

## Single Use

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**From:** [REDACTED]@ibec.ie>  
**Sent:** Friday 25 November 2022 15:35  
**To:** SingleUse  
**Cc:** [REDACTED]  
**Subject:** Ibec cross sectoral submission to the consultation on draft regulations for an environmental levy on single-use disposable cups  
**Attachments:** Ibec cross sectoral trade associations submission to the consultation on draft regulations for an environmental levy on single-use disposable cups final.pdf

To whom it concerns,

On behalf of [REDACTED], Ibec Executive Director of Membership & Sectors, please find attached an Ibec cross sectoral submission to the consultation on draft regulations for an environmental levy on single-use disposable cups

Our submission makes the following points –

- Well-designed environmental policy must be aligned with all existing enterprise, health and food safety policies
- New initiatives such as the proposed levy must be based on sound science, data or other empirical evidence and the metrics underpinning them must be transparent
- Policymakers must acknowledge that compostable and recyclable cups can provide a sustainable solution and either or both should be exempted from the proposed levy
- Any such levy should be set out in detail and at least 12-18 months before it takes effect
- A proportion of the Circular Economy Fund should be ringfenced and made available to the retail and food service sectors to support the changes needed to operationalise the levy
- A clear framework will be necessary to guide the introduction of any future such levies, with adequate timelines. Affording adequate time to properly prepare for implementation will be paramount.

We look forward to ongoing, close engagement with the Department on this important issue for our members.

Kind Regards

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## Consultation on draft regulations for an environmental levy on single-use disposable cups

25 November 2022

Ibec and its relevant trade associations (Drinks Ireland, Food Drink Ireland, the Irish Beverage Council, Retail Ireland, and the Small Firms Association), together with its member companies from across the wider food service, hospitality, tourism, experience economy and events sectors represented through Ibec Networks, welcomes this opportunity to respond to the consultation on draft regulations to introduce an environmental levy on single-use disposable cups.

Businesses across these impacted sectors are proudly investing in many positive changes to elevate the sustainability of their processes and practices, some of which are highlighted in this submission. Ibec member companies will continue to do everything possible to improve the circularity and environmental performance of their products and packaging, while ensuring the highest level of quality and safety for their consumers and employees alike.

Irish business is committed to its role in supporting the transition towards a Circular Economy. We support a collaborative approach between government and all actors across the supply chain to ensure this is achieved in the most efficient way possible.

### General principles

This is the first such levy proposed under the recently enacted Circular Economy and Miscellaneous Provisions Act 2022. Given the strong signals from government that further levies are likely to follow, it is vital that a clear framework for the introduction of such levies, respecting a number of important general principles, is embedded during the development of this levy and carried through to any future levies.

- **Coherence with government policy:** All circular economy initiatives must be considered as part of an overall approach. No one, single measure can be considered standalone; rather well-designed environmental policy must be aligned with all existing enterprise, health and food safety policies.
  - In this case, the introduction of the proposed levy in the same period as the VAT rate on the sale of coffee will increase from 9% to 13.5% shows a lack of joined-up thinking across government departments and policy areas. Furthermore, the coincidence of these changes at a time of extreme cost pressures on business and consumers demonstrates a very urgent need for the implementation timeline to be reconsidered.
- **Evidence base:** Regulations must be effective, cost efficient and with the least burden on the economy. They must be based on sound science, data or other empirical evidence and the metrics underpinning them must be transparent. For regulations to be truly effective, policymakers and regulators must have thorough knowledge of the industry sector for which

they are designed. This is often not the case. Increased transparency and accountability underpin a better regulation system. Initiatives designed to effect behavioural change should be founded on an evidence-based assessment of the very behaviour they aim to change, as well as a clear understanding of the impact that is desired.

