



Warszawa, 2021.01.15

Ref: Preliminary Comments on SUP Directive's draft Implementing Acts in view of the Technical Adaptation Committee meeting of January 19th, 2021

Draft SUP Guidelines (Work Package 1)

- The Guidelines are foreseen in Article 12 and it is mentioned as well in the Recitals of the Directive.
- Guidelines were expected for publication by July 2020.
- The last draft version presents some simplification and elimination of important concepts necessary to ensure **harmonisation and free circulation of goods** among Member States:

POSITIVE +

- The inclusion of different types of plastics in the scope of the Directive to ensure a level playing field and with the interpretation of main structural component.

NEGATIVE -

- The criteria of "*tendency to become litter due to its size and volume*" and "*single-serve portion*" have been omitted completely in violation of Article 12 SUPD: they have to be recouped in the Guidelines.

The draft suggests the provisions of the legislation would apply to all food containers, packets and wrappers regardless of their portion size and intended use or intended place of consumption, including for example multipacks and multi-serve portions, in clear contradiction to the legal text of the Directive. By proposing to disregard the two main pillars defining the scope of the packaging products covered by the SUP Directive, i.e. single-use and on-the-go, the current draft creates a drastic increase in the scope of the Directive, disconnecting this legislation from its original stated purpose of reducing marine litter, and from the original impact assessment accompanying the proposal.

- The Commission must clarify objectively what is this tendency and how to link it to each item of the Annex.
- The Commission must also apply the *point-of-sale* criterion in relation to 'intended for immediate consumption', hence to add: Point-of-sale: The product is usually sold on-the-spot or as take-away (e.g. fast-food restaurants, food trucks, vending machines, take away aisle in supermarkets, caterers) and therefore more prone to becoming litter.
- The exemption of multipacks of food containers (as for Recital 12) has been disregarded in this last draft. Instead, it has to be reinserted. Therefore, yogurt

containers sold in more than one unit cannot be considered as single use food containers, also in the light of the fact that yogurt is not consumed on the spot.

- The exclusion of multipacks from the scope of the Directive must therefore be applied for reasons of logic (and common sense) to food containers ("food containers") as well as to flexible packaging ("packets & wrappers").
- The draft also foresees, for packets & wrappers, that the following activities such as *washing, peeling or cutting* of foodstuff are not considered 'further preparation' and therefore fall under the scope of the Directive. Which is at odd with the intention of the Directive, which is to target consumption on-the-go.
- Re. caps & lids, the plastic cap with separate sealing membrane (2 step closure) used in combination with a single use plastic beverage container should not be included under Art. 6 (Product Requirements) likewise the foil lid seal on a single use plastic beverage container (page 23). Both the sealing membrane and the foil lid seal are used for safety & freshness of a beverage since both cannot be placed back on the product as per definition adopted in this draft as well.
- A clear identification of EPS (expanded polystyrene) and its distinction from other polystyrene products has been omitted, therefore the Commission should clarify and provide photos to avoid confusion at MS level.

Adopted Regulation on marking of cups for beverage (WP2)

- The adopted Regulation presents some mistakes concerning the exact wording to be included in the various linguistic versions. For this reason, the European Commission is currently working on a Corrigendum.
- Therefore, even if the Regulation has been adopted ([here the official texts](#) published in the Official Journal of the EU), there is the possibility to request the Commission and Member States the following:
 - Allow for **English language as a text that can be used as universal language, under the local language, for reason of exports**: it would be very difficult to have as many languages as the countries where the cup would be exported and economically inefficient, since English is understood widely in Europe.
 - Also, according to Article 7/2 c) of the SUP Directive, the Regulation should include the following requirements which has been completely omitted: *«consider **existing sectoral voluntary approaches** and pay particular attention to the need to avoid information that misleads consumers»*. For example, where the final consumer is not likely to see the packaging (such as restaurants, bars and vending machines) obligation for a correct information via visible billboards, video screens and/or communication with stickers on vending machines or their displays. Similar to current compulsory communication on ingredients or allergens. It must be noted that this communication strategy can provide much



clearer instruction to the consumer on how to dispose the different items where alternatives are available (recycling bin, dedicated collectors, organic waste and so on).

- Given the **delay in the publication of this Regulation** (foreseen by the Directive to take place by July 2020) and now the need for a Corrigendum, the time for companies to abide to the Regulation (July 2021) is dangerously short. Therefore, **a waiver of marking obligation until at least January 2022**, the minimum estimated time for companies to comply should be granted.

Draft IA on separate collection of beverage bottles (WP3)

- Important that the following references re. reporting has also been eliminated to different polymers under Article 5 (former Article 6): *«the weight and the characteristics with regard to colour, water content, PVC and polyolefin content, other residual content of waste single use plastic beverage bottles collected according to the measurement points referred to in Articles 2 to 5 by each collection type separately»*. Good that this sentence has been eliminated and should not reappear.
- However, there are new requirements under Article 5, point 3, in relation to **certified quality management systems**, point a, b and c. This whole paragraph could be too stringent for Member States to create and to pay for and in our opinion it **should be eliminated**.
- Also, Article 5, point 4 foresees also to consider the *polymer type of caps & lids*; this is also new. Such reference to polymers of caps should be avoided because it is not relevant for the sake of data collection of beverage bottles.

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