

A PLASTIC WORD. UPS AND DOWNS IN THE NATIONAL APPLICATION OF DIRECTIVE 2019/904/EU

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Abstract

Today, plastic is one of the biggest environmental problems. Directive 2019/904/EU aims to contribute to an increasingly plastic free society by reducing disposable plastic's use. This paper analyses the criticalities of EU directive comparing States' transposition and finding that some EU Countries are far behind (such as Romania or Slovakia) compared to others (such as Germany, France, or Italy). Also, several EU Regions anticipated State directive's transposition by applying decrees or regulations focusing on citizens' education. Indeed, citizens must be made aware by the regulator of the impacts that the production and mismanagement of plastics can generate on to the environment and health. Italy can be considered one of the most virtuous Countries since it adopted local regulations and it is characterized by case law on plastic.

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1. Introduction

In last century there has been a worldwide increase of plastics' consumption¹. Indeed, it has been estimated that plastic production is twenty times higher than the 1960s, quantity which is expected to nearly quadruple by 2050². However, although today there is a plastic emergency, there is not a valid alternative since our society is characterised by a strong consumerism.

The European Union (EU) shows its intention to limit plastic waste with directive 2019/904/EU³ on single use plastic. However, it is difficult to fight completely in an integrated way this problem since the directive has been transposed into national law in different ways. Indeed, there are some Member States that are more efficient than others. The main reason why some Countries are lagging (such as Romania) is because the EU leaves a great margin of discretion to States that sometimes do not perceive the problem of plastic as an urgent one. However, at the same time, there are several examples of European regions that approved regulations before their States. This is due to the need for local entities to curb the phenomenon since they are closer to the citizens and generally have to bear the burden of the waste. A good example in this sense is Italy, that is characterized also by case law on this topic.

For these reasons, this paper analyses the EU and national legislation on plastics and the reasons that have led to a differentiation in national transposition together with the reasons that instead drive local entities to adopt measures to counter plastic use. Indeed, if the plastic problem can be considered as a global one that necessarily involves states, sometimes, due to the greater

¹ T. Rosembuj, *Climate Change and the New Green Deal*, 4 Riv. giur. ambiente 20 (2019). For plastic statistics see <https://ourworldindata.org/plastic-pollution>.

² W. Piontek, *The Circular Plastic Economy and the Instruments to Implement It*, 3 *Ekonomia i Środowisko* 24 (2019).

³ Council Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment [2019] OJ L 155.

proximity of small entities to citizens, the greater virtuosity of the latter is manifested compared to states and, even more broadly, to the European Union. So, starting from the EU legislation and from the different national transpositions of the EU Directive, the aim of this paper is to identify whether there is a virtuous regulatory model to counter (or at least reduce) the unlimited use of single-use plastics as well as to discuss and analyse legislation's criticalities.

The paper is structured as follows: Section 2 analyses the evolution of European legislation up to Directive 2019/904/EU, Section 3 the single use plastic directive, Section 4 its different reception by EU Countries and Section 5 the Italian legislation and case law.

2. The EU reparatory approach and the extended producer responsibility scheme

In recent years several authors highlighted the single use plastic problem trying to solve it also through the idea of a “*plastexit*” to find systems that allow a more circular use of plastic products to limit waste⁴. Although there are thousands of types of plastics, 90% derived from virgin fossil fuels⁵ and Europe is the world's second largest producer of plastics after China. It is estimated that 2% to 5% of produced plastic ends up in the oceans, with negative effects on coastal and marine ecosystems⁶. The European Commission points out that between 150,000 and 500,000 tonnes of plastic are thrown away in Europe, a small percentage compared to the global quantity (ranging from five to thirteen

⁴ C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, 8-9 *Ambiente & Sviluppo* 589 (2019). On plastic, L. Belviso, *Lotta alla plastica ed ecosistemi marini. Il quadro giuridico all'indomani della direttiva UE/2019/904*, 1(24) *Przegląd Prawa Rolnego* (2019); B. Baran, *Plastic waste as a challenge for sustainable development and circularity in the European Union*, 19(1) *Ekonomia I Prawo – Economics and Law* 15 (2020); U. Barelli, *La Strategia e le norme dell'Unione Europea contro la dispersione della plastica nell'ambiente e la loro attuazione in Italia, nelle Regioni e nei Comuni*, 10 *Riv. giur. Ambiente* (2020); K. Meixner & M. Kubiczek, *Microplastics in soil-current status in Europe with special focus on method tests with Austrian sample*, 7(2) *Env. Science* (2020).

⁵ J. Zheng & S. Sangwon, *Strategies to reduce the global carbon footprints of plastics*, *Nat. Clim. Change* 374 (2019).

⁶ U. Barelli, *Le norme UE contro la dispersione della plastica nell'ambiente e la loro attuazione in Italia*, *Riv. Giur. Ambiente* (2020).

million)⁷. In particular, the Commission states that the phenomenon is exacerbated by the growing amount of plastic waste generated each year, which is also due to the increasing prevalence of single-use plastic products. These are packaging or other consumer products that are thrown away after only a short use, which are rarely recycled and likely to be dispersed into the environment⁸.

For this reason, it is important to analyse the existing European legislation on plastics to identify feasible policies to carry out such a "*plastexit*". But since plastic produces pollution and damage predominantly as waste, it is necessary to start from the latter notion.

Waste is defined by directive 2008/98/EC as any substance or object which the holder discards or intends or is required to discard. It is based on the concept of circular economy⁹, defined by the Ellen MacArthur Foundation as a self-regeneration economy. It

⁷ L. C. M. Lebreton & al., *River Plastic Emissions to the World's Oceans*, 8 Nature Communications 1 (2017). On plastic sea pollution see J. R. Jambeck & al., *Report - Plastic waste inputs from land into the ocean*, 347 Science 768 (2015); M. Nyka, *Legal approaches to the problem of pollution of marine environment with plastic*, 59(131) SJMUS 162 (2019). On soil plastic pollution, see C. Yooeun & A. Youn-Joo, *Current Research Trends on Plastic Pollution and Ecological Impacts on the Soil Ecosystem: a Review*, 240 Env. Poll. 387(2018).

⁸ These products include small packages, bags, disposable cups, lids, straws, and cutlery. In these products plastic is widely used because of its light weight, low cost, and convenience. European Commission, *A European Strategy for Plastics in a Circular Economy*, 3 (2018).

⁹ Circular economy differs from the linear one, which is based on the scheme produce-use-throw away, with no provision for product reuse or recycling: once the consumption of the good is over, its life cycle also ends, forcing the economic chain to start all over again. In the circular economy, on the other hand, all activities, from production to disposal, are organised in such a way as to allow a good, which has become waste for someone, to be transformed into a resource for someone else. See U. Barelli, *La Strategia e le norme dell'Unione Europea contro la dispersione della plastica nell'ambiente e la loro attuazione in Italia, nelle Regioni e nei Comuni*, cit. at 4, 2. On linear economy see E. Nicoli, C. Spadaro & P. Antonelli, *Plastica addio. Fare a meno della plastica: istruzioni per un mondo e una vita zero waste*, Altreconomia (2019); W. McCallum, *Vivere senza plastica* (2019). On circular economy, F. Iraldo & I. Bruschi, *Economia circolare: principi guida e casi studio*, Osservatorio sulla Green Economy - IEF Bocconi (2014); F. De Leonardis, *Economia circolare: saggio sui suoi tre diversi aspetti giuridici. Verso uno stato circolare?*, 1 Dir. Amm. 163 (2017); J. Dodick & D. Kauffman, *A Review of the European Union's Circular Economy Policy*, R2P The route to circular economy (2017).

is made up of biological¹⁰ and technical¹¹ material flows that aim at minimising total waste production by reusing products in subsequent production cycles.

