

## **EuroCommerce feedback regarding the draft guidelines on how to identify and describe the products covered by the Single Use Plastic Directive**

EuroCommerce welcomes the opportunity to provide feedback regarding the draft guidelines on how to identify and describe the products covered by the Single Use Plastic Directive. The Single Use Plastics Directive, its implementation as well as interpretation is a very important issue for our members.

We believe that interpretative guidelines must be drafted very diligently, therefore we are concerned that there was only a short feedback period. Providing profound answers that follow a thorough analysis is almost impossible on such a short notice. In addition, our members are currently dealing with severe issues due to the corona crisis, which results in less time and resources left for commenting on planned guidelines. Nevertheless, we prepared the following comments and remarks in order to help to improve the guidelines.

### **General comments**

We support that the guidelines aim to provide more clarity on the scope of the directive, especially when it comes to which products are covered and which are out of scope. At the moment we think that the draft guidelines do not provide clarity on all matters. In particular:

- It should be noted that the term "coating" is not defined in the guidelines. It is not yet clear whether the term relates to a plastic coating/lining or if a regular pigment coating or starch is meant. This is of importance, as the latter would also affect recyclable materials made from biogenic fibers.
- A possible solution to this problem could be to create a positive list on which e.g. pigment coatings and starch can be added; another solution could be to adding a footnote to the list indicated that those coatings are not relating to a plastic coating.

Any legal uncertainty relating to the Single Use Plastic Directive prevents the implementation of a circular economy, in particular when it comes to substituting plastics. Vague wordings jeopardize a uniform implementation of the Directive.

Another point which should be clarified in our opinion is the question if cellulose fibers are out of scope of the directive. The ECHA Guidance on the implementation of the REACH-Regulation regarding monomers and polymers (April 2012, version 2.0) and Article 3 (39) of the REACH state that natural polymers are the result of a polymerisation process that has taken place in nature, and that is independent of the extraction process. Article 3 (40) REACH defines a non-chemically modified substance as a substance whose chemical structure remains unchanged, even if it has undergone a chemical process, chemical treatment, or physical mineralogical transformation, e.g. to remove

impurities. Therefore, cellulose fibre types such as Kraft pulp, sulphite pulp, CTMP, and other cellulose types such as dissolving pulp etc., and cellulose fibers such as viscose and lyocell are excluded from the scope of the SUP according to our current understanding.

Cellulose fibers consist of the natural polymer cellulose, which is the main component of plant cell walls, such as in wood. The polymerisation process of cellulose takes place in nature. The pulping process is a disaggregation process in which wood is split into wood fibers containing cellulose, hemicellulose, and lignin. A process is used to isolate a natural polymer from a natural resource (usually hydrolysis); this has no effect on the nature of the polymer. The cellulose structure in pulp, paper, viscose and lyocell remains the same: a linear chain of hundreds to thousands of  $\beta$ -D-glucose units. The intrinsic crystallinity of cellulose in wood fibers contributes significantly to the preservation of the chemical structure, even after the chemical extraction process. Hydrolysis does not alter the chemical properties of the cellulose components. We would prefer that the final guidelines make a statement regarding this question.

## Part A: Objectives and scope of the SUP directive

### Returnable cup systems

Page 10 indicates that there are no alternatives to disposable cups. However, returnable cup systems are existing on the market.

## Part B: General terms and definitions

### 3.2.2: What is meant by “can function as a main structural component”? (p13) and figure 2-1 (p9)

According to the explanations given, a product can only be included in the SUP, if the plastic it contains is functionally relevant (e.g. coated cups), regardless of the proportion of plastic, even if only small.

This leads to some confusion: if the product contains plastic, which is not needed at all - does that mean the product is not covered by the SUP? As there are no corresponding examples of such exceptions given, what would those products be?

### 3.3: How should the exception for “natural polymers that have not been chemically modified” be understood?

The Single Use Plastics Directive provides for a derogation of the scope for “*natural polymers that have not been chemically modified*”. According to that “*unmodified natural polymers, within the meaning of the definition of ‘not chemically modified substances’ in point 40 of Article 3 of Regulation (EC) No 1907/2006..., should not be covered by this Directive as they occur naturally in the environment.*”

On the term „*not been chemically modified*” three possible options for interpretation are provided:

- A strict interpretation where no modification is allowed even during the extraction process.
- An interpretation that refers to a process in which no intentional change occurs in any stage of the manufacturing process. The changes which occur due to the extraction process are not considered as intentional changes and therefore not to affect the status of the extracted substance as a ‘natural polymer’.