- In respect of the proposed levy, industry calls for more detail to be shared on the evidence supporting the introduction of this levy. Ibec is keen to understand what alternative measures were considered that could achieve similar environmental objectives without placing the same burden on already-challenged business operators.
- **Impact assessment:** Poorly designed policy, legislation and regulation add to the cost of doing business and are obstacles to growth and job creation. It is vital to fully assess the broader and holistic impact of the proposed levy on employment, SMEs, regional development, competitiveness and innovation.
  - In this case, the presence of a Regulatory Impact Assessment is very welcome. However, without having sight of the SME Test report, stakeholders do not have an opportunity to assess its thoroughness.
  - Of particular concern are the significant reporting obligations to be borne by all operators serving hot beverages, including SMEs and micro-businesses.
- **Performance of regulations must be monitored:** Government must monitor the effectiveness of the regulations and take corrective measures when required. It is not sufficient just to involve stakeholders in policy development. An effective regulatory system must also encourage and actively seek feedback throughout the entire lifespan of policies and initiatives, such as that under consideration in this consultation. Regulations often remain in effect long after technological changes and other evolutions make them too inflexible, unworkable, or obsolete entirely. The EU's better regulation strategy stresses the importance of identifying obsolescence in the regulatory environment.

Business calls for a culture of ongoing evaluation. RIAs are conducted ahead of policies being introduced. This is the point of least information being available. Assumptions form the basis of decisions at this early stage. However, monitoring actual performance against set objectives can be based on empirical evidence. Ex-post evaluation or systems allowing ongoing monitoring must become the norm in effective policy making. Ireland is third lowest in the OECD when it comes to conducting ex-post analysis on regulations.

- **Adequate transition time:** Rushed implementation has the potential to cause significant unintended consequences, including supply chain disruption and market distortions. Operationalising the proposed levy will require time – at least 12 to 18 months after the final details of the levy are made known – to allow for systems updates, planning and budgeting, as well as staff training and development. Clear timelines allowing for adequate preparation

will be vital to support the very businesses that will be expected to collect the levy on behalf of the State.

- The process a typical retailer or food service business will need to follow to be adequately prepared to operationalise the levy will take significant time to complete, and only after the final details of the levy are known.

### Scope

There are a number of different types of cups used to package hot beverages in Ireland – reusable cups (such as *Keep Cups*), compostable cups, recyclable cups and non-recyclable cups.

While the prevalence of reusable cups has grown in recent years, their use still represents a very small proportion of the overall market. Many reusable cups are not recyclable and need to be used many times over to achieve carbon neutrality. If all other cup options are removed from circulation, the Irish market may be flooded with cheap, hard plastic ‘reusable’ alternatives that could have a greater environmental impact than the cups they are intended to replace, damaging the very outcomes the levy is designed to achieve.

In this context, it is important to recognise that the other three types of cups (compostable, recyclable and non-recyclable) are also not equal from an environmental point of view. Ignoring this fact misses an opportunity to support industry’s journey to a more sustainable future and provide a critical mass of a specific type of cup for waste management operators.

The proposed levy does not recognise the very significant difference between the different types of cups and there is no evidence that all options in this regard have been fully examined and scrutinised.

Previously, government indicated that compostable cups would not be included in any future levy, thus providing an incentive for many industry operators to transition from non-recyclable and recyclable cups to compostable options. Many companies responded to this statement of policy direction by sourcing compostable cups – for some, 100% of their cups are now fully compostable.

Other operators have enhanced their use of recyclable cups. Paper cups are low carbon and while a plastic barrier layer is required, there are several examples from the UK and elsewhere that this layer can be easily removed as part of the recycling process, once the right facilities are available.

Compostable and recyclable cups can be part of a sustainable solution. They are in line with the objectives of the circular economy. A levy provides government with a valuable opportunity to steer industry away from less sustainable materials to more circular options. **For instance, by exempting either or both of compostable and recyclable cups from the proposed levy, industry will be incentivised to transition to a more sustainable packaging model.**

Affording such exemptions will necessitate an enduring, strategic decision by government, in order to support progressive innovation for years to come. Companies will have to bear significant cost in

order to make changes to their supply chains, and some may have to reverse the direction in which they have already invested significantly.

