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Metal Packaging Europe submission to Ramboll et al for the draft Guidance on defining the single-use plastic products covered by the SUP Directive

17 April 2020, Brussels

Metal Packaging Europe (MPE) welcomes the study to support the development of implementing acts and guidance under the Directive 2019/904 on the reduction of the impact of certain plastic products on the environment, as prepared by Ramboll and others. The draft guidance document, that has been circulated as a pre-read to the webinar that took place on 4 April 2020 provides a comprehensive overview of the definitions and intended scope of the SUPD. However, MPE is concerned with some of the provisions and inconsistencies between the draft guidance document and the Directive 2019/904 and the discrepancies within the draft guidance itself.

Main arguments

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| <ul style="list-style-type: none">• <i>Metal beverage packaging is explicitly excluded from the scope of Directive 2019/904 and as the littering potential of food and other metal packaging is close to nil, the supporting Guidance document should clarify that all metal packaging is specifically excluded from its scope, as was the intent of the Directive;</i> |
| <ul style="list-style-type: none">• <i>The Guidance document must not expand the scope or misinterpret the articles of the Directive;</i> |
| <ul style="list-style-type: none">• <i>Coatings should not fall under the definition of plastics within the scope of the Directive as they cannot function as a main structural component;</i> |
| <ul style="list-style-type: none">• <i>A functional component should not be misinterpreted as a structural component;</i> |
| <ul style="list-style-type: none">• <i>Coated metal packaging is not partly made from plastic;</i> |
| <ul style="list-style-type: none">• <i>Metal packaging is fully embedded in the Circular Economy.</i> |





Exclusion of metal beverage containers, and consequently of all rigid metal packaging containers from the scope of Directive 2019/904

The Directive sets out the scope of the products in its recital 7: "To focus efforts where they are most needed, this Directive should cover only those single-use plastic products that are found the most on beaches in the Union as well as fishing gear containing plastic and products made from oxo-degradable plastic." The recital goes further and clearly sets that: "Glass and metal beverage containers should not be covered by this Directive as they are not among the single-use plastic products that are found the most on beaches in the Union." This argument is then further reiterated in recital 12. When it comes to the specific measures of the Directive (Art. 4., 5., 6., 7., 8., 9. and 10.) the exclusion of metal and glass beverage containers that have caps and lids made from plastic is further specified in the Annex of the Directive specifically linked to four of those Articles in several parts (C, E, F, and G). Consequently, metal beverage containers must be explicitly excluded in the guidance document as well.

Following the same logic, the exclusion of metal food containers should be implied as well, even though there is no specific reference to these in the Directive itself. In order to avoid any further legal uncertainty, MPE would welcome that the exclusion of all rigid metal containers from the scope be explicitly mentioned in the guidance document, since there is no problem of leakage into the environment and they are already among the most recycled packaging in Europe, with a recycling rate of 80.5% for steel packaging and a recycling rate of 74.5% for aluminium beverage cans, thus already fully in line with the spirit of the Directive which is also to promote the transition to a Circular Economy.

Even though the exclusion of metal beverage containers is explicit, MPE's concern arises when it comes to the clarification in the draft guidance document, specifically in part C tables 1-2 and 2-3, which specify the main criteria and guidance indicators to define SUP food containers and beverage containers.

The Guidance document must not expand the scope or lead to a possible misinterpretation of the Directive

Even though the exemption argument is used several times in the guidance document, the tables provide further detail on specifications of the products covered (resp. food container and beverage container). Specifically, it states: "Food containers that are entirely made of metal or glass are excluded from the SUPD" and "Beverage containers and beverage bottles entirely made of glass or metal are excluded from the scope of the SUPD." Although, unlike metal beverage





packaging, metal packaging for food and other items is not explicitly excluded from the scope in the Directive, their littering potential is practically nil. We can logically assume that they therefore are also excluded from the scope without the requirement in the guidance for the packaging to be made entirely out of metal.

