

FoodDrinkEurope comments on the first draft guidance document on the definitions of the SUP Directive (March 2020)

GENERIC COMMENT ON REUSE AND REFILL CONCEPTS

We believe that there is a lack of alignment on concepts regarding multiple use, reuse and refill of beverage and food containers through the different parts of the documents.

There are two concepts mixed in the draft guidance that should be clearly separated:

- Reuse related to using the same packages several times as it contains several portions/servings (in relation to beverage containers, food containers and packets, more in line with the concept of multiple use)
- Reuse related to using the packaging several times because it can be refilled when the content is finished (in relation to beverage containers). Two agents can refill such beverage containers:
 - Beverage producers/operators (sent back to the factory, washed and refilled, not necessary in that order) (also known as returnable containers)
 - Consumer (refilling of specially designed beverage containers to be reused by consumer)

Such differentiation of concepts should be clearly reflected in the guidance and classified as reusable products excluded from the scope of the directive.

PART A – OBJECTIVES AND SCOPE OF THE SUP DIRECTIVE

We welcome the decision-tree provided under section 2.1 page 9 for determining whether a product should be considered single-use (Figure 2-1: How is a SUP product defined in the SUP Directive?). However, we believe that the criteria to be taken into consideration in the case of food and beverage containers and packets and wrappers are much more complex and detailed. We therefore recommend amending the decision tree by adding specific branches for food and drink containers based on the criteria laid down in the SUP Directive Annex Part A(2).

We also welcome the explanations and the table about the specific policy measures laid down in the SUP Directive (Section 2.2 and Figure 2.2). this section provides a good overview of the different measures and their respective scope of application while providing the rationale for these different scopes.

Part A should also stress that the Guidelines and in particular, definitions proposed, are meant to help ensure harmonised understanding of the scope of the Directive and that this be applied accordingly. Reference should also be made to the European Commission's letter to Member States (ENV/DCC ARES(2019). This letter asks Member States to notify any stricter interpretations of the Directive and its scope and *"demonstrate that the measure in question is adequate and does not go beyond what is necessary to attain*

the objective of preventing and reducing the impact of certain plastic products on the environment and does not constitute a means of arbitrary discrimination”.

PART B – GENERAL TERMS AND DEFINITIONS

Polymer definitions (Section 3)

We welcome the clarification that a key element to be considered to determine whether a polymer *“can function as a main structural component”* is whether the SUP product can fulfil its intended function without the polymer. However, the definition in article 3.1. of the SUP directive reads *“can function as a main structural component of final products”*. *“Final products”* is in an undefined and plural form and, therefore, further clarification is welcome that this consideration only needs to be made for the SUP product in which the polymer is used as described in the scope of the directive

We would like to suggest adding a paragraph in the section on the definitions concerning the *“main structural component”*. In section 3.2.2 of the guidance (What is meant by *“can function as a main structural component?”*), it is claimed that *“a key element to be considered in regard to determining whether a (plastic) polymer can function as a main structural component is whether the SUP product can fulfil its intended function without the polymer(s)”*. This means that *“main structural function”* needs to be translated into *“essential intended function”*. We have doubts that this interpretation is in line with the legal text and there is a risk of misinterpretation by Member States. The intended effect does not depend on the quantity or proportion in which the polymer is used therefore the word *“main”* becomes irrelevant. Furthermore, it is questionable whether this interpretation is aligned with the regulatory framework on food contact materials, which distinguishes between *“plastics”* and *“coatings”*.

We welcome the clarifications provided under section 3.3 regarding the terms *“polymers”* and their qualification as not been chemically modified. In our view, it is important to make clear reference to the definitions in the REACH Regulation in particular to clarify that, when the chemical structure remains unchanged in the final polymer, it should not be considered as being chemically modified. Such consideration should also be made in Table 2-3 of part C.

Further clarity could be provided by adding a positive list on non-chemically modified polymers in the guidance.