According to circularity, prevention is the preferred solution which consist in the production of fewer products or goods that can be reused, recycled or that have a long-life cycle due to their characteristics and composition. Indeed, the non-production of single-use plastic is the best solution. However, if waste is generated, it has to be prepared for re-use, which consists in controlling, cleaning, disassembly and repairing operations without any other pre-processing¹². Then there is reuse, which includes any operation by which products and components that are not waste are reused for the same purpose for which they were conceive¹³, and recycling, by which waste is processed to obtain products, substances, or materials to be used for their original function (such as recycling plastic, paper, metal, and glass) or for other purposes. After recycling, there are other recoveries whose main result is to allow waste to perform a useful function by replacing other materials that would otherwise have been used, such as composting or oil regeneration. In cases where none of the above steps are feasible, waste disposal is the last solution.

From the 1970s the EU has approved several directives to regulate waste and plastic waste, which are considered problems to be handled. After waste framework directive 2008/98/EC¹⁴, 2015 marked the transition from a predictive and reductive approach to a new awareness. Thanks, in fact, to the 2015 directives, the EU begins to set recycling standards in line with circular economy, although empirical. Indeed, even if the reduction of waste production is the priority, standards for reuse, recovery and recycling began to be set. In December 2015, the European Commission adopted the Action Plan on the Circular Economy, identifying plastics as one of the major priority areas for action. Also, the Commission proposed by 2020 a 30% reduction for the ten types of waste that most commonly pollute beaches, as well as for

¹⁰ Capable of being reintegrated into the biosphere.

¹¹ Destined to be revalued without entering the biosphere.

¹² An example of preparation for re-use is glass bottles washing.

¹³ If we use the same example of the previous note, reuse consists in the use of glass bottles.

¹⁴ Council Directive (EC) 2008/98 on waste and repealing certain Directives [2008] OJ L312.

fishing equipment abandoned at sea, with the Communication “Towards a Circular Economy: Zero Waste Europe Programme”¹⁵.

On 2 December 2015, in addition to the Action Plan, the Commission also approved a Package of directives on the circular economy¹⁶. These directives require the achievement of a 55% recycling target for municipal waste by 2025, 60% by 2030 and 65% by 2035, while reducing landfilling to a maximum of 10% by 2035. The Package also sets recycling target for packaging (65% by 2025 and 70% by 2030) and separate collection from 2025 for hazardous waste, household textiles and biodegradable waste.

In line with the above, the European Commission adopted on 16 January 2018 the European Strategy for Plastics in the Circular Economy to ensure the collaboration between all stakeholders (producers, waste managers, retailers, consumers) to design and produce goods able to be repaired, reused, and recycled, without a total abandonment of plastics. One of the strategy’s targets is to make all plastic packaging recyclable within the EU market by 2030 and to implement separate collection and extended producer responsibility (EPR) schemes, whose contributions are expected to simplify design for recyclability.

In 2019, together with the European Green Deal¹⁷ (which is a roadmap to stimulate efficient use of resources to reduce pollution, climate change and move towards a sustainable and circular economy) the Ellen McArthur Foundation, together with UNEP, published the “New Plastics Economy Global Commitment: 2019 Progress Report”. This Report resumes the New Plastics Economy Global Commitment signed in October 2018 during the Ocean Conference in Bali. This Commitment aims at reducing plastic packaging by introducing a target of 100% recyclable, compostable or otherwise reusable packaging to be placed on the market by 2025. Several companies and nations are attempting to phase out the use of plastics, leading to significant experimental innovations as well as a revolution in the packaging system. However, the 2019 Report shows that companies that are virtuous in this regard produce only

¹⁵ European Commission, *Closing The Loop - An Eu Action Plan For The Circular Economy*, COM(2015) 614 final, paragraph 5,1 and note 34.

¹⁶ T. Ronchetti & M. Medugno, *Pacchetto Economia Circolare: al via il recepimento*, 4 *Ambiente & Sviluppo* 279 (2020).

¹⁷ European Commission, *The European Green Deal*, COM(2019) 640 final.

3% of the total plastic material by weight¹⁸. This may be partly due to the fact that it is difficult for a producer to make a sharp switch in the production system; in addition, the study and application of innovative and more sustainable production techniques and the creation of products intended to (if possible) never become waste requires know-how and not inconsiderable economic investments. For this reason, first and foremost, it is necessary for the regulator to set stringent targets to make producers to comply with them.

In this sense, in 2019 directive 2019/904/EU (single use plastic-SUP directive) was approved. This directive, which is discussed in detail in the following section, combines both the predictive and the reductive approaches, preventing the production of plastic waste while reducing its impact on the environment through its more sustainable composition. Moreover, this directive marks a turning point in European regulation, leading to the adoption of more concrete and practical solutions than those empirically outlined previously.

Before analysing SUP directive, a brief parenthesis should be opened on the EPR scheme. According to the EU principle of polluter pays, whoever produces waste (whether a private consumer or a company) must pay for its proper management in proportion to the quantity of waste produced. Indeed, whoever puts on the market a product destined to have a short life without the possibility of recycling is subject to the so-called extended producer responsibility, since he/she contributes to the production of more waste than a virtuous producer of durable goods with recyclable components¹⁹.

This form of responsibility imposes on producers a financial (or financial and organizational) responsibility for managing all phases of the good's life cycle, from when it is placed on the market until it becomes waste. Therefore, it follows that a producer is also responsible for the end-of-life of the product (collection, disposal,

¹⁸ Ellen McArthur Foundation – Unep, *The New Plastics Economy Global Commitment: 2019 Progress Report*, 14 (2019).

¹⁹ OECD defines EPR as “a policy approach under which producers are given a significant responsibility – financial and/or physical – for the treatment or disposal of post-consumer products. Assigning such responsibility could in principle provide incentives to prevent wastes at the source, promote product design for the environment and support the achievement of public recycling and materials management goals”. OECD, *Extended Producer Responsibility: A Guidance Manual for Governments*, 164 (2001).

etc.), even if the waste was generated by a third party; this is why it is defined as “extended” responsibility.

At the EU level, EPR is governed by article 8 of the Waste Framework directive 2008/98/EC²⁰, and directive 2018/851/EU introduced “general minimum requirements” in its article 8a²¹. This article provides that EPR systems must clearly define the responsibilities of the actors involved (producers, organizations, managers, etc.) as well as the waste management objectives. Also, according to the 2018 directive, States must take the necessary measures to ensure that the contributions paid by producers cover the costs related to: separate collection and transport of waste; adequate information to waste holders; data collection and reporting.

According to recital 21 and article 8 of directive 2019/904/EU, Member States must introduce extended producer responsibility schemes that allow for full coverage of costs (management, waste removal and awareness-raising measures to reduce and prevent waste production) in addition to those already provided for in directive 2008/98/EC. However, SUP directive leaves a great margin of discretion for Member States, setting also a too long deadline for the systems’ implementation, which does not reflect the urgency of the single-use plastic problem. This is one of the reasons why, as it will be discussed above, several State have not adopted (or have not fully adopted) norms that transpose into national legislation the European provisions, perceiving the directive’s rules as insufficiently stringent and long-standing. Anyway, due to the particularly negative environmental impact of these plastic products, it is crucial that Member States set up EPR systems as soon as possible (well before 2024, the date of transposition of article 8 of the directive by Member States), also through eco-modulation of fees, considering durability, reparability, reusability, recyclability, and the presence of hazardous substances.

