

Ms. Florika Fink-Hooijer
Director-General of DG Environment
European Commission
Avenue de Beaulieu 5
1160 BRUSSELS

April 28th, 2021

Dear Ms. Fink-Hooijer,

We would like to thank you for your letter of reply of the 2nd of April 2021 to our joint letter addressed to President von der Leyen, with regard to the critical issues raised by the draft Commission guidelines on the Single-use Plastic Directive, currently under discussion in the European Commission.

We are aware of the work that the Commission, and in particular DG ENV, is carrying out through the drafting of these guidelines to enable Member States to swiftly implement the Directive. In your letter, you mention that the European Commission aims to support the correct transposition and implementation of the SUP Directive across EU Member States, being fully consistent and aligned with the objectives and the wording of the legislative text. However, on the basis of the most recent version of the draft guidelines and the interpretations provided by the European Commission, Confindustria and BDI reiterate their strong concern for the effects that the current approach is likely to have on the environment, on the free movement of goods in the internal market and on the industry's ability to invest in new technologies.

Notably, we would like to underline the concrete danger that, although the objective of the guidelines should be to ensure a proper alignment of Member States' national legislation to the SUPD principles - as reiterated also in your letter of reply -, the text currently under discussion would disproportionately extend the scope of the SUP Directive to all single-use products, thus exposing the Commission and the Member States to the risk of long and costly legal disputes.

In fact, in the continued absence of clear, objective and uniform indications, we have evidence of several Member States drafting national measures that are completely different from each other in terms of scope, timing and objectives, with outcomes which would end up being far more restrictive than the Directive itself as well as inconsistent with its consumption reduction objectives. Once in force, such schemes would not only introduce proper obstacles to trade, both within the EU and internationally, with the serious risk of violating the fundamental principles of free movement of goods and non-discrimination, but they would also have profound and unexpected repercussions on an extremely vast number of operators in the industry, distribution and catering sectors, whose services would in no way be able to be re-organised effectively in such a short-term period of time.

In this regard, we suggest that at this stage the European Commission draws up only very streamlined guidelines to define in a clear manner the scope of the SUP Directive without entering into the merits of the most controversial legal and technical issues, leaving to a later moment the possibility to resolve the most critical points on the basis of scientific evidence and of a comparison of the actual available and more eco-friendly technological alternatives.

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In addition, we stress a further concern regarding the definition of *"placing on the market"* contained in Article 3 of the SUP Directive: it would seem that the Commission is currently considering a restrictive interpretation of the notion, according to which products not complying with the Directive placed on the market of a Member State before the 3rd of July 2021 may continue to be marketed in that Member State, but not, after that date, on the market of another Member State.

This interpretation, clearly in contrast with the fundamental principles on free movement contained in the Treaties, would inevitably lead to enormous problems of stock disposals, with clear discriminatory effects, great waste of resources and further fragmentation of the internal market, resulting in legal uncertainty and insecurity for the economic operators as well as potential claims for damages and considerable economic losses.

In our opinion, the interpretation of the definition of *"placing on the market"* contained in the SUP Directive should be aligned with the one currently provided by the Blue Guide, to the extent that a product placed on the market in a Member State is deemed to be placed on the EU one.

Finally, while in your letter you rightly point out that one of the SUP Directive's objectives is to promote the transition to a circular economy with innovative and sustainable business models, products and materials, in our opinion there is the real risk that the current text will end up producing the opposite effect, discouraging investments in research and development and penalizing entire sectors in which the European industry has leadership positions worldwide, going well beyond the original objectives of the legislator.

To this regard, Confindustria and BDI want to reiterate their common commitment to support the European institutions in defining the best possible legal and regulatory framework to promote the economic recovery, investments and employment while ensuring a high level of social and environmental protection.

In this perspective, we urge the European Commission to take these comments into consideration before finalizing the guidelines, in the belief that, on issues that are so decisive for the future of our societies, the European manufacturing industry should be considered by the institutions and other societal actors as an integral part of the solution to the major challenges we face.

We remain at your disposal for any further clarification and we would like to thank you for your attention on this matter.

Sincerely,



Francesca Mariotti
Director-General
Confindustria



Holger Losch
Deputy Director-General
BDI