



EDA position on the draft Commission guidance on the scope of the Single-Use Plastic Directive 2019/904

The European Dairy Association (EDA) appreciates the EU Commission's efforts in raising awareness on the problem of marine plastic pollution and is fully committed to further reduce single-use plastic packaging waste along the chain. The dairy industry would support an EU guidance ensuring legal certainty and facilitating a harmonised approach to implementation across the European Union.

Nevertheless, some parts in the latest draft Commission guidance on the scope of the Single-Use Plastic Directive 2019/904 still need improvement, in order to ensure a harmonised, compliant and proportionate application 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.

Therefore, the dairy industry kindly asks the EU Commission to include or amend the following elements in the draft guidance.¹

On the criterion of the littering tendency and the 3-litre threshold

According to Article 12(1) of the Directive, only food packaging that has a "tendency to become litter, due to its volume or size, in particular single-serve portions" is covered by the Directive:

- The criterion of the littering tendency, as explicitly provided for in Article 12(1) of the Directive, should be introduced into the tables 4-2 and 4-3 as well as in table 4-7 and 4-8.

In the latest draft Commission guidance, it is proposed to implement this criterion by applying the 3-litre threshold for beverage containers "by analogy" also to rigid and flexible food packaging (see p. 12 and 15). This proposal is neither in line with the Directive nor practicable, as well as inconsistent with the draft guidance itself:

- The 3-litre threshold is not used to define a portion, but as main descriptors to define single use plastic beverage container. It should also be taken into consideration that the multi-serving packaging "exemption" is not applicable to beverage container according to SUP Directive and to the draft guidance. It confirms that there is no link between this threshold and the definition of a "portion", even more if we consider that a 3L beverage container contains multiple portions. Actually, the 3-litre threshold is established as this is the largest format that TOMRA deposit scheme systems in e.g. the supermarket work with for beverage containers. As such, this threshold set for beverage containers is due to technological reasons and is not to be linked to the concept of portion sizes, especially for food containers.
- It is evident that in reality the volume of a "single-serve portion", i.e. the "portion typically consumed by one person in one meal session" (see p. 12) does not come even close to the three litre threshold, which is therefore totally unsuitable as a criterion for the "tendency to become litter".
- In paragraph 4.5.1 (p. 29) - about the elements to be used to distinguish food containers from beverage containers - is written "in general, beverages are expressed in volume (e.g. millilitres) and food generally in weight (e.g. gr.)", which contradicts the current proposal of a "volume" threshold as referential for food containers.
- The idea also raises the question of how a volume criterion should concretely be applied to foodstuffs that are usually measured in grams and kilograms.

An interpretation of the Directive based on this proposal could lead to a drastic expansion of the scope of the directive, far beyond the area defined by the European legislator. For example, it would be disproportionate if distributors of products that have a very low probability of being littered, such as yoghurt pots (see example on p. 29), had to contribute to the costs of cleaning up public spaces (see Article 8 of the Directive).



In addition, as the current proposal of applying the 3-litre threshold to rigid and flexible food packaging is not reasonably applicable, it could also lead to distortions of competition and restrictions on the free movement of goods in the internal market, as Member States' regulators will either neglect the criterion of the littering tendency or apply it in different ways regardless of the guidance.

On packaging with more than one portion and so-called multi-packs

The guidelines should clearly point out that packaging with more than one portion and so-called multi-packs, i.e. sales units of several single-portions, are excluded from the scope of the Directive. Recital 12 clearly states that "containers containing food in more than single-serve portions or single-serve portion-sized food containers sold in more than one unit are not to be considered single-use plastic products for the purposes of this Directive". Moreover, they are not "intended for immediate consumption, either on-the-spot or take away" (see section below).

A column should be added to the tables 4-2 and 4-3 where the criteria "more than one portion" and "multi-packs" are mentioned as exclusion criteria. The examples 2 and 3 in table 4-3 should be corrected accordingly and marked "EXCLUDED". There is no reason for treating flexible food packaging different from rigid packaging. In order to apply a consistent approach, also more-than-one-portion beverage containers and multi-packs of beverage containers should be excluded in table 4-7.

On the criteria "intended for immediate consumption, typically consumed from the receptacle, and ready to be consumed without any further preparation"

- It is important to point out the following statement (p. 11): "The three criteria laid down in point (2) of Part A, point (1) of Section I of Part E, and point (1) of Part G of the Annex of the Directive apply cumulatively. Therefore, for a food container to be covered by the Directive it has to meet all three criteria that apply to the food contained." This has to be taken into account consistently throughout the draft guidance, including with regards to packaging with more than one portion and so-called multi-packs (see section above).
- The criterion "intended for immediate consumption, either on-the-spot or take-away" for food containers (p. 11) should be clarified as "intended for immediate consumption after purchasing".
- The following sentence should be reintroduced: "The product is sold on-the-spot or as take-away (e.g. fast-food restaurants, food trucks, vending machines) and therefore more prone to becoming litter." (cf. September version). Otherwise, products sold for consumption at home or at work, where there is no tendency for them to be littered into the environment, would also be included. Such an extension of the scope would not be covered by the purpose of the Directive to prevent littering and the impact assessment.
- The example of a yoghurt cup on p. 29 should be deleted because such yoghurt cup is neither intended for immediate consumption after purchase, nor does it tend to be littered.
- "Washing, peeling and cutting" should also be considered as further preparation of the food (p. 11).

On the distinction between cups for beverages and beverage containers

More clarity is kindly requested on the definition of industrially prefilled cups containing beverages and transported, distributed and sold with a chilled content to the consumer at retailers, which can be covered by both packaging types.

Finally, 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 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. In this context, research, investment, and innovation in circular economy solutions play a vital role, which needs to be favoured by the legislation in place. Therefore, it is key that both the current legislative framework and the future European guidance do not discourage investments that could further safeguard environmental resources.

ⁱ This EDA position paper is mostly aligned with IK-Elipso Opinion on the draft Commission guidance on the scope of the SUPD.