- An interpretation that refers to the end stage of the manufacturing process. The changes occurring during the manufacturing process are not considered relevant, the end product of the manufacturing should be considered when determining the status of the polymer.

**As only the properties of the product itself are relevant for the objective of the SUP, the third option should be used.**

The objective of the SUP-Directive is to reduce the impact of certain plastic products on marine littering: *"to prevent and reduce the impact of certain plastic products on the environment, particularly on the aquatic environment"*. Wood-based cellulose fibers, such as viscose, Modal and Lyocell, are not plastics. They consist of a natural polymer cellulose, which is not chemically modified. They degrade rapidly in the environment and therefore do not contribute to the littering problem. This is why it is important to take a closer look at the three relevant properties relevant for an exemption of the application of the SUP-Directive:

- **"natural polymer"**: In its *"Guidance for monomers and polymers - Guidance for the implementation of REACH. Version 2.0"* provides a definition of "natural polymer" with *"polymers, which are a result of a polymerisation process that has taken place in nature, independently of the extraction process with which they have been extracted"*. Regenerated cellulose fibers consist of natural polymer cellulose, which is the main component of plant cell walls, such as in wood. The polymerization process of cellulose takes place in nature. The Nova-Institute lists among others cellulose, including viscose and lyocell fibers, as polymers that are to be considered natural polymers (Nova Institutes, 2019).
- **"not chemically modified"**: The production process of regenerated cellulose starts with wood, from which as a first step pulp is produced. From there, a 100% regenerated cellulose fibre is produced: this is done by a lyocell process (purely physical process) and by a viscose process via a spinning solution, which is identical to natural cellulose. This means that the molecules of these fibers, as well as the filament yarn and fleece, are no different from the molecules of cellulose in wood and cotton.
- **"biodegradable"**: Biodegradability has been tested positively according to standardized and certified methods within, e.g. compost, soil, fresh and sea water. Wood-based fibers biodegrade within a short time in fresh water, salt water and compost (approx. 10 weeks). Scripps, 2019, is investigating the cellulose fibers Modal, Viscose as well as Lyocell in degradation tests in the sea together with natural, synthetic, blended and bio-based polymer fibers. The cellulose-based fibers Viscose, Lyocell and Modal show the same biodegradability as natural fibers (cotton) and are completely degraded after 35 days in the sea. Those degradability studies have been carried out in line with OECD and ISO standards, which are foreseen within the ECHA ANNEX XV proposal on a restriction on intentionally added micro-plastics.

In addition, and for further clarification, in chapter 3.3.2 "what is meant by "that have not been chemically modified", the following explanatory statement should be included:

*If temporary changes do occur during the manufacturing process of products made of natural polymers (e.g. intermediate as non-isolated derivatization of cellulose in viscose process), the chemical structure of the final product (natural polymer) should be reverted to the original state. Since the endpoint of the manufacturing process (product) is an essential criteria for the environment, both lyocell and viscose cellulose fibers meet the definition of natural polymer that have "not been chemically modified", since they have the same chemical structure as natural cellulose in wood and cotton and are biodegradable in compost, soil, fresh water and marine water within a short period of time (approx.10 weeks) according to the accepted OECD and ISO-Standards in groups 1-4 in ECHA proposal ANNEX XV Restriction for intentionally added microplastics.*

Relevant literature:

Nova-Institute, 2019: "Which polymers are "natural polymers" in the sense of the single-use plastic ban? nova-Institute, Hürth, Germany, 18 September 2019; Updated version 02 October 2019

Scripps, 2019: Plastics and Microfibers in the Environment; Sarah-Jeanne Rover, Dimitri Deheyn; 58th International Fiber Conference, Dornbirn, Austria September 13th 2019

## **5. How does the interplay between the sup directive and packaging and packaging waste directive work? - Marking requirements (p22):**

The different and/or contradictory requirements of the SUP and the Packaging Directive are not yet tackled within the draft guidelines. In particular, the crucial question, when a packaging must be considered as "plastic" is not discussed:

- According to the SUP, single use plastic products are already considered as "plastic" if there are (even small) parts of plastics included, e.g. bio-based plastics.
- According to the Packaging Directive there are sometimes different classifications: e.g. plastic-coated paper cups can also be considered as paper depending on the proportion of plastic included.

For us one important question remains: what are the effects of these contradictions on labelling?

## **Part C: Single-use plastic product definitions**

### **1.3.1. How to distinguish between single and multiple-use food-containers?**

We believe it would be useful to add a clarification on the size or dimensions of the food container similar to beverage containers in the section on volume and size.