With regards to *“natural polymers”*, further clarity should be provided on polymers that have been created by 'biosynthesis through artificial cultivation and fermentation processes manufactured in industrial settings'

Single versus multiple use (Section 4)

We welcome that the draft guidelines provide more clarification on products which should be considered single-use. This will ensure harmonised understanding of the scope of application of the Directive and provide legal certainty for operators. Nevertheless, we would like to make the following comments:

- Starting point from the SUP Directive (4.1)

We welcome the introduction of product-specific guidance on elements to consider distinguishing between single-use and multiple-use in Part C. However, we believe Part B – alongside Part D – should include additional specific guidance related to food containers, in particular to reflect the requirement to consider their tendency to become litter as laid down in Article 12.

- *“Multiple trips or rotations” and “being returned to a producer for refill or re-used for the same purpose for which they are conceived” (4.3)*

The draft guidance states that *“multiple trips and rotations”* indicates that the product has been purposely designed so that it can be used repeatedly i.e. over and over again. We believe this is misleading. *“Multiple trips and rotations”* indicates that a product has been designed so that it can use more than once, but not necessarily endlessly.

For instance, food containers or packets containing several serving portions and/ or which can be stored for a certain period of time are designed to be *“used”* i.e. to serve its function more than once during the product lifespan. In our view, such product should be considered as *“being conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being (...) re-used for the same purpose for which it was conceived”* in accordance with the Directive. However, in this example, the term *“re-used”* is different from the definition laid down in the Waste Framework Directive” (WFD). As for reusable and refillable beverage bottles, these are conceived to be reused for a rather limited number of rotations (see below further consideration on reusable refillable).

Furthermore, different considerations for reuse can be observed when addressing beverage containers, food containers and packets. It is therefore necessary to provide different definitions and contexts for reuse for these different product categories.

While Section 1.3.1 of the Guidance Part C provides further guidance on the reusable nature of food containers, it remains unclear and risks leading to different interpretations by Member States. We believe that there should be greater clarity including through illustrating the explanations with specific examples.

Interplay between the SUP Directive and the Packaging and Packaging Waste Directive (Section 5)

We believe Section 5 adequately highlights the distinction and interplay between the SUP Directive and the PPWD and consider the different figures and tables as clear and useful.

PART C – Single-use plastic product definitions

Single-use food containers (Section 1)

- **Single and multiple-use food-containers (1.3.1)**

As explained under Part B Section 4, the distinction between single-use and multiple use products is more difficult to make in the case of food containers and requires specific guidance. While the additional guidance provided in this section is welcomed, it still leaves some leeway or even raises new questions which risks leading to misinterpretation by Member States.

Furthermore, section 1.3.1. indicates where a pack material has a tendency to become litter: *“When the foodstuff is consumed indoors (e.g. restaurants, canteens), the risk of a food container becoming litter is*

small.” We feel that the likely indoor use of a product should be considered as a key element to determine whether such product should be regarded in scope of this Directive or not.

Reusable or refillable nature of the product

As explained earlier, food containers containing several serving portions and/ or which can be stored for a certain period of time are designed to be “used” multiple times i.e. to serve its function more than once during the product lifespan (i.e. until the product expiry date for perishable goods). In our view, such product should be considered as re-usable, even if not in accordance with the definition of “re-use” in the WFD.

Providing this is reflected in the Guidance, we agree with the statement that the tendency to become litter of refillable products and products expected to be used more than once is very low and that these products should be excluded from the scope of the Directive.

Volume or size – portions

We agree that the tendency of a product with multiple-size servings to become litter is much lower. There is however no legislation harmonizing the size of portions for all products and would recommend referring to “multiple portions” instead of “multiple size portions” being within the same pack. There is therefore no generic guidance to identify whether a product contain multiple-size servings, apart from common sense. With regards to the reference to the energy value of the foodstuff in the volume and size section, we believe that the formulation is rather unclear.