²⁰ Article 8, directive 2008/98/EC states that Member States may take legislative or non-legislative measures to ensure that any natural or legal person professionally developing, manufacturing, processing, handling, selling, or importing products (product producer) is subject to extended producer responsibility.

²¹ Council Directive (EU) 2018/851 amending Directive 2008/98/EC on waste [2018] OJ L150.

So, a well-designed EPR scheme can play a key role in providing economic incentives for companies to develop more sustainable plastic products and securing the necessary funding. Indeed, in states with very high recycling rates most of the costs of separate collection and treatment of packaging waste are funded by producer contributions. If well designed and implemented across Europe, EPR systems could therefore help improve the efficiency of the recycling process, encourage design for recycling, reduce waste, and promote greater dialogue between producers, local authorities, and citizens. It is therefore important to identify the critical issues encountered by States in the transposition of EU directives to enable an overall reduction of single-use plastics.

3. Directive 2019/904/EU: prevention and reduction of plastic waste into the environment

The Single Use Plastic (SUP) (directive 2019/904/EU) can be considered the first EU directive that sets stricter rules for the ten types of packaging and polluting products most found on EU beaches and for which there are viable alternatives. In particular, the 2019 directive sets quality and composition standards for plastic goods to reduce their dispersion in the environment²² consequent to their improper disposal into sewers or other drains.

The focus are single-use plastic products, which are products designed, conceived, or placed on the market to be used once or for a limited period and then discarded without any subsequent possibility of reuse²³.

The directive distinguishes single-use plastic products according to whether sustainable alternatives currently exist. For easily replaceable products (e.g. straws, plates, cotton buds) there is an obligation for Member States to ban them by mid-2021; for products for which no viable alternatives exist, such as food containers, Member States must commit to reducing their consumption by 2026 through a range of measures such as national

²² The directive uses a preventive approach to not generate plastic waste. M. Nyka, *Legal approaches to the problem of pollution of marine environment with plastic*, cit. at 7, 166.

²³ The directive gives examples of single use plastics such as fast-food containers or food containers that do not require further preparation, while excluding containers of dry food or food sold cold that require further preparation or those containing more than one portion.

reduction targets, economic instruments or market restrictions. For products already regulated by other EU legislation (such as plastic bags), the directive simply reinforces existing measures²⁴; finally, for those not falling into the above categories (e.g. tobacco products), the directive imposes labelling requirements, awareness-raising measures and EPR schemes.

Under article 4 of SUP directive, Member States must take measures to decrease the consumption of single-use plastic products listed in Annex A thereof (such as: beverage cups, including lids and caps, and single-use food containers) and this is to significantly reduce the use of these products by 2026 compared to 2022. Indeed, States can apply non-discriminatory and proportionate measures to reduce consumption, identify or ensure reusable alternatives to such single-use products, or introduce economic instruments to avoid free distribution of such goods to the final consumer. Articles from 5 to 7 deals with other disposable plastic products (i.e. those made of oxo-degradable plastic)²⁵. For disposable plastic containers listed in Annex F Member States must ensure, as of 2025, that PET bottles are manufactured using at least 25% recycled plastic, to be calculated as an average for all PET bottles placed on the market in the territory of the specific Member State and 30% by 2030. To make consumers more aware, article 7 requires Member States to place on the market only those bearing markings in large, clearly legible, and indelible letters, on the packaging or on the product itself, information on: the correct waste management methods and those to be avoided; the indication of the presence of plastic in the product with the specification of the negative consequences that would derive from improper disposal or dispersion in the environment of the waste²⁶.

²⁴ For example, the packaging directive 94/62/EC requires States to implement EPR systems by 2025, achieving the target of 50% recycled plastics in packaging by 2025.

²⁵ A ban on the marketing of such products is a tool found in many international agreements. M. Nyka, *Legal approaches to the problem of pollution of marine environment with plastic*, cit. at 7.

²⁶ To harmonize marking rules within the European Union, the European Commission adopted in December 2020 an implementing act aimed at laying down more detailed rules on marking, considering existing voluntary sectoral agreements and avoiding, at the same time, the dissemination of misinformation to consumers. European Commission, *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*

Although the directive sets sustainable environmental goals, it simultaneously produces significant impacts on EU SUP industries. Indeed, as pointed out above, the detailed targets set by the directive necessarily entail a change in industrial production processes, which are destined to increasingly move away from the use of single-use plastics; this entails an expansion of corporate know-how along with substantial investment in sustainable production processes, which not all companies are willing to sustain. On the other hand, the reduction of plastics can create a new market and new jobs by developing new green technologies. In addition, start-ups and large companies that started producing eco-sustainable products even before the directive will certainly benefit from the restrictions imposed on plastics in economic terms.

Moreover, as the McKinsey Report 2015 and the European Commission's Plastics Strategy point out, the directive targets states that represent a tiny percentage of the much larger global problem. Indeed, while there is no doubt that Europe constitutes a large pool of plastics production, imposing stringent obligations on EU countries does not solve the global plastics problem making instead European companies less competitive in the global market as they are subject to higher costs for sustainable production. These are key issues that the directive seems to overlook but instead undoubtedly affect the implementation of EU provisions.

Furthermore, while plastics undoubtedly constitute a problem, the directive should have focused more on civic education, for which to date there is no common action but individual virtuous initiatives by Member States or citizens. This is because if citizens become aware of the importance of reducing and properly managing and disposing of single-use plastics, companies and manufacturers would also (most likely) be incentivized to adopt circular policies; this would also attract more customers to green and plastic-free companies. Also, not to be underestimated is the provision of an efficient infrastructure by institutions for the reuse and recovery of plastic products²⁷.

In any case, as stated in the European Commission's working document accompanying the proposed directive, the measures contained in the directive should allow the saving of 2.6 million

impact of certain plastic products on the environment, (Implementing Regulation) 2151 OJ L 428 (2020).

²⁷ L. Maestri, *Direttiva SUP e guerra ai rifiuti di plastica: il problema è la plastica o il rifiuto?*, TuttoAmbiente (2019).

tons of CO₂ by 2030, thus avoiding damage to the environment worth €11 billion. In addition, it is estimated that it will cost €2 billion to bring companies into compliance, €510 million for waste management and around €6.5 billion for consumer savings²⁸.

3.1 What is missing at EU level?

Based on this analysis, it is possible to affirm that in our society plastic cannot be eliminated. Instead, we could think of a “*plastexit*”, to quote Claudio Bovino, meaning fighting the dispersion of plastic waste in the environment as well as promoting research and the introduction on the market of alternative materials with lower environmental impact, and greater potential for recycling and recovery²⁹. Therefore, the correct use of plastic needs to be implemented, encouraging citizens to change their lifestyles³⁰.

To promote “*plastexit*”, it is therefore necessary to act firstly on the producer (by producing less plastic) and then on the end-of-life of the product (more recycling/recovery of the plastic produced)³¹. In this respect, EPR systems can certainly play an important role in raising finance, incentivising companies to produce more sustainable plastic products and setting up privately managed funds to finance investments in environmentally sustainable solutions and technologies³². However, even with EPR’s extension and the implementation of separate collection and plastic waste management systems, consumers remain the main perpetrators of non-compliant behaviours. The SUP directive focuses on awareness-raising campaigns towards these end consumers, but the result is qualitatively uncertain. Certainly, to incentivize good consumer behaviour, there should be a market

²⁸ European Commission, *Executive Summary of the Impact Assessment Single Use Plastics & 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) 255 final.

