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Guidelines

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EDA guidelines for interpretation of the Single Use Plastics Directive

Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment

This document includes our sectoral guidelines, which propose our interpretation of the Single Use Plastics Directive's requirements that might be applicable to the dairy products. It aims at providing input to the development of the future EU Commission's guidelines, as well as improving the understanding of the Directive by dairy companies. The overall objective would be to support EU guidelines that guarantees legal certainty and facilitate a harmonised approach to implementation across the EU.

The focus of this document is on the clarification of the scope of the Directive, and of the main relevant definitions of 'plastic', 'single use plastic product', 'single use plastic food container', 'single use plastic beverage container'.

General considerations

The European Dairy Association (EDA) welcomes the publication of the Directive on the reduction of the impact of certain plastic products on the environment. The dairy industry appreciates the EU Commission's efforts in raising awareness on the problem of marine plastic pollution and is fully committed to further reduce packaging waste along the chain. For example, EDA has driven a major project identifying the most relevant environmental impacts of different dairy products – the Dairy Product Environmental Footprint (Dairy PEF) – which also includes the assessment of packaging.

Nevertheless, some of the definitions in the text still need further clarification, in order to avoid numerous misunderstandings and diverging interpretations by regulators at the national level during the implementation phase. Ambiguous definitions would create legal uncertainty and potentially lead to the fragmentation of the internal market for packaged goods. For this reason, EDA is pleased to have clarified the **dairy sector's approach** and provides this as **input to the Commission's work**.

In addition, and while recognising the general necessity of reducing plastic packaging and increase recycling, EDA is always keen to highlight that many dairy products require specific handling at production, in transportation and in the consumer's home. This can only be achieved with the adequate packaging that



Guidelines

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safeguards the products from external influences and remains as light and practicable as possible. Also, the design of dairy packaging not only needs to **ensure safety and quality** as a non-negotiable baseline, but also plays an integral part in reducing food waste by keeping dairy products fresh and safe for longer.

For all these reasons, we firmly believe that **research, investment, and innovation** in circular economy solutions play a vital role, which would need to be favoured by the legislative framework in place. A framework facilitating investments in new and cutting-edge solutions would have a positive impact on the overall environmental footprint of packaging and would support the dairy industry's overarching goal of reducing plastic littering while ensuring the protection of our consumer's safety. Therefore, we consider as key that both the current legislative framework and the future guidelines do not discourage investments that further safeguard environmental resources.

Clarification of the 'single-use plastic product' definition

Supported by Recital 12, Article 3 of the Directive defines a single-use plastic product as *"a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived."* This definition could have unintended consequences in the implementation of the Directive, such as, for example, an extension of the scope of the Directive to food and drink products which are not intended to be consumed 'on-the-go' and are unlikely to be littered.

Whilst the material used as packaging of dairy products is to a great extent made of plastic, the contribution of these products to littering is basically below detection level as dairy products are generally not consumed 'on-the-go', as most of them need cooling and are consumed chilled. EDA believes that the focus of the Directive should remain on the most frequently littered items – in line with article 12, which specifies that the **tendency to be littered** should play a decisive role in order to determine whether a food container is to be considered as a single-use plastic product for the purposes of this Directive.

EDA would recommend that the future EU guidelines clarify that plastic packaging of food that is normally intended to be brought back to households is not in the scope of the Single Use Plastics Directive, to avoid that in the implementation phase such scope could be extended to items that are not consumed 'on-the-go' and thus do not contribute to plastic marine littering.

Clarification on tendency to be littered

In general, only small packaging sold in on-the-go situations has a tendency to be littered.

More specifically, the SUP Directive already provides **cumulative criteria** for food containers having the tendency to be littered (first included in Part A of the Annex): 'intended for immediate consumption' + 'typically consumed from the receptacle' + 'ready to be consumed without any further preparation'. These criteria might be further detailed in order to ensure a consistent implementation of the Directive in the Member States.



Guidelines

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Intended for immediate consumption should be understood as ‘designed for immediate consumption’. It would mean that: the product could be eaten immediately without requiring further preparation (see below) and/or additional tools such as cutlery.