### **1.3.2. Food containers - What product-specific definitions and criteria can be considered?**

On table 1-2 on page 10 "*Main criteria and guidance indicators to define SUP food containers for the purposes of the SUP Directive*"

- On section "Typically consumed from the receptacle" subsection "Nature of packaging/receptacle" the table states that "*The shape / type of packaging used allows consumers to eat directly from the receptacle by simply removing the lid or cap, without requiring the foodstuff to be placed in another receptacle before consumption e.g. a plate or a bowl.*"

We think that the expression "*the shape allows consumers to eat directly by removing a lid*" is too broad. Any cup or bottle allows for that, simply by its geometry. For example, the contents of each yoghurt cup can be eaten directly by removing the lid. However, the yoghurt can be put into a bowl for eating as well. This means, eating habits should be taken into account as well; it is not only the shape or type of the respective packaging that counts. A combination of the criteria would therefore be more appropriate to meet the "*tendency to become litter*" criterion.

- On section "intended for immediate consumption" subsection "Nature of packaging" first bullet point: "*The time that a food container is intended to remain in contact with the foodstuff is an indication of whether the foodstuff is typically consumed immediately*"

We would like to propose an additional criterion that excludes the article from being "*intended for immediate consumption*": presence of technical features in the packaging that allow a longer shelf life, such as oxygen barriers, EVOH barriers, semi-permeable sealing e.g. in cups for cream.

- On table 1-2 Portion-size, relating to the examples in table 1-3

There, it says: *“On the contrary, the inclusion of multiple-sized portions in one receptacle (e.g. family pack of a single-sized portion cheese) indicates that the product is not intended for single-use.”*

The table of examples should include a reference that the classic "thermoformed packs" made of polystyrene, such as those used for packaging sliced sausage or sliced cheese in the self-service sector, are not included because they are not single-portion packs.

- On table 1-3

The following examples of products are completely missing in the list:

Products made of expanded polystyrene

- which are subject to the SUP-Directive; or
- which are not subject to the Directive because they:
  - do not come as single portion sizes
  - cannot not be eaten directly from the packaging, but are intended for transport home, are not subject to the Directive, such as the classic ice cream boxes (usually larger than 0.5l), which are available in supermarkets, pastry shops or ice cream parlors.

#### 1.4.1 What are the key elements to distinguish food containers from beverage containers?

Here for us some questions remain, for example how has cream to be classified? It is usually sold in liquid form, but unlikely to be consumed/drunk directly from the container.

#### 2.4.1 How to distinguish between single and multiple-use beverage containers; beverage bottles; and cups for beverages?

On capacity the draft says: *„It should be noted that any receptacles with the capacity over 3 liters is considered as not intended for single-use. Even if receptacles with a capacity below 3 liters might include multiple-sized servings, they are likely to be consumed “on-the-spot or take-away”.*

According to our experiences, also containers with a capacity of less than 3 liters, although they may contain several portion sizes, are rarely consumed on the spot.

### 3. Packers and Wrappers

The example on page 55 *„Small individually packed/wrapped portions of bakery goods, sweets, frozen food and chewing gum sold in more than one unit (in any type of receptacle)”* could be misleading.

It is, very generally, assumed that these are designed for immediate consumption. However, this is not always the case, e.g. what applies to ice cream that is (individually) packed in foil within a family pack?

Furthermore, regarding the example of a packet of larger quantities of bakery goods, biscuits, and sweets on page 57 in table 3.3 we would like to know what is the definition of larger quantities? Maybe a weight-based criterion could be added here.

#### 6.3 How to define single-use cutlery; plates; straws; and stirrers? (p 72) as well as in the draft guidelines document Part A, B, D, 4.3 (p 17)

In addition, to better identify washable cutlery; plates; straws; stirrers, made of a durable plastic it would be useful to add further clarification, e.g. specifications on thickness like it was done in the case of plastic bags.

#### 6.4.1 What are the key elements to consider in order to distinguish food containers from plates?

**Brand can be identified in the example on page 44**

**Missing explanation for reusable cap lids on page 47/48**

#### 4.3.2. Lightweight plastic carrier bags - What product-specific definitions and criteria should be considered?

#### 9.4. Wet wipes - What product-specific definitions and criteria should be considered?

Some of our members sell fascial beauty masks (so-called “sheetmasks”) and the question arose if these masks are considered wet wipes. The guidelines are not clear in this point. Most sheet masks are made of bio-cellulose material, but they can also be made of some plastic material, like wet wipes, which are soaked in serum. Are these masks in the scope or not? In either case it would be helpful to add these products to the examples in table 9.4. on page 96.

\_\_\_\_\_