²⁹ C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, cit. at 4, 589.

³⁰ C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, cit. at 4, 589; G. Balocco, *L’inquinamento determinato dalla plastica: una problematica planetaria*, 4 *Giornale dir. amm.* 480 (2020).

³¹ C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, cit. at 4, 698.

³² European Commission, *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) 256 final 3.

supply of viable alternatives to ordinary plastics³³. However, these alternatives (when they exist) are not always of equivalent handling, quality, and convenience to plastic products, they require raw materials with higher costs than plastic³⁴, and they lack clear labelling or marking for end consumers³⁵. This necessarily brings consumers to perform a cost-benefit analysis that may lead them to choose the plastic product that is more cost-effective (higher production costs necessarily fall on the end consumer) and functional.

In addition, as already outlined, while wanting to condemn plastics, or at least single-use plastics, less consideration is given to the impacts that phasing out these products from the market may have on it. Indeed, many plastic manufacturers are threatened with closure and thousands of workers with redundancy. Therefore, a solution could be to allocate national funds to allow producers to reinvent themselves and to change their business by producing plastic free and alternative products³⁶. Also, a fund can be used to adopt guidelines on single use plastic products (on the chemical composition of plastic goods, on their proper end-of-life management, etc.) to ensure a minimum impact on the market without distortions of competition³⁷. The main challenge remains, however, the improvement of the internal management of the company to better meet European circular expectations³⁸; this can

³³ A. Muratori, *Prodotti in plastica monouso: dalla Dir. 2019/907/UE, regole “circolari” contro la dispersione nell’ambiente*, 7 *Ambiente & Sviluppo* 524 (2019); C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, cit. at 4, 698.

³⁴ S. Thomas, *Personal Property Law for a Zero-Waste Circular Economy: Using Retention of Title Clauses to Reduce Plastics Waste*, 15 *LEAD* 179 (2019).

³⁵ Even if the European Commission sets the goal of clear labelling by 2021 of cups, sanitary pads, wet wipes, tampons and applicators and tobacco products with filters, underlining their plastic content, environmental risks, and proper disposal methods. European Commission, *Turning the tide on single-use plastics*, (2019). See also C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, cit. at 4, 692.

³⁶ C. Bovino, *Plastexit, in che termini realizzare la necessaria uscita dalla plastica (parte prima)*, cit. at 4, 698.

³⁷ E. Capone, *La Direttiva (UE) 2019/904 (Single Use Plastics – SUP o “Plastic Free”) e la protezione del territorio da parte degli enti locali*, 5 *Riv giur. Amb.* 1 (2019); G. Balocco, *L’inquinamento determinato dalla plastica: una problematica planetaria*, cit. at 30, 471.

³⁸ European Commission, *A European Strategy For Plastics In A Circular Economy*, COM (2018) 028 final 19.

be improved starting from raising awareness among the citizens and consequently among workers and business managers.

An important aspect that should be pointed out is that SUP directive contains contradictions such as those relating to three-litre beverage bottles, for which EPR begins on 31 December 2024, while the development of public services for their separate collection and recycling to ensure that at least 77% of the waste is recycled by 31 December 2025. In addition, regarding food containers and beverage cups, the directive does not set a European-wide reduction target, but a vague requirement to achieve an “ambitious and sustained reduction” of these products by 2026. This requirement does not provide a sufficient incentive to reduce the consumption of these products, and without precise targets it is difficult to measure compliance. The directive also excludes from its scope many everyday goods such as plastic cups or toothpaste tubes³⁹. These aspects have certainly contributed to the delays and lack of completeness in the transposition of the directive in EU Member Countries.

Moreover, although the directive is undoubtedly innovative in its approach⁴⁰, it does not consider citizens’ rights to a healthy environment⁴¹ which is instead crucial for incentivizing the reduction of single-use plastic use.

Lastly, given the nature of plastic waste, which is easily transported by tides, currents and wind, a global action is necessary⁴² that is not limited to EU Member States sharing the same seas or geographical areas⁴³. Indeed, in the absence of a globally coordinated policy, restrictions on market access or

³⁹ G. Balocco, *L'inquinamento determinato dalla plastica: una problematica planetaria*, cit. at 30, 479.

⁴⁰ To quote De Vido, the directive is based on five Rs: Reduction, Restrictions, Requirements, Responsibility, Recycling. S. De Vido, *Climate Change and the right to a healthy environment*, 114 (2019).

⁴¹ S. De Vido, *La direttiva UE sulla plastica monouso alla luce del diritto umano ad un ambiente salubre*, 1 Studi sull'integrazione europea 133 (2020).

⁴² L. Belviso, *Lotta alla plastica ed ecosistemi marini. Il quadro giuridico all'indomani della direttiva UE/2019/904*, cit. at 4, 191.

⁴³ A recent analysis, conducted by the Helmholtz Association of German Research Centres in Munich, shows that 90% of the plastic spilled into the oceans comes from the Yangze, Indus, Yellow River, Hai, Nile, Brahmaputra Ganges, Pearl River, Amur, Niger, and Mekong rivers. G. Balocco, *L'inquinamento determinato dalla plastica: una problematica planetaria*, cit. at 30, 479.

obstacles to the free movement of goods are to be expected⁴⁴ along with the lower competitiveness of EU companies subject to greater costs than foreign ones.

Also, while directive 2019/904/EU has provided important tools⁴⁵, its implementation, postponed to 2025 or even 2029, undoubtedly slows down the adoption of plastic-free solutions. Probably a more short-term goal would have prompted more EU countries to take immediate action to implement more environmentally sustainable products and more efficient collection systems. However, with this delay in implementation, less efficient countries will likely continue to delay taking action.

In addition, the percentage of recycled plastic in the composition of bottles of 25% by 2025 and 30% by 2030 is, presumably, quite meagre as the targets of some multinationals are much more ambitious (such as a Dutch mineral water brand which was the first to make bottles made of 100% recycled plastic or another US beverage brand which has set a target of 50% recycled plastic by 2030). It seems then that the market is moving faster than the legislator.

4. The different models of transposition of directive 2019/904/EU into national and regional law

It was reported that only a few EU Member States (such as France or Estonia) managed to meet the 3 July 2021 deadline bringing into force regulations, laws, and administrative provisions necessary to transpose into national laws the directive. They have left behind other Member States (Bulgaria, Romania, Slovakia, Czech Republic, and Poland) which have just started the transposition process. Many other countries are just in the middle, meaning that while they may have undertaken some work, they are still too slow and they didn't meet the short transposition deadline.

Indeed, 3 July 2021 deadline did not provide for several States enough time or opportunity to develop and implement harmonised rules, also because the guidelines implementing the directive were only published in June 2021, almost a year later than originally planned.

⁴⁴ G. Balocco, *L'inquinamento determinato dalla plastica: una problematica planetaria*, cit. at 30, 476.

⁴⁵ W. Piontek, *The Circular Plastic Economy and the Instruments to Implement It*, cit. at 2, 30.