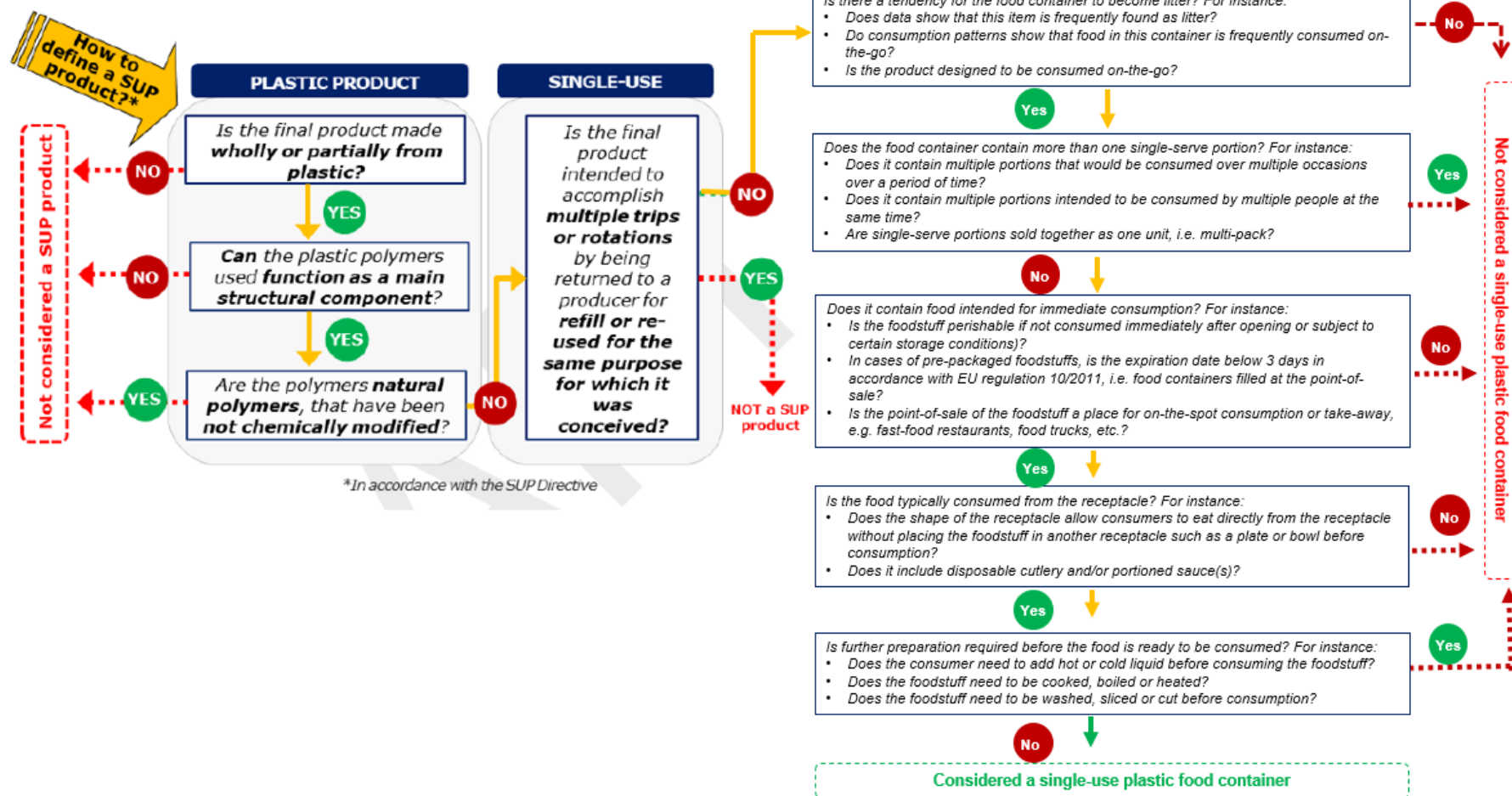
- **Product-specific definitions and criteria to be considered (1.3.2)**

We welcome that the draft Guidance document highlights that three criteria for a food container to be covered by the Directive should be met cumulatively. The reference to the portion size could be useful however has some limitations, as previously explained.

While we welcome the provision of a detailed overview of the main criteria and guidance indicators to define SUP food containers in Table 1-2, we recommend including a decision-tree instead of a table, based on the model of Part A Figure 2-1. This will also help avoid potential contradictions amongst the different indicators proposed.

We would like to propose the following model decision-tree in addition to Table 1.2:

Decision-tree for Food Containers



- As compared to Table 1-2, we have included in this decision-tree, a step corresponding to the assessment of the “tendency to become litter”. Moreover, we suggest the following changes: First bullet of the Guidance indicator “*Ready to be consumed without any further preparation - No need to cook the foodstuff*”, revise as follows “*There is no requirement to add hot or cold liquid*”);
- “*Ready to be consumed without any further preparation*” criteria, should include an additional guidance indicator: “*No need to use cutlery to be able to consume the food as intended, unless disposable cutlery are provided*”.

