

## LEGAL ALERT

### NEW RESTRICTIONS ON THE USE OF PLASTIC PRODUCTS

#### DECREE-LAW NO. 78/2021, OF 24 SEPTEMBER

On November 1<sup>st</sup>, 2021, a set of new measures to reduce the impact on the environment of single-use plastic products, products made from oxo-degradable plastic, and fishing gear containing plastic, approved by [Decree-Law no. 78/2021, of 24 September](#), will come into force.

Said statute:

- (i) Partially transposes into national law [Directive \(EU\) 2019/904, of 5 June 2019](#), regarding the reduction of the impact of certain plastic products on the environment, adopted in a context of growing European and worldwide concern considering the increase in the production and use of plastic in short-life applications; and
- (ii) Introduces some changes to both [Law no. 76/2019, of 2 September](#) (determining the non-use and non-availability of single-use plastic tableware in the catering and/or beverage sector and in the retail trade), and [Law no. 77/2019, of 2 September](#) (imposing that alternatives to the distribution of ultralight plastic bags and plastic cuvettes at points of sale of bread, fruits and vegetables are made available to consumers).

A short summary of the most relevant measures and goals to take into consideration is provided below:

## 1. Prohibition to place on the market and to make available certain plastic products

AS FROM:	PROHIBITION APPLICABLE TO THE FOLLOWING PRODUCTS:
November 1 <sup>st</sup> , 2021	<ul style="list-style-type: none"> <li>Single-use plastic products specified in Decree-Law no. 78/2021, of 24 September (<i>e.g.</i>, cutlery, plates, beverage stirrers, and certain types of food containers and beverage containers made of expanded polystyrene);</li> <li>Products made from oxo-degradable plastic;</li> <li>Single-use plastic products (<i>e.g.</i>, sanitary towels/pads, wet wipes, cups for beverages) that do not comply with the “<i>marking requirements</i>”, <i>i.e.</i> that do not visibly display on their packaging or on the product itself: <ul style="list-style-type: none"> <li>(i) the appropriate waste management options for the product or the waste disposal means to avoid for that product;</li> <li>(ii) the presence of plastic in the product and the resulting negative impact of littering or other inappropriate means of waste disposal of the product on the environment<sup>1</sup>.</li> </ul> </li> </ul>
July 1 <sup>st</sup> , 2024	<ul style="list-style-type: none"> <li>Single-use plastic beverage containers that do not meet the “<i>design requirements</i>”, <i>i.e.</i> that do not have a capacity of less than three litres, which does, however, have certain exceptions.</li> </ul>

## 2. Specific restrictions on bread, fruit and vegetable points of sale (by amendments to Law no. 77/2019)

AS FROM:	MANDATORY / PROHIBITED PRACTICES:
January 1 <sup>st</sup> , 2022	<ul style="list-style-type: none"> <li>Mandatory availability, at the points of sale of bulk products, of re-usable alternatives for packaging bakery products, fruits and vegetables;</li> </ul>
June 1 <sup>st</sup> , 2023	<ul style="list-style-type: none"> <li>Prohibition to make available very lightweight plastic bags and single-use plastic containers in the marketing of bakery products, fruits and vegetables in commercial establishments;</li> <li>Prohibition to commercialize those same products when packaged in very light plastic bags and single-use plastic containers.</li> </ul>

<sup>1</sup> This prohibition is without prejudice to the possibility to make available on the market the said products without the above-mentioned marking, to the extent they are placed on the market before the 1<sup>st</sup> of November of 2021, and until stocks are completely exhausted.

### 3. Obligation to make available re-usable solutions

AS FROM:	OBLIGATION APPLICABLE TO:
January 1st, 2024	<ul style="list-style-type: none"> <li>• <b>Take-away or home-delivery:</b> all outlets that use single-use plastic drinking cups and certain single-use plastic food containers on a take-away or home-delivery basis are required to make re-usable alternatives available to their customers against a deposit to be returned when the packaging is returned; In particular, the sales unit consisting of the product and the re-usable packaging shall not be made available at a higher price or on less advantageous terms than the sales unit consisting of the same product and the single-use packaging;</li> <li>• <b>Vending machines:</b> vending machines, supplying ready-to-eat meals or drinks packaged at the time of purchase by consumers, which are installed or replaced on or after January 1<sup>st</sup>, 2024, must allow the consumer to use his/her own container;</li> <li>• <b>On-the-spot consumption:</b> in food or beverage establishments, except in cases of non-sedentary activity, all utensils intended to serve and/or assist in the consumption of food or beverages sold for on-site consumption must be re-usable.</li> </ul>

### 4. Obligations imposed on producers and other economic operators

ECONOMIC OPERATORS INVOLVED IN THE TRADE CHAIN (including producers)	<ul style="list-style-type: none"> <li>• <b>Raising awareness and providing mandatory information</b> to consumers, keeping a record that evidences the information and awareness actions developed, for possible disclosure to the competent authorities.</li> </ul>
PRODUCERS	<ul style="list-style-type: none"> <li>• Promotion of <b>research and development of sustainable alternatives</b>;</li> <li>• <b>Registration and submission of data in the national integrated system of electronic registration of waste (SIRER – sistema integrado de registo eletrónico de resíduos)</b>, annually providing to the Portuguese Environment Agency a set of information and data, as from 2022 or 2023, depending on the type of information;</li> <li>• <b>Appointment of an <i>authorized representative</i></b> responsible for fulfilling these obligations, imposed on: <ul style="list-style-type: none"> <li>(i) Producers established in another member state of the European Union or in a third country, who sell this type of product directly to end users in Portugal by means of distance communication techniques;</li> <li>(ii) Producers established in Portugal who sell such products, by means of distance communication techniques, directly to end users in another Member State in which they are not established.</li> </ul> </li> </ul>

## 5. National goals for the medium / long term

Finally, ambitious quantitative targets are established to:

- (i) The reduce the consumption of single-use plastic beverage cups and certain single-use plastic food containers, set for 2026 and 2030;
- (ii) The increase the incorporation of recycled plastic in certain beverage bottles with a capacity of less than three liters, to be met annually by each packager as of 2025;
- (iii) The increase the separate collection of waste from certain single-use plastic beverage bottles with a capacity of less than three liters.

## 6. Applicable sanctions

In view of their declared importance, and depending on the type of obligation at issue, failure to comply with these obligations may qualify as:

- **Serious economic offence**, punishable with a fine of up to EUR 24,000.00, in the case of large companies;
- **Light, serious or very serious environmental offence**, punishable by a fine that, in the case of legal entities, may reach EUR 36,000, EUR 216,000 or EUR 5,000,000, respectively.

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