The current state of legislative processes across the EU shows unprecedented fragmentation and different timing of transposition. Italy may be the only country to take the questionable decision to exclude biobased plastic products from the scope of the transposition law, while in Sweden delay seems to be an inevitable scenario due to the extremely high number of responses the draft text of the national law received from stakeholders. However, many other countries, such as Romania and Bulgaria, have not yet taken real steps towards transposition.

4.1 Virtuous countries banning single use plastic products

The analysis of the transposition of the SUP directive begins with the most well-performing countries that have transposed all or most of the EU provisions.

One of the most virtuous State is Estonia, that has been particularly praised for its deposit and return system covering beer, cider, and soft drinks bottles for the past fifteen years. Also, Estonia is working to extend this system to single-use and refillable packaging for spirits, soft drinks, and syrup. It is reported that Estonia will set a minimum charge for single-use cups and food containers of €0.50, impose the availability of reusable packaging from 2023, and eliminate single-use packaging completely by 2025. In addition, local government will have to ensure that reusable containers and cutlery are provided at public events from 2023⁴⁶.

Another example is Ireland, which is planning to introduce additional bans to those required by the directive (on non-medical wet wipes, single-use sachets and hotel toiletries) in 2022. In addition, a national decree for PET bottles and cans is expected to be in place by the end of 2022 to reach the 90% collection target, while trials of EPR with eco-modulation of tariffs are underway. The aim is to set an EPR scheme which provides a reward to sustainable producers in 2023. A “latte levy” will also be in place from 2022 to incentivise a reduction in the consumption of disposable cups, as well as a ban on the use of disposable cups in restaurants.

Then Greece, which has banned the use of single-use plastics in the public sector. Specifically, as stipulated in Law 4736/2020, on

⁴⁶ HKTDC Research, *Several Member States Miss Single-Use Plastics Directive Transposition Deadline*, HKTDC Research (2021).

the abolition of single-use plastics, all public bodies (general government bodies) are obliged to stop supplying ten specific types of single-use plastics, in line with EU directives. The transposition period for the directive began in February 2021 and to encourage reduced consumption, a reciprocal tax of €0.04 will be levied on all plastic cups and food containers from 1 January 2022. Also, reduction targets of 30% and 60% have been set for cups and food containers (by 2024 and 2026 respectively). In addition, there are binding requirements for retailers to provide reusable packaging and mandatory rebates for consumers who bring their own reusable packaging. These measures affect the entire hospitality and retail sector and will apply from January 2022. From that date, catering services will no longer be able to use single-use plastic products. In addition, to reduce the consumption of bottled water, the provision of public taps has been made mandatory in all municipal sports centres and playgrounds (from July 2021). Marking requirements will be applied to all single-use products covered by the directive from 1 January 2022, so that citizens know which products are intended for re-use, which for recycling and which for composting; also, caps and lids tied to caps will become compulsory for all plastic containers (food and drink) by July 2024.

Another example is France, where law No. 398/2018 amended the Environment Code by adopting a more stringent approach banning, as of 1 January 2020, single-use plastic products such as toothpicks, plates and straws. In addition, from 1 January 2025, plastic food containers for cooking and heating as well as plastic food services in gathering places such as schools or universities will be banned. Also, France banned six months before SUP directive the single-use plastic products. The draft implementing law proposes to set the maximum plastic content threshold for single-use cups at 15% from 3 July 2021, 8% from 1 January 2024 and 0% from 2026 and it provides for a general ban on all single-use packaging by 2040. Regarding EPR, France preceded the EU requirements by setting up from 2021 schemes for tobacco products' industry. Regarding design requirements, France will be ahead of the EU directive, with cap requirements introduced already in 2021. However, France has not introduced a national strategy to raise awareness among French citizens; campaigns will certainly take place at local level, except those for tobacco products for which a national campaign conducted at least once every two years by EPR organisations is planned.

About Germany, it decided to introduce an obligation for larger restaurants and take-away establishments to offer reusable cups and food containers from 2023. In implementing the directive, from 2022 almost all previously applicable exemptions from mandatory deposit for single-use plastic bottles and cans will no longer apply. As far as EPR schemes are concerned, it is still uncertain how Germany will implement these measures. Discussions are still ongoing on how to calculate and capture the costs of cleaning and waste collection. Concerning separate collection, Germany will meet the 77% and 90% targets of the SUP directive, even if beverage containers such as Tetra Pack, which contain partly plastic, are not collected separately and there are no plans to include them in separate bins. Regarding design requirements, PET beverage bottles in Germany already have a 25% recycled content. To go beyond business as usual, Germany should aim to achieve a total recycled content of up to 60% by 2030 with an intermediate target of 40% by 2025. Germany has implemented the EU directive in several national texts: a comprehensive waste law transposing several waste directives, an ordinance on the prohibition of single-use plastics and an ordinance on the labelling of single-use plastics which entered into force on 3 July 2021.

In the Netherlands, the 90% collection target for beverage containers is expected to be achieved through the existing national law for single-use PET bottles by 2022. The Netherlands also has EPR legislation for packaging which will be extended to other product categories to include beverage cups and light bags. New EPR schemes will also be created for tobacco products with filters (by 2023), balloons and wet wipes (by 2024). Awareness-raising measures will be funded by the government until the EPR schemes are launched, but no specific long-term awareness-raising strategy has been decided upon. Also, no consumption reduction target has yet been decided, although local NGOs have joined forces to push for specific targets (50% reduction for cups and 30% reduction for food containers in 2025). The Dutch government is taking further measures to combat waste. From 1 July 2021, a deposit of fifteen cents will be in force for plastic drinks bottles containing less than one litre. The producers of the bottles are responsible for introducing the deposit system and accommodations and small businesses are not required to collect them. From 31 December 2022, cans of soda, water and beer will also have a deposit of fifteen cents, even if how and where these cans will be collected is still

unknown. Also, in the Netherlands the rules for labelling, banning, and applying EPR scheme have a progressive time frame. From 3 July 2021 products made of oxo-degradable synthetics, balloon rods (except those for industrial or other professional use), cotton tips (excluded those for medical use), polystyrene foam food and drink containers and cups, straws (excluded those for medical use), stirrers, cutlery and plates are banned (loose caps and lids, that have to be fastened to bottles of up to three litres, are banned by 3 July 2024), while within this date filter tobacco products packaging, drinking cups, packaging of moist towelettes, sanitary bandages, tampons and tampon applicators are subject to labelling rules in order to inform consumers on: the products' containment of plastics, their proper disposal and the adverse impact of litter on the ecosystem. Regarding the application of the EPR scheme, it applies from 5 January 2023 for filter tobacco products, bags, and wrappers, drinking cups, light carrier bags and one-person food packaging, while from 31 December 2024 for moist towelettes, balloons and fishing gear⁴⁷.

Finally, in Belgium, the draft federal law will introduce from October 2022 restrictions on all single-use plastic beverage and food containers and on single-use plastic bags (except very light ones). On the other items, which follow the list of the SUP directive, the bans apply from the entry into force of the law.

From this review, it emerges clearly that most of the initiatives taken by States relate to the reduction of single-use plastic products (such as straws or single-use containers) while only some States have focused on the implementation of EPR systems. But what emerges from this analysis is that apart from the Netherlands (which has not adopted a long-term strategy anyway) States have not focused on policies to raise public awareness. This is because, as highlighted above, the directive itself does not give emphasis to this aspect, which nevertheless is essential for building a plastic-free society. Indeed, as it will be later highlighted, a state policy is efficient in reducing single-use plastic consumption if it starts with citizens, making them aware of the products they use and of their proper disposal. Anyway, the Countries listed in this paragraph can be considered virtuous in SUP directive transposition, unlike those that will be mentioned in the next paragraph.