- In practice, this would mean that if the food product has been designed with the purpose of being consumed on-the-spot or take-away (e.g. out of home) just after selling, this is an indication that it might fall under the scope of the SUP Directive. The methods of sale might also provide an indication, i.e. whether they are imagined and organised to provide a meal to be eaten on the spot (e.g. a beach kiosk vs a supermarket).
- On the contrary, this would exclude foods (and beverages) which would require further preparation (see below) and/or the use of cutlery, products sold in more than one single unit (multipacks and multi-serve), and whose main consumption pattern would be at home.

Typically consumed from the receptacle should be understood as a product for which there is no need of an additional product (for example cutlery, straw, etc.) to be consumed. It is also important to focus on the word ‘typically’, which is linked to the main consumption pattern of a product, which in some cases is just eventually and occasionally consumed from the receptacle but not typically.

Ready to be consumed without any further preparation would mean without heating, boiling or cooking, and possibly, in the case of ambient foods, the addition of milk, drinkable plant-based products, or water prior to consumption. The need of cutlery could also be an indication that the product needs further preparation to be consumed.

- In practice, if the food/beverage require additional preparation, this means that it has been designed or that its main consumption pattern is rather at home vs on-the-spot/take-away.

Please note that the criteria are cumulative, so e.g. it is not enough for a product to be ready to be consumed without any further preparation to be considered prone to be littered.

Clarification of the ‘single use plastic food container’ definition

We can find a general definition of food and beverage single-use plastic container in Recital 12 of the Directive, which is useful to clarify until a certain extent which products are covered by the requirements in the text. This recital brings into focus fast-food containers and containers of food that does not need further preparation and introduces the concept of **single-serve portions** or **single-serve portion-sized food containers sold in more than one unit**.

This means that dairy food containers containing food in more than single-serve portions, or single-serve-portion-sized dairy food containers sold in more than one unit are not to be considered as single-use plastic products. This would rule out large-size in home-use packaging.

Moreover, according to the description of ‘food containers’ in the Annex, food containers covered by the Directive are containers of food:

- for immediate consumption,**
- typically consumed from the receptacle, and**
- ready to be consumed without any further preparation.** (see chapter on ‘tendency to be littered’)



Guidelines

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With reference to the concepts in (a), (b) and (c) outlined above, we consider that single-serve-portion-sized food containers sold in one unit **requiring cutlery to be consumed and sold without** would also fall out of scope of articles 4, 8 and 10, because a product requiring cutlery to be consumed cannot be considered to be ready for immediate consumption directly from the receptacle without any further preparation unless there is cutlery attached to the container (e.g. attached to the pot of a fermented milk product or a dessert) enabling the consumer to actually consume that product immediately.

Possible single-serve portion sized food container sold in one unit

To facilitate a harmonised implementation of the Directive in EU Member States, EDA is proposing in these guidelines possible single-serve portion sizes of food containers sold in one unit with cutlery attached to the packaging.

- Yoghurt and fermented milk products
→ Possible max. size for this category: 200g
- Milk-based dessert
→ Possible max. size for this category: 200g

Clarification of the 'single use plastic beverage container' definition

All dairy is considered a food, due to its nutritional content and recognised importance in the diet, and this should be represented in all relevant legislation (*see box below for more detail*).

We would assume this is recognised in the SUP Directive as well, and reasonably dairy would be seen as nutrition, thus food. Despite other interpretations or certain national special laws already existing, we would be in favour of a harmonised and consistent definition in this Directive.

Thus, we would recommend **drinking milk** to be seen food.

Milk drinks and **milk-based drinks** would be food as well. *

We may need to further see what practical consequences these definitions can have in the implementation of the SUP Directive, but we bring forward our engagement for the best possible framework, to comply with the aim of this legislation in reducing plastic littering as well as overall packaging waste.