Coatings should not fall under the definition of plastics under the scope of the Directive as they cannot function as a main structural component

Coated metal packaging items (Cans, Ends, closures, as well as many reusable metal water bottles) are, by their nature, predominantly metal with some polymeric coatings, inks and sealants used for protection, conveying information and to form seals between components. It is clear from the Single Use Plastics Directive 2019/904 that such polymeric materials, present at only a few percent by weight of the finished articles are not the intended target of the measure. Neither these polymeric components nor the finished coated metal packaging are intended to be within the scope of the Directive. This can be clearly demonstrated by the definition of 'plastic' in the Directive (Art.3.1):- "plastic' means a material consisting of a polymer as defined in point 5 of Article 3 of Regulation (EC) No 1907/2006, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified".

Note that the function and chemistry of paints (to protect and decorate), inks (to convey information) and adhesives (to join components together), which are all explicitly excluded from definition of single use plastics in recital 11, is inseparable from the function and chemistry of coatings, inks and sealants respectively.

However, the draft Guidance Document to Directive (EU) 2019/904 appears to deviate from the intentions of the Directive, in particular in its interpretation of the definition of plastic. It is clear in the Directive that one of the key requirements for a material to be defined as a plastic is that it "can function as a main structural component". This wording is distinct, and there should be little scope for differences in interpretation:

- a main component should be the most significant component that effectively characterizes the article and for coated metal packaging that would be the metal(s) alone;
- a structural component is the component that provides the physical shape, form and strength to the final article and for coated metal packaging, that would be the metal alone.





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A functional component should not be misinterpreted as a structural component

Polymers within the coatings and sealants used in metal packaging are an auxiliary means that support the product's functionality but do not change the packaging material's structural characteristics nor do they negatively impact the recyclability of the packaging

The draft Guidance Document should clearly differentiate between functional components (such as coatings etc) that aid, and may be vital to, the long-term performance of the article, and structural components. There should be no opening to interpretation which would allow a functional component that makes up only a very small proportion of the finished article to be defined as a main structural component.

Coated metal packaging is not partly made from plastic

As explained above, the coatings and sealants used in metal packaging do not fall within the definition of plastic as set out in the Directive because they cannot function as the main structural component of the final product. Metal packaging is therefore not made "partly from plastic" despite coatings or sealants being used.

Importantly, the "plastics" Regulation (EU) No. 10/2011 on plastic food contact materials and articles has a very similar definition for "plastic" as that in the current Directive (EU) 2019/904. This definition also requires that a plastic must be capable of functioning as a main structural component of the final material or article. This definition has always been interpreted as excluding the coatings on coated metal packaging such as cans ends and closures from the Regulation and indeed this was explicitly confirmed in an e-mail from the European Commission (Dr A. Schäfer) to David Smith of the UK Metal Packaging Manufacturers Association on 4th April 2011.

Metal Packaging is fully embedded in the Circular Economy

Additionally, coatings are not a barrier to the recycling of metal packaging, nor do they contaminate the recyclate/secondary raw materials since they melt away during the recycling process and are processed in a way which guarantees that there is no leakage into the environment. This circularity aspect of metal packaging should also be considered when looking at the items falling within the scope of the SUPD. Metal packaging recycling rates are continuously on the increase, with a current recycling rate for all metal packaging of 75%. Metals can be infinitely recycled into new products without any loss of quality, which is why they are

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considered as a permanent material. The high quality of recyclates has led to the fully functioning market for secondary metals which we experience today, with recyclates being used for various applications.

In view of the above, Metal Packaging Europe believes that it should be explicitly clarified in the Guidance document that all coated metal packaging should be outside the scope of Directive 2019/904. This would avoid any legal uncertainty during the transposition of the Directive into Member States' national legislation and help avoid negative impacts on the internal market due to a non-harmonization at EU level.