⁴⁷ <https://www.kvk.nl/english/rules-and-laws/ban-on-single-use-plastics/>.

4.2 The least efficient States. What is lacking?

Contrary to the States listed in the previous paragraph, some Countries are far behind the plastic regulations' implementation such as Romania (Government Ordinance 6/2021 on reducing the impact of certain plastic products on the environment was recently approved) or Slovakia. Regarding separate collection, Slovakia plans to have a decree for beverage containers by 2023, which means a delay of one year compared to what was initially announced in a draft law presented by the Ministry of Environment in September 2019. The deposit is expected to be twelve cents per PET bottle (and ten cents per can). According to the new legislation, the deposit will be mandatory for establishments of more than three hundred m², and voluntary below this area. Regarding bans, through its amendment to the Waste Act, Slovakia is following the bans of the SUP directive from three years onwards. The authorities have started to transpose the EU directive in two laws: Act 11 September 2019, No. 302 establishing a decree for single-use beverage packaging and Act 460/2019 amending the Slovak Waste Act No. 75/2015 which entered into force on 27 December 2019. Simultaneously, benefiting from the support of the OECD, Slovakia has initiated discussions and working groups on the circular economy with a view to adopting its national circular economy strategy in the first quarter of 2022⁴⁸.

Among the reasons that have undoubtedly led these States to lag behind is the fact that the deadline of 3 July 2021 has been very stringent, not allowing some states that are not in the forefront of sustainable production to adapt to the new plastic-free rules. In addition, long-term goals perceived to be far off by individual States have evidently contributed to a delay in the transposition of the directive, which was seen as not very imperative in dictating targets. This is also evident in contrast to local entities, which, as it will be analysed in the next section, have sometimes been ahead of the States in transposing the EU provisions as they are closer to the citizens and consequently more burdened by the need to fight the problem of plastic pollution.

⁴⁸ <https://www.kvk.nl/english/rules-and-laws/ban-on-single-use-plastics/>.

4.3 Local implementation of single use plastic regulations

In recent years it has happened that some local entities have been ahead of the states in implementing single-use plastic reduction policies and measures.

For instance, the Municipality of Rethymno in Greece signed on 12 March 2020 a memorandum of cooperation between the Region of Crete, the Municipalities, and the hoteliers of Crete for the sustainable management of beach waste and the SUP's reduction. With this memorandum, the Municipalities committed to include specific terms for the protection of the coast and the sea when offering the management of organised beaches and to clean the rest of the beaches once a week. Hoteliers, on the other hand, have undertaken, among other things, to remove single-use plastic, replace plastic bottles with glass ones and provide ashtrays on the beach. It will then be up to the Region of Crete to monitor the implementation actions of all parties, to report when commitments are not followed and to terminate cooperation with parties that repeatedly fail to comply with the agreement.

In Austria, Montanuniversität Leoben (MUL) worked on the realisation of regional hubs in the Styria region as part of the eCircular Flagship project. The main objective of the eCircular project is the reduction of plastic waste along the value chain. The project aims to support companies and organisations in their efforts to reduce plastic waste. This includes the creation of regional hubs as a central focal point to which stakeholders can address their requests and needs.

Then there is the BLASTIC project, which monitors and maps the sources and pathways of marine litter in four areas (Turku in Finland, Södertälje in Sweden, Tallinn in Estonia, and Liepaja in Latvia) to demonstrate how plastic waste makes its way from urban areas to the Baltic Sea. BLASTIC developed a checklist for mapping the sources, flows and routes of marine litter and formulated a methodology for monitoring its distribution in rivers and coastal waters in and around the Baltic Sea. Local plans for the prevention and reduction of marine litter were developed in the pilot areas, with a focus on plastic waste from cities.

In France, the Provence-Alpes-Côte d'Azur region is facing two major problems: multiple illegal practices and poor performance in established sectors (relatively low collection rate, low public awareness, etc.). To tackle these problems, the Regional Council integrated in its regional waste planning a target of zero

plastic waste in deposit in 2030 presenting different programmes such as the call for projects “*Zero Plastic Waste in the Mediterranean*” to support innovation. It also finances the MerTerre association in accompanying the structures registered on the ReMed Zero Plastic platform. This initiative brings together a wide range of public and private actors to share know-how and strengthen local initiatives in the service of a zero-waste objective. In partnership with the ARBE (Regional Agency for Biodiversity and the Environment), they have launched a Zero Plastic Waste charter. Signatories (communities, companies, schools) are invited to explain what they are doing to reduce and eliminate plastic from their premises/activities by following a reduction plan and being helped and trained by the regional agency. The region also works in collaboration with several CPIE (Centre of Permanent Initiative for the Environment) throughout its territory and it is carrying out more plastic reduction programmes at local level through more channels. The region is working with the CPIE Côte Provençale to zero plastic canteens and reduce waste in canteens (for example, to replace plastic containers for cooking, heating, and serving in canteens and to increase the value of the waste produced through the recycling of packaging or the composting of organic waste).

Another example is Belgium, where some regions introduced measures to limit single-use plastics before the federal law was adopted. In Flanders, drinks cannot be served in single-use packaging at public events or government buildings from 2020 (unless event organisers can guarantee that 90% is collected separately for recycling). From 2022, it will also not be allowed to serve food in single-use plastic in government buildings. In Wallonia, restrictions on single-use plastic items listed in the directive (except for cotton swabs) started at the beginning of 2021, six months before the deadline set by EU law. In 2020, Wallonia also banned the distribution of plastic advertising material on vehicles that are stationary or parked on any road open to the public, and the use and release of confetti, streamers and other projectiles made of plastic, as well as the distribution in plastic film of advertisements and all other free non-advertising publications; in particular, targets are set to reduce the use of plastic film by December 2021 by at least 50%, to reach a total ban by the end of 2022. In the Brussels-Capital Region, the city of Brussels and some other cities have also taken measures at city level. As of 1 July 2019, the distribution and use of single-use plastics (for example: straws,

food containers and their packaging, cutlery, drink stirrers, beverage glasses, etc.) have been banned during events in public space. On recycling, the federal legislative proposal also includes a requirement for labels on bottles to ensure that they can be easily removed to facilitate refilling.

Also, since the Belgian federal law lacks EPR schemes, they have been transposed at regional level. For example, in the Flemish law, although it does not clearly list the products concerned, it mentions EPR schemes (following the definition of the directive) stating that they will cover all products that are present as waste in a significant way, but without targeting plastics more than other materials. Flanders is considering introducing an obligation for all producers who contribute significantly (5%) to waste to pay for cleaning costs. So, in Belgium, overall, implementation follows the minimum requirements set by the SUP directive, but for some measures, in relation to food and drink containers, there is a great deal of ambition at both federal and regional level⁴⁹.

So, it emerges that at the national level it has been preferred a stringent approach aimed at preventing the marketing of certain products containing plastic which are considered potentially harmful to the environment and human health, while Regions have, depending on the case, moved in the direction of stringent bans on the marketing of plastic products or on recycling standards. What emerges, however, is the emphasis given by local entities to the education and awareness of citizens (or public employees) which have to be considered the real pillars for the creation of a plastic-free society. This is the main difference (besides the timeliness of adopting policies to fight single-use plastics) between regions and states. Probably the reason for local entities to involve and seek more dialogue with the community is related to the territorial proximity between the administrative entity and citizens. In any case, it appears that, no matter how virtuous these initiatives are, there is a need for coordination and for common national (and then EU) policies to reach "*plastexit*"; this can only be pursued through timely and detailed regulations that take citizens as a starting point.

