

Comments on the draft guidelines:

Overall, the Single Use Plastics Directive, its implementation as well as interpretation is a very important issue for our members. After a speedy legislative procedure that led to the Single Use Plastics Directive that is now in force, interpretative guidelines have to be drafted very diligently.

This is why we are very concerned about such a short feedback period. Providing profound answers that follow a thorough analysis are very difficult 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.

In general:

In general the scope of the Directive is not clear. When analyzing its wording, there is some clarity missing, including Art. 4, 6 and 9. Our members especially pointed out the issue, which products are covered, and which are not. Unfortunately, the draft guidelines do not provide the respective assistance needed for this matter. 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 fibres. This is why we have to reject such undefined and unclear interpreting guidelines.
- A possible solution 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, which may lead to turning away from its initial aim, combating marine littering.

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.

This is why, cellulose fibre types such as Kraft pulp, sulphite pulp, CTMP, and other cellulose types such as dissolving pulp etc., and cellulose fibres such as viscose and lyocell are excluded from the scope of the SUP according to our understanding. Cellulose fibres 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 fibres 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 β -D-glucose units. The intrinsic crystallinity of cellulose in wood fibres 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.

On Part A, OBJECTIVES AND SCOPE OF THE SUP DIRECTIVE:

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

On Part B, GENERAL TERMS AND DEFINITIONS:

On 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?

On 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 3rd option should be implemented.**

In addition, we would like to offer the following explanations:

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 fibres, 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 fibres 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 fibres, 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 fibres biodegrade within a short time in fresh water, salt water and compost (approx. 10 weeks). Scripps, 2019, is investigating the cellulose fibres Modal, Viscose as well as Lyocell in degradation tests in the sea together with natural, synthetic, blended and bio-based polymer fibres. The cellulose-based fibres Viscose, Lyocell and Modal show the same biodegradability as natural fibres (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 microplastics.

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 Deheyne; 58th International Fiber Conference, Dornbirn, Austria September 13th 2019

On 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 is not yet tackled within the draft guidelines. In particular, the crucial question, when a packaging has to 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.

The question remains: what are the effects of these contradictions with regard to labelling?

In addition, some members have pointed out possible collisions with existing national legislation. For instance, in the Czech Republic, service packaging becomes packaging only at the point of sale, i.e. the manufacturer of such packaging does not have the obligation to take it back and recycle. This obligation arises for the person who filled the packaging at the point of sale and de facto made it the packaging placed on the market. The proposal considers such (unfilled) plastic packaging a priori as a packaging already at the production point compared to cases of packaging made of other materials, which become packaging only at the point of sale. The problem seems to us that those who produce such

packaging 1) may not know on which market this product ends and 2) these products - packaging can be sold separately to the consumer as a separate product to which the Directive does not apply. The existing Czech solution defined in Act 477/2001 Coll. on packaging and packaging waste seems to be the right and practical solution from the point of view of registration, traceability and controllability. Thank you for taking this addition into consideration.

relevant literature:

Czech Republic, Act 477/2001 Coll., accessible (in English) at
[https://www.mzp.cz/C125750E003B698B/en/packaging_legislation/\\$FILE/OODP-Act_on_Packaging_No_477_2001-20110111.pdf](https://www.mzp.cz/C125750E003B698B/en/packaging_legislation/$FILE/OODP-Act_on_Packaging_No_477_2001-20110111.pdf)

On Part C, SINGLE-USE PLASTIC PRODUCT DEFINITIONS:

On Table 1-2: Main criteria and guidance indicators to define SUP food containers for the purposes of the SUP Directive

Section "Typically consumed from the receptacle" subsection "Nature of packaging/ receptacle":
"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."

- 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" approach.

Section "Ready to be consumed without any further preparation" subsection "No need to wash, cut, peel or slice the product"

- Basic foods, such as cream or natural yoghurt can be consumed without further preparation, but they are usually processed further. One uses them for cooking, mixing with sauces, dressings or in salads, or for refining or supplementing dishes.
- This is why we propose to add the following sub-section under "ready to be consumed without any further preparation": "No need to mix the product": "No need to cook with it, to add it manually to other dishes or to use it to refine or supplement dishes."

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 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 tables 1-2 Portion-size, relating to the examples in tables 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 tables 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 parlours.

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

Questions remain: e.g. how has cream to be classified? (e.g. usually in ml, but unlikely to be drunk directly)

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

On capacity it says: „*It should be noted that any receptacles with the capacity over 3 litres is considered as not intended for single-use. Even if receptacles with a capacity below 3 litres 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 litres, although they may contain several portion sizes, are rarely consumed on the spot.

On 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?

On 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):

There is still an overlap on when something, e.g. tableware is considered as being disposable versus being reusable: the suitability for several rinsing cycles is often there; however, the manufacturer/seller rarely knows how the user intends to use it (disposable/reusable).

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

In our opinion, the classification/definition of when freshly cooked food is served, e.g. "meals on wheels" in recessed plastic plates, is not clear.

Further remarks:

On page 44 a RECUP cup, which can be clearly identified as such, is shown. For reasons of neutrality, no brand names should be included. We suggest using an alternative image of a returnable coffee cup without any branding.

On page 47 and 48 we miss the explanation/addition that a reusable cup lid is not covered by the guideline. This explanation should be given in the same way as for cups: one example should be provided for disposable and another one for reusable cups. In this case as well, an image of a reusable lid without any logo should be provided.