* *Due to a different frame in the German national packaging law where consistency would be appreciated, the German dairy industry would not support this European approach for milk drinks and milk-based drinks.*



Special definitions that support the definition as 'food' for all dairy:

- Major legislation for dairy is the **General Food Law 178/2002**, where all intakes are considered 'food' and the **Food Information to Consumers 1169/2011**, as well as the protein quality in the **Total dietary replacements, School food scheme** and all existing **national dietary guidelines**.
- This 'food' status is even stated in existing Standard, like **Codex Standard for Fermented milk**, providing that products containing 50% minimum of milk are 'fermented milk'. With less than 50 % milk, the name of product should be 'Drink based on fermented milk'.
- A clear distinction is also made between food and beverage in the **Food Information to Consumer regulation (1169/2011)**:
 - 1/ p. L304/45: "4. Beverage with high caffeine content or food with added caffeine [...] 4.2 foods other than beverage"
 - 2/ p. L304/61: "ANNEX XIII REFERENCE INTAKES 2. Significant amount of vitamins and minerals [...] 15 % of the nutrient reference values specified in point 1 supplied by 100 g or 100 ml in the case of products other than beverage, [...] 7,5 % of the nutrient reference values specified in point 1 supplied by 100 ml in the case of beverage."
- Referring to the 'beverage' terminology existing in EU legislation, 'dairy products' is a specific category in **TARIC (EU tariffs)**, not covered by any provision related to 'beverage'. In the tariff chapter, milk and milk products are in chapter 4, drinks in chapter 22, and Ayran for example, it contains water, so Ayran is no longer listed in chapter 4 but as a drink.
- Two **precise definitions**:
 - "The term 'beverages' is a collective term for liquid foods that are prepared or prepared for drinking. Their most important property is to cover the daily liquid requirement of humans and to maintain the associated metabolic processes. Drinks can be drunk hot or cold. Milk is not a beverage, but a nutrient fluid." ([link](#))
 - "Because of its high nutritional content, milk is considered to be a foodstuff and not a drink. The German Society for Nutrition (DGE) has divided foodstuffs into different categories. The category 'beverages' includes products that are usually drunk to quench thirst and contain few nutrients. Milk and dairy products have a unique spectrum of nutrients." ([link](#))

Differentiating lightened polystyrene from expanded polystyrene

The manufacture of yoghurt pots often uses a sheet of 'lightened' polystyrene (PS), which is made up of three layers: the inner and outer layers are PS compact (density 1.04) and the intermediate layer is PS which has been slightly expanded during extrusion with chemical agents or gas (CO₂ or nitrogen). With this expanded intermediate layer, a lightened PS sheet of density <1 is obtained. Depending on the thickness of the intermediate layer and the level of the expansion, sheets of lightened PS are obtained



Guidelines

connect to the world of dairy

whose density can range from 0.80 to 0.95. Replacing the compact PS sheet with lightened PS reduces PS consumption by 10 to 20% depending on the type of pot. It is not conceivable to lower the density of the reduced PS sheet below 0.80 because the loss of rigidity and resistance of the pots will be too large and not acceptable.

There is no distinction between these two types of expanded polystyrene in the Directive. EDA would suggest differentiating in the future EU guidelines lightened polystyrene (density >0,8) from expanded polystyrene (density <0,8), and focus the ban on expanded polystyrene. If lightened polystyrene was banned, producers would need to use full polystyrene, leading to an increase of plastic on the market by around 10%.

Annex

Recital 12 provides the following examples of food and drink-related products that are considered as single-use plastics:

Category of containers	Examples of products in the scope	Examples of products outside the scope
Food containers	<ul style="list-style-type: none"> - fast-food containers or meal, sandwich, wrap and salad boxes with cold or hot food, - food containers of fresh or processed food that does not need further preparation, such as fruits, vegetables or desserts 	<ul style="list-style-type: none"> - food containers with dried food or food that is sold cold requiring further preparation, - containers containing food in more than single-serve portions or single-serve portion-sized food containers sold in more than one unit
Beverage containers	<ul style="list-style-type: none"> - beverage bottles or composite beverage packaging used for beer, wine, water, liquid refreshments, juices and nectars, instant beverages or milk* 	<ul style="list-style-type: none"> - glass and metal beverage containers

* Cups for beverages are a separate category of single-use plastic products for the purposes of this Directive