⁴⁹ For all these info about EU States see Plastic Solution Fund, *Moving on from single-use plastic: how is Europe doing?*, (2021) <https://rethinkplasticalliance.eu/wp-content/uploads/2021/06/SUP-Assessment-Design-final.pdf>.

5. The Italian case

To conclude the analysis on EU States, Italy can be examined since it is one of the most efficient EU Countries regarding SUP regulation.

Indeed, Italy, with 2018 Financial Law, banned cotton buds from 1 January 2019 and established an obligation to affix on products' packaging information for their proper disposal and an explicit remind of the prohibition to throw them into sewers and toilets (Law 27 December 2017, No. 205, art. 1, para 545).

By implementing directive 2015/720/EU on plastic bags and pouches, Law 3 August 2017, No. 123, introduced to the Italian Environmental Code articles 226bis and 226ter on banning the marketing of plastic bags and on reducing the marketing of plastic bags made of ultralight material. The Circular Plastic Strategy of 2018 was implemented partially by article 1, paragraph 802, Law 30 December 2018, No. 145, which introduced article 226quater into the Environmental Code setting prevention objective of SUP production made of fossil material. On the other hand, Financial Law 2020 (Law 27 December 2019, No. 160) imposed a plastic tax amounting to €0.45 per kg of plastic in article 1, paragraphs 634-658. The purpose of this tax is to reduce and disincentivize the use of products containing disposable plastic that are intended to contain, protect, handle, or deliver goods or food, even if in the form of sheets or films. However, the imposition of this tax has not been unanimously accepted and its application has been postponed to 1 January 2024⁵⁰. Authoritative opinion⁵¹ considers this instrument a mere system for collecting money that it is not then used for technological recycling innovations; the business associations of plastic and packaging producers have also criticized this tax as it is expected to lead to a significant reduction in company turnover (between 10% and 15%) with negative consequences for investment and employment⁵². On 4 November 2021 then Italy approved the reception of SUP directive.

⁵⁰ Legge 29 dicembre 2022, n. 197.

⁵¹ A. Muratori, *La Plastic Tax, dopo liti e revisioni, è ora legge dello Stato: ma è utile, o no?*, 1 Ambiente & Sviluppo 9 (2020).

⁵² G. Balocco, *L'inquinamento determinato dalla plastica: una problematica planetaria*, cit. at 30, 480.

5.1 Italian regional regulations: pioneering the elimination of disposable plastics

In addition to the regulatory provisions listed above, Italy is an excellent example in terms of regional regulations. Indeed, the Italian case is emblematic and exemplary in terms of the approval of measures to address single-use plastics by local authorities even before the State.

Among these, there is Law 1 August 2019, No. 27, of the Marche Region. With this law, the Region intends to regulate the use of plastic products to reduce their production, promote sustainable development and spread social and environmental education. Article 2 of the law specifies the prohibition of the use of SUP products (such as straws, plates, cups, and cotton buds) and oxo-degradable plastic products, as defined by article 3 of SUP directive. On the other hand, the use of such products is permitted, pursuant to article 5, in the event of sanitary emergencies, personalized diets with medical certifications that cannot be packaged on site, waterworks service interruptions or natural disasters. For other products, such as food containers, there is instead a restriction on their consumption (art. 2, para 2). Article 4 provides for a more restrictive provision compared to the directive, prohibiting smoking on the regional coastline in the absence of specific containers for the collection of post-consumer waste from tobacco products containing plastic. Article 7 assigns to the Regional Council the promotion of research and industrial development projects for the substitution of plastic materials, also through the granting of regional contributions. For products not listed in article 2, the Council promotes the reduction of their use by encouraging deposit/refund systems. Article 8 concerns citizens awareness campaigns incentivising the reduction of disposable and oxo-degradable plastics.

Another virtuous Italian Region is Emilia-Romagna whose Regional Council adopted Resolution 11 November 2019, No. 2000, with which the Region promised to regulate the transition towards more sustainable consumption systems. Already in 2015, the Region adopted Law No. 16 to orient the regional economy towards more resilient and circular system by identifying ambitious waste management objectives in line with the EU hierarchy and creating a Regional Waste Management Plan. Among the various tools initiated by the Region, there is the Green Shopping Cart logo that distinguishes the stores that are members of the Regional

Environmental Qualification System characterized by plastic waste prevention systems through, for example, the sale of products in bulk. Instead, the 2019 resolution launched the #Plastic-freeER Strategy with which the Emilia-Romagna Region aims to prevent the production of SUP products and implement their life cycle. The Region also commits to progressively replace single-use plastic products listed in Annex B of the 2019 directive, as well as plastic bottles, from the offices of the Regional Administration, the Region's in-house companies and the Regional Agencies. In collective catering (canteens, hospitals), beaches, protected areas of the Region, festivals, public events and fairs, the Region proposes to promote the replacement of disposable plastic tableware with sustainable ones. Also, as part of the Regional Program of Information and Education for Sustainability referred to in Regional Law 29 December 2009, No. 25, actions have been established to raise awareness and educate citizens to more sustainable behaviours. The Region is also concerned about the production chains in the plastic sector helping them to convert to renewable plastic production, rewarding those that experiment plastic-free solutions or that promote the use of alternative materials.

Then there is Campania Region, which on 4 December 2019 adopted Law No. 26 that entry into force on 3 July 2021, the same deadline of SUP directive. In article 1, paragraph 1, the law prohibits, from 3 July 2021, the use of single-use plastic products (including tableware and balloon rods) during fairs or events that are also financed and organized by the Region and the Local Authorities. Paragraph 2, on the other hand, prohibits the use of disposable plastic containers or tableware in protected areas and parks, without referring to beaches of the maritime domain. Finally, paragraph 3 prohibits disposable plastic goods in the offices and premises of regional authorities when serving food or drinks, including from vending machines. The Region promotes awareness and information campaigns for the employees of the Regional Council, the Entities, and all citizens to make them responsible for behaving virtuously aiming at reducing waste production (SUP waste particularly) and informing them about the sanctions and prohibitions provided for by law.

From these three examples, it is clear that some Italian Regions have been ahead of the State in regulating single-use plastic. However, what emerges from this examination is that not

only have the Regions been conscientious about reducing the consumption of plastic in public places, but more importantly these local authorities have been concerned about raising awareness through information campaigns, unlike several EU Countries. Among the reasons that probably prompted these Regions (all three of them overlook the sea) to regulate citizens' awareness is the fact that they struggle with plastic accumulations on beaches and have to dispose of them properly. The fact that they perceive the problem more closely on the beaches has perhaps led those Regions to regulate more and earlier on the subject; but this should evidently give rise to the question as to why States have not acted in the same way, maybe perceiving the problem as more distant. Moreover, as it will be discussed in the next section, Italian local authorities have been also involved in administrative litigation on the issue.

Anyway, certainly these entities (and the European ones seen above) should be taken as models for speeding up the transposition of European legislation on SUP and for fostering public education and awareness on the issue.

5.2 Trade union and bathing establishment ordinances on plastic. The case of Italian administrative jurisprudence

As mentioned above, the anticipated implementation of SUP directive by Regions and Municipalities brought to case law.