We also welcome the examples provided to illustrate the guidance on food containers. Certain examples could be reviewed especially against the portion-size criteria and the Nature of packaging indicators in Table 1-2, as well as in line with our proposed additions above. Further examples may need to be added in the future based on experience, therefore it would be useful to allow for the table to be updated regularly after the Guidance will be published.

- **Food containers and other product types (1.4)**

Food containers versus packets and wrappers

We support the proposed guidance on how to distinguish food containers from packets and wrappers which is based on the flexible nature of the packaging. Since in some cases, the rigidity of a package is provided by materials other than plastic, the text of Table 1-5 should refer to “rigid plastic material”. In addition, it may be useful to also provide clarification on the difference between a packet and a wrapper to facilitate translation of the text of the Directive in other EU languages.

Beverage containers, Beverage bottles and cups for beverages (Section 2)

The definition of “reusable or refillable nature of the product” includes a reference to “a re-sealable cap”. We ask to remove this as there are examples of reusable/refillable containers that do not use re-sealable cap.

We believe that Section 2 is clear and the illustrative examples are helpful. We also recommend using a decision-tree format in replacement of Table 2-3. Criteria included in the table would benefit of frequent revision especially on the tendency to become litter of plastic bottles. Also please in Table 2-3 remove the reference to hygiene standards as they are not in the scope of the SUP directive

It should however include additional clarification around the terms refillable and reusable. We feel there is a lack of clarity regarding the concepts on reusing and refilling from a fillers’ perspective (i.e. drink producers) and from a consumer perspective throughout the different parts of the document. In view of this, there should be some clarification regarding the volume criteria to define refillable bottles as there are small (single serve) refillable packages in the market that are actually refilled.

In addition, we would welcome adding a picture of a refillable and reusable PET bottle to the line on page 36-37 where returnable and/or refillable beverage bottles are defined and classified as excluded.

Also Table 2-3 should also include a row to include Metal beverage containers including a picture of beverage cans and indicating that these are also listed as excluded.

Finally, additional correction is necessary in the sentence "*As in the case of food containers, reusable and refillable containers include products that are placed on the market as a part of deposit refund schemes (DRS) that are set up by EPR schemes or refund schemes established food retailers as long as the products are reused or refilled, but not recycled*". Though technically correct (as the "*but not recycled*" is at the end), it seems to mix the concept of deposits used for refillables (i.e.) and the DRS refunds. In addition, such EPR schemes are established by beverage producers and food retailers.

Regarding caps and lids, we would welcome close correspondence between the examples given in table 2.4 and definitions given in section 2.4.2.3, as several examples given in the table do not match the definition in the section.

In page 28, the third bullet point states "*Beverage containers are under consumption reduction measures*". This sentence should be amended as this is not the case.

In page 32 Table 2-32 indicates that Beverage containers excluded from the SUP directive are those "*Beverage containers and beverage bottles which are **entirely** made of glass or metal*". Please remove the word "*entirely*" as this is not reported in the SUP directive.

In page 46 it is mentioned the following: "Therefore, the closure should address the appropriate technical characteristics needed to ensure that the consumer will not be subject to hygiene or safety risks. A specific mention is provided in Article 6(3) for "carbonated drinks", whereby closures should be tight enough to resist the internal pressure and not leak or explode." We understand that these two sentences do not bring any additional clarification with respect to the text included already in the directive and, in addition, hygiene is not mentioned with relation to Article 6 of the Directive.

Packets and wrappers (Section 3)

We believe that Section 2 is clear and the illustrative examples are helpful.

In tables 1-2 and 3-2, the guidance on "*ready to be consumed without any further preparation*" should be the same. For instance, Table 1-2 mentions that adding cold water is a further preparation step, but this is not included in Table 3-2 (see above regarding how that wording could be improved overall for clarity).

PART D – ANNEX: Additional supporting information

The Annex provides a clear overview of the products and relevant requirements laid out in the SUP Directive. As it provides the basis for the explanations provided in the Guidance document, it would be useful to introduce the annex earlier on, for instance in the introductory part (Part A).