Introducing a discriminatory flat levy on all single-use cups represents a reversal of the progress made by industry over recent years to offer more sustainable options to consumers and in fact may have unintended, detrimental consequences.

It is also essential that the Department and other decision-makers acknowledge the enormous amount of water that will be required for the constant washing of reusable cups.

### **Other exemptions**

The draft regulations state that the levy will only apply where there is a point of sale. As such, it can be inferred that all single-use cups used to serve beverages which are offered on a complimentary basis are exempt from the application of the levy. Ibec calls for formal confirmation of this assumed exemption either in the final regulations or in accompanying guidance.

The draft regulations are silent on any other exemptions. However, Ibec contends that exemptions will be required in circumstances where either public safety, and/or the health and safety of the consumer or service staff override the environmental objectives, for example –

- Cups used to serve hot beverages in transportation environments – onboard planes, trains, ferries, etc.
- Hospitals and other medical, clinical and healthcare settings.
- Certain events and/or venues and their environs where the use of reusable cups is not possible or feasible due to health and safety considerations, and where and when directed by An Garda Síochana for reasons of public safety or otherwise.

### **Infrastructure**

The proposed levy must only be introduced as part of a strategic and comprehensive waste management plan, aligning all stages in the circular economy and all actors in the supply chain, supported by significant improvements in the collection and recycling infrastructure in Ireland. The levy must only be introduced after proper waste solutions, appropriate infrastructures and other necessary supports have been rolled out.

Currently neither compostable nor recyclable cups provide a total sustainable solution. This is not because of the cups themselves but rather the lack of adequate infrastructure for their processing. While some cups are designed to be recyclable, they cannot be recycled in Ireland because of the lack of suitable facilities to do so.

When it comes to collection, some retail and food service outlets offer dedicated cup collection points on site. However, such collection methods are insufficient, and most cups are ultimately disposed with general waste and incinerated. As part of the introduction of the proposed levy, consideration must be given to the provision of appropriate on-street and household collection

facilities, whether separate collection or combined with mixed recyclables (recyclable cups) or organic waste (compostable cups).

According to the EPA's latest figures on packaging waste, recycling rates remain low for plastic at 29 per cent. Ireland is falling short on its commitments to recycle plastic packaging waste, and plastic packaging recycling rates were a long way off the 2025 EU target of 50 per cent. Data like this indicates a very serious challenge in the national recycling infrastructure.

The ability to process recyclable and/or compostable cups within Ireland must be enhanced. One food service operator reports that they collect cups in-store, before exporting them to the UK for recycling. Making such infrastructure available in Ireland will be facilitated and simplified by steering industry towards compostable or recyclable cups.

### **Implementation timeline**

Adequately preparing industry and consumers for the introduction of the proposed levy will take considerable time. Given the prevailing economic environment, as well as the changes expected of business to support the introduction of the levy, we believe that the timeframe indicated by DECC for the activation of the proposed levy is unrealistic and unfeasible. **Any such levy should be set out in detail at least 12-18 months before it takes effect.** In parallel with these developments, consumer education programmes should be initiated, supported by the Circular Economy Fund. These should inform consumers and raise awareness about the appropriate segregation and disposal of waste. In tandem, funding should also be allocated to local authorities to provide the necessary infrastructure to enable on-street and public space waste segregation. Government should also undertake a review of the proposed levy and implications (financial, operational and otherwise) on existing public sector contracts.

### **Barriers to the adoption of reusable packaging**

In 2021, Food Drink Ireland co-hosted a webinar with VOICE Ireland exploring reusable and refillable packaging. Participating companies were asked what they considered to be the biggest barrier in switching to reusable packaging. From almost 100 participants, the results were as follows:

- Product suitability – 45%
- Cost – 22%
- Logistics – 14%
- Ensuring product quality – 11%
- Regulatory issues – 6%
- Consumer demand – 2%

It is vital for government to work with industry to address these barriers (or perceived barriers as they may be in some cases) if we are to accelerate the transition to a circular economy.