In Italy, the first court to have pronounced is the Administrative Regional Tribunal of Sicily, Palermo. This Tribunal adopted two decisions partially different from each other after being seized by companies that produced disposable plastic tableware⁵³. With both rulings, the Tribunal suspended trade union ordinances of the Municipality of Trapani (29 March 2019, No. 32) and the Municipality of Santa Flavia (5 February 2019, No. 5). Both ordinances prohibited the distribution, marketing and use of disposable products containing food and beverages made of materials that were not compostable or biodegradable, referring to SUP directive. The prohibition also extended to public parties and every public event. The Tribunal opted for their suspension for the absence of the regulatory requirements that would have justified the adoption of contingent and urgent ordinances, since in these

⁵³ Administrative Regional Tribunal Sicilia, Palermo, Sez. I, ordinanze cautelari, 4 luglio 2019, No. 798 and 807.

cases there weren't unpredictable and exceptional situations, and for no time limits for the provided prohibitions⁵⁴.

Subsequently to these judgments, the Administrative Tribunal of Abruzzo Region ruled in the Council Chamber on 10 July 2019⁵⁵ on the legitimacy of the Teramo Mayor's ordinance of 9 April 2019, No. 63. This ordinance, in the wake of those in Sicily, banned the use of SUP goods that are not compostable or biodegradable, while allowing the gradual disposal of any stocks present in points of sale and warehouses of such material (for plastic bottles the date was 30 September 2019). The Abruzzo's Tribunal ruled contrary to the Sicilian one, maintaining in force the trade union ordinance, since no serious and irreparable damage had been caused to disposable plastic's producers that also produced compostable and biodegradable goods. The Tribunal affirms that the prohibition is limited to the city of Teramo, within which companies can reinvest in distribution and production of eco-sustainable products without losing the market shares occupied by traditional plastic products.

Another case is the one that occurred before the Puglia Regional Administrative Court in relation to a bathing ordinance of the Puglia Region that prohibited the distribution, marketing, and use of single-use plastic products on the Region's beaches. The ordinance was based on the recent SUP directive and on 24 July 2019 the Puglia Court suspended the Region's ordinance, recalling a previous ruling of 23 July 2019, No. 1063, in which it had annulled the trade union ordinance of the Municipality of Andria imposing the use of biodegradable and compostable tableware in food and beverage vending machines. It also states that the 2019 directive requires earlier transposition by the States since it intervenes on competition and places restrictions on the market and it ruled that the Region cannot regulate a matter of exclusive State competence pursuant to article 117, paragraph 2, letter s) of the Italian

⁵⁴ Contingent and urgent ordinances are an *extra ordinem* instrument and they are not compatible with measures aimed at prohibiting or reducing the use of plastic, which should be considered permanent. Some authors share the conclusion of such jurisprudence, since plastic free resolutions/agendas containing measures of environmental policy should be preferred to prohibitions (as also suggested by the National Association of Italian Municipalities). U. Barelli, *La Strategia e le norme dell'Unione Europea contro la dispersione della plastica nell'ambiente e la loro attuazione in Italia, nelle Regioni e nei Comuni*, cit. at 4, 19.

⁵⁵ Administrative Regional Tribunal Abruzzo, Sez. I, ordinanza cautelare, 10 luglio 2019, No. 123.

Constitution. The Region therefore appeals to the Council of State, Fourth Section, that with order 30 August 2019, No. 4273, rejected the suspension of the effectiveness of the order. Indeed, the Council of State found in article 6, paragraph 2, letter b, of the Regional Law 10 April 2015, No. 17 the regulatory basis of the power exercised by the Region. The judges, contrary to what was previously provided by the Tribunal, then agreed that the bathing ordinance pursues a public interest to ensure a safe use of the maritime domain, providing that the Regions have the power to dictate more restrictive rules than those provided at national level. This assertion is based on the Constitutional Court's jurisprudence⁵⁶ according to which, even though the subject matter environmental protection falls within the exclusive jurisdiction of the State pursuant to article 117, paragraph 2, letter s) of the Constitution, the Regions maintain a degree of autonomy which allows them to dictate higher protection standards⁵⁷. Obviously, if the state's transposition of the SUP directive will be stricter than the regional rules, these will have to comply with the transposing state law.

From this brief jurisprudential review, there is undoubtedly a need to provide for uniform single-use plastic provisions at the national level, which should then be transposed to the regional level to avoid initiatives by local authorities in conflict with the regulations.

6. Conclusions

This paper shows Europe's increasing attention to the issue of plastics and plastic waste.

Directive 2019/904/EU is undoubtedly innovative in this respect by setting specific targets in terms of product composition, recycling rates and EPR systems. However, the short deadline of 3 July 2021 has not allowed several states to implement plastic-free policies, especially those that had not taken action to regulate the issue before 2019.

Although Italy is not the only European Country to have witnessed local implementation, the paper shows how several Italian regions have adopted before the State plastic ordinances to reduce the use of disposable plastics and to raise awareness among

⁵⁶ Constitutional Court decision 17 January 2019, No. 7.

⁵⁷ For example, Italian Constitutional Court decision 19 June 2018, No. 198 and decision 21 February 2018, No. 66.

citizens. This has also led to case law on the issue, which have always been resolved in favour of a fair compromise between the environmental protection and waste reduction and the different jurisdiction between the State and the local entities.

One aspect that has emerged from this examination is that of awareness-raising campaigns. The 2019 directive emphasises this aspect with the obligation of clear and comprehensive labels in its article 7 while local authorities have taken more care of this fundamental aspect. Indeed, while it is essential to invest in a more circular, well designed, and durable production, it is also necessary to raise awareness among end consumers of the negative impacts that improper product disposal can have on the environment. In this regard, extended producer responsibility systems play an essential role in raising financial resources to invest not only in new production technologies but also in citizens' awareness-raising campaigns.

Thus, the strengths and weaknesses of EU legislation and consequently of its (sometimes difficult) transposition into national laws emerge from this study. Indeed, while undoubtedly the SUP directive has been pioneering in the field by setting detailed targets for the reduction and recycling of single-use plastics, it has several critical issues such as the short deadline for transposition, which has undoubtedly disadvantaged the least sustainable countries. In addition, the wide margin of discretion left to states in transposition along with the long-term targets (up to 2029 in some cases) has contributed to states' perception of the plastics problem as not immediate and, consequently, postponable. This is exacerbated by the fact that the transition to plastic-free production systems presupposes a change within companies, needing more know-how and investment in green production. This obviously increases the prices of production and of the products themselves, making EU companies less competitive in the global market than those in non-EU countries which are not subject to such obligations. This probably contributed to the delay in the transposition of the directive, which, moreover, affects only a small circle of countries (those in Europe) whereas the plastic pollution problem is undoubtedly more far-reaching.

Thus, although the SUP Directive can be considered a milestone in the field, it should probably have started with public awareness of single-use plastics. Public awareness and education campaigns have been neglected by most EU countries, unlike local

authorities closer to the community. Starting with citizens and increasing their awareness of the consequences of improper use and disposal of plastics would also help raise awareness among companies, which, to attract consumers who are sensitive to sustainability issues, would have a greater incentive to adopt sustainable production processes. Moreover, starting from the bottom would also incentivize states (and then the European Union) to adopt stricter regulations on the subject.

Therefore, in the coming years, it will be necessary to rethink the regulations on single-use plastic with greater involvement of local communities and citizens, which are the real cornerstones of the fight against single-use plastic. It is indeed from the bottom up that it is necessary to work from to achieve the long-awaited "*plastexit*."