istituzione di un sistema di deposito cauzionale per i contenitori monouso per bevande”, Atto Camera: 2618. <https://www.camera.it/leg19/126?leg=19&idDocumento=2618>

¹⁷⁷ European Commission, *Have your say: what is the impact of the Single-Use Plastics Directive?* https://environment.ec.europa.eu/news/have-your-say-what-impact-single-use-plastics-directive-2025-12-23_en



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durable goods, repairing, sharing, renting, and being content with what we have.¹⁷⁸ From an economics perspective, the idea is to dissociate economic development from resource use.¹⁷⁹ While the change must be led by businesses, individuals are called upon to act and assume responsibility: a rapid glance at plastic recycling bins placed along the streets is enough to realize that the quality of our disposal systems is not only flawed by wide disinformation, but also by the rampant indifference of citizens, who arguably feel urged to take action only when their individual sphere is affected, neglecting instead societal and environmental interests.¹⁸⁰

In conclusion, to promote a significant transition, regulation and containment measures alone are not sufficient. Within a cross-cutting, multi-level governance model, addressing the plastic pollution emergency demands the active participation of institutions, the private sector, civil society, and judicial bodies too. Only “collective cultural maturation”, and therefore the combination of the socio-cultural dimension — which requires a profound change in lifestyles in light of limited resources —, the legal dimension, and the scientific dimension, can reshape behavioural patterns and, therefore, lead to a comprehensive, global response.¹⁸¹

¹⁷⁸ E. MAITRE-EKERN, *op cit.*

¹⁷⁹ F. RASPADORI, *op cit.*

¹⁸⁰ M. LIACI, *Strategia europea per la plastica e riflessi normativi e giurisprudenziali nell’ordinamento italiano*, in *AmbienteDiritto.it*, 3, 2021. <https://www.ambientediritto.it/dottrina/strategia-europea-per-la-plastica-e-riflessi-normativi-e-giurisprudenziali-nellordinamento-italiano/>.

¹⁸¹ G. AMENDOLA, *op cit.*; T. KIESSLING, *op cit.*, and B.G. DI MAURO, *Per una strategia olistica di contrasto all’inquinamento da plastica: tra frammentarietà dei modelli normativi, ruolo attivo dei Tribunali e responsabilità della società*, in *P.A. Persona e Amministrazione*, 13 (2) 2024, 1063–1102; and L. ARISTEI, L. VILLANI, W. RICCIARDI, *Directive 2019/904/EU. The need to raise awareness on plastic misuse and consequences on health*, in *European Journal of Public Health*, 30 (suppl. 5) 2020.