### **Cost environment for businesses and consumers**



In the period since the above survey was conducted, the economic environment has changed utterly, bringing considerable additional challenges for business and consumers. Retail and hospitality businesses have faced major disruption during the Covid-19 pandemic. Those sectors, in addition to the food and drink industry and operators across the wider experience economy, are now hampered by unprecedented inflationary pressures across many cost headings, most notably energy, labour and commodity prices.

Meanwhile, consumers are being squeezed by a range of cost-of-living pressures, including an annualised increase in food and non-alcoholic beverage prices of 9.9% (CSO, September 2022 vs September 2021). The introduction of the proposed levy would see an initial additional €0.20 added to the price of a hot beverage in the same period as the VAT on the product is due to increase from 9% to 13.5% (from 1 March 2023). The levy is a regressive tax and will likely see lower-level income earners bearing a greater burden.

The proposed levy is modelled on the plastic bag levy. Introduced in 2001 at €0.15, within 6 years the levy was increased by 47%. Under the Circular Economy and Miscellaneous Provisions Act 2022, the Minister for the Environment is empowered to increase the proposed levy up to a maximum of €1. If the required behaviour change is not realised, industry may see a staggering 400% increase within a short number of years. This would trigger significant additional financial strain in sectors where the sale of hot beverages is often an important profit centre supporting the very viability of a number of retail and hospitality operators.

Policymakers will understand that the current cost environment makes it extremely challenging for businesses to make the investments needed to operationalise the levy.

### **Food safety considerations**

The proposed levy is based on S.I. No. 605/2001 - Waste Management (Environmental Levy) (Plastic Bag) Regulations, 2001. However, comparing a coffee cup to a plastic bag is not a fair comparison as it is not a like-for-like product. A coffee cup is a product which comes directly into contact with food. As such, the regulations under consideration in this consultation must adequately address all food safety considerations and obligations. As the levy is designed to incentivise consumers to transition to reusable cups there is an added risk of food contamination through poor hygiene practices.

While the accompanying Regulatory Impact Assessment does consider these points, the regulations underpinning the introduction of the levy must clearly specify where liability lies if contamination occurs through poor consumer hygiene practices and ensure that the vendor or operator is protected from circumstances which are entirely outside of their control. The regulations must also clarify if operators have the right to refuse a cup they deem to be unsanitary or otherwise unsafe in any way.

Additionally, there are substantial European regulations that govern the specifics of materials that can be considered safe food contact materials (FCMs). As new bodies of evidence regarding the suitability of FCMs emerge, the regulation must make provisions to allow operators the right to



refuse a cup made from materials deemed to be unsafe food contact materials, for example plastics made using bamboo powder.

### **General health and safety**

The regulations must also address the other health and safety implications of increasing the quantity and use of reusable cups. Exposing service staff to unfamiliar cups of varying shapes and sizes elevates the risk of spillages, burns and falls. As such, the regulations must address where liability lies in all such cases.

In the case of self-service beverage stations, machines are designed to accommodate a certain cup size which enables the safest possible use for customers. Reusable cup sizes may vary, outside of normal machine settings, increasing the health and safety risk.

Finally, Ibec and its member companies are concerned about the potential increase in both employer and public liability insurance costs triggered by the transition to reusable cups and the associated cost implications for impacted operators of all sizes.

### **Other considerations**

It is also important to consider the other, unintended consequences of the introduction of the proposed levy. The levy may have the counterproductive impact of flooding the market with cheap 'reusable' cups made of hard plastic. Plastics such as Tritan and Polycarbonate are often used in reusable cups and can have limited recyclability and are fossil-oil-based materials. The final regulations should take into consideration the life cycle analysis of such cups and how to prevent such them from entering the Irish market.

Before a levy is introduced, government should look at what has been done elsewhere across the EU. Some EU countries are increasing their waste collection by investing in public bin infrastructure with the availability of on-street recyclable and compostable bins. Other EU countries are investing and upgrading their sorting and waste infrastructures to enable the local recycling of composite products without the need to export them.

Clarity will be required in the final regulations as to the various roles played in the supply chain. In some situations, contract caterers currently operate as distributor or agent in the sale of hot beverages. The role of the agent and/or distributor in the collection of the levy needs to be very clearly defined, in addition to the role of the retailer at final point of sale. This will ensure clarity, transparency and consistency for all parties involved.

The design, development, and implementation of Ireland's Deposit Return Scheme for beverage packaging has been cited by the Department as an exemplary example of what can be achieved when government works collaboratively with industry. A similar partnership approach should be considered to address the issue of single-use cups. Ibec, and its relevant trade associations, looks forward to exploring such an approach with the Department.

### **Operational complexity**

It is important that the Department understands and acknowledges the significant operational complexities to be borne by industry in implementing – and thereafter collecting – the proposed levy on behalf of government. In addition to staff training, significant changes will have to be made to prepare each point of sale prior to the introduction of the levy – technology and systems updates; adjustments to menus, marketing material, pricing and meal deals; and complicated alterations to self-serve beverage stations and self-service checkout points.

Many operators serving hot beverages do not have on-site or in-store washup facilities. Installing an adequate washing/cleaning/rinsing system to accommodate reusable cups will require significant investment and ample time to ensure sites are fully prepared in advance of implementation and are enabled to guarantee the health and safety of customers.

A cost efficient and easy to implement method of collecting the levy will need to be identified for businesses, particularly small businesses. Out-of-the-box software will be required for business to collect the levy and to meet the reporting obligations set out under the regulations.

Ibec calls for a proportion of the Circular Economy Fund to be ringfenced and made available to the retail and food service sectors in supporting the changes required. Adequate funding must also be made available to support consumer education and awareness and to enable local authorities to procure appropriate public infrastructure to elevate collection rates.

### **The night-time economy**

Government has recognised that the night-time economy is key to revitalisation and growth of our cities, towns, and villages across the country. The Night-time Economy Taskforce has identified a number of measures to ensure policies, planning and local regulations will support the growth of the night-time economy, in addition to conserving core aspects of the night-time economy during this challenging period. The objective is to sustain and grow the range of cultural, social, and recreational activities, as well as supporting people working in the night-time economy. These includes expanding the mix of hospitality settings operating from pubs to night-clubs, as well as supporting cafés to open later. Nine “pilot” local authorities have been selected to develop dedicated night-time economy strategies, and it is envisaged that the position of a night-time economy advisor will be established to coordinate delivery of these strategies. Specific consideration must be given to the practicalities of proposed levy and its operation across different settings during the hours of 6pm to 6am.

### **Conclusion**

In conclusion, impacted business sectors call for further engagement with the Department of the Environment, Climate and Communications to devise an appropriate way forward. Most immediately, we have concerns about the timing of the introduction of the proposed levy. While this additional cost measure is unwelcome at a time of unprecedented pressures in the costs of doing business and the general cost of living for consumers, more time will also be needed to ensure that

businesses, their staff and their customers are all appropriately prepared to play their role from the 'go-live' date.

Beyond that, we feel that there are adaptations or alternative policy measures that deserve thorough consideration before proceeding with the levy as currently proposed. Specifically, as highlighted above, an exemption for compostable cups should be considered. Industry has made significant investment in this material which can provide a sustainable solution. Government should look to a standardised compostable cup to promote a more circular end-to-end solution and to incentivise the transition to a more sustainable packaging model.

We are committed to working constructively with the Department to achieve a successful outcome that achieves the important environmental objectives of this initiative while recognising the short and long term needs of businesses in the impacted sectors.



  
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