

Dear Member States,

After the TAC meeting you have sent some questions to our functional mailbox.

Please see below the **answers (in red)** to your questions.

There are also questions or comments concerning specific implementing acts, they will not be answered in here as they will be addressed in the context of the specific acts.

As usual please see our disclaimer:

Please take note that these clarifications express the view of the services of DG ENV and do not commit the European Commission. The interpretation of EU law is the sole preserve of the Court of Justice of the EU.

Questions from Slovenia:

1) ROLE OF A (DISTANCE) CONTRACT

According to the definition of the producer, which is a legal or natural person registered in the Republic of Slovenia (hereinafter: RS), irrespective of the sales technique used, including the distance contract defined in the law of consumer protection, professionally produces, fills, sells, imports SUP from another EU Member State or a member of the European Economic Area (hereinafter referred to as a Member State) or third country, or filled single use plastic products or fishing gear containing plastic and places those products on the market in RS.

From which we can conclude that if the products are placed on the market by a (distance) contract before 3 July 2021 for a certain quantity of SUP products (exactly ones), it is considered that they were placed on the market before 3.7.2021 and can also be sold in Slovenia after 3.7.2021?

Regardless of whether this contract is concluded between

- Slovenian companies in the distribution chain, or
- Slovenian company and a company in another Member State, or
- Slovenian company and a company in a third country?

We are aware of the definitions of making available on the market and placing on the market in a Member State, but the definition of producer also contains: "the producer places on the market in the Republic of Slovenia which include also the (distance) contract". Do we have the right understanding of the above-mentioned conclusion?

From the SUP point of view, there is a temporal application issue.

Article 5 and 7 of the SUP become applicable on 3 July 2021. They refer to the concept of the placing on the market, which in accordance with SUP is based on Member State national markets. Before that date the products covered by the Articles concerned were placed on EU market and in accordance with the principle of free movement of goods, hence the Blue Guide apply. The Blue Guide does not have the concept of producer as defined in SUP and does not refer to national markets.

So the answer to the question is - yes, if the products are placed on the market by a (distance) contract before 3 July 2021 for a certain quantity of SUP products (exactly ones), it is considered that they were placed on the market before 3.7.2021 and can also be sold in Slovenia after 3.7.2021, regardless if it is Slovenian companies or companies from another MS. As far as third countries are concerned, the moment important for the placing on the market, it is the moment when goods are released for free circulation, as it is at that moment that they have to comply with harmonised EU legislation.

2) Question related to your answers number 9 and 20 in Update explanations for "placing of the market":

Could your answers be continued in the terms of: Unless companies from different Member States have a contract for the sale / distribution of this product for a given shipment in another Member State before 3.7.2021? Do we understand correctly the role of contract?

Yes.

3) At what point is it placed on the market by distributors / traders when independently imported products or products of their own brand? Is it placed on the market where transport from the warehouse performed to the point of sale? Or when order is issued for a product to the point of sale? Or when an invoice is issued from the warehouse? Or when a resale contract is concluded for a product (eg to a wholesale customer, a public institution such as a hospital, a school..., etc.)? Which business transaction exactly means that the product was placed on the market?

In accordance with the Blue Guide, when the product passes into the distribution phase it is made available for the first time, that is - it is placed on the market. The exact moment of passing into the distribution phase would have to be decided on case by case basis by national authorities.

As far as imported products are concerned, the product normally is considered to be placed on the market, when it is released for free circulation.

4) Do we even have a producer of fishing gear?

Regarding the status of a producer of fishing gear containing plastic, we have a special situation in Slovenia. Our professional fishermen have fishing boats between 6 and 12 meters. In the last five years, there has been an average of about 71 active vessels.

Slovenia has only 46 km of coastline. Fishermen buy fishing gears in Italy from craftsman and they use gears for their activity. In accordance with the definition, our fishermen place on the market in the Republic of Slovenia, but they are exempted from the directive if they carry out fishing activities as defined in point 28 of Article 4 of Regulation (EU) no. 1380/2013. They carry out this fishing activity. Is it a correct opinion that we do not have producers of fishing gear?

Regarding the question concerning the existence of producers of fishing gear containing plastic in Slovenia, the Commission services would like to comment as follows:

The definition of 'producer' provided for by the Single-Use Plastic Directive is the following:

'producer' means:

(a) any natural or legal person established in a Member State that professionally manufactures, fills, sells or imports, irrespective of the selling technique used, including by means of distance contracts as defined in point (7) of Article 2 of Directive 2011/83/EU of the European Parliament and of the Council ⁽²¹⁾, and places on the market of that Member State single-use plastic products, filled single-use plastic products or fishing gear containing plastic, other than persons carrying out fishing activities as defined in point (28) of Article 4 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²²⁾; or

(b) any natural or legal person established in one Member State or in a third country that professionally sells in another Member State directly to private households or to users other than private households, by means of distance contracts as defined in point (7) of Article 2 of Directive 2011/83/EU, single-use plastic products, filled single-use plastic products or fishing gear containing plastic, other than persons carrying out fishing activities as defined in point (28) of Article 4 of Regulation (EU) No 1380/2013;'

Article 4 (28) of Regulation (EU) No 1380/2013 provides the following definition of fishing activities:

'fishing activity' means searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fishery products'

Based on the above definitions, persons carrying out such fishing activities are not to be considered as producers of fishing gear containing plastic under the SUP Directive.

However, this does not guarantee that there are no producers of fishing gear containing plastic active on the Slovenian market (or established) in Slovenia. Based on the definition of producer provided by the Single-Use Plastic Directive, the Slovenian authorities should examine the existence of the following persons in order to conclude whether there are, currently, producers of fishing gear containing plastic in Slovenia:

- Natural or legal persons established in Slovenia that professionally manufacture, sell or import and places on the market fishing gear containing plastic;
- Natural or legal persons, established in a Member State other than Slovenia or in a third country, that professionally sell fishing gear containing plastic in Slovenia to private households or to users other than private households by means of distance contracts as defined in point (7) of Article 2 of Directive 2011/83/EU.

The Commission services would like to comment that the obligations of Slovenia under the Single-Use Plastic Directive do not depend on the current existence or the number of producers (established) in Slovenia. Equally, the number and the size of the fishing boats currently existing in Slovenia and the length of the country's coastline do not influence Slovenia's general obligations under the Single-Use Plastic Directive.

With regard to this, the Slovenian authorities are reminded of the following obligations:

- To ensure that extended producer responsibility schemes are established for fishing gear containing placed on the market of Slovenia;
- To set a national minimum annual collection rate of waste fishing gear containing plastic for recycling;
- To monitor fishing gear containing plastic placed on the Slovenian market as well as waste fishing gear containing plastic collected and report to the Commission.

Furthermore, the Slovenian authorities are reminded that, based on Article 8(6) of the Single-Use Plastic Directive, they should allow producers established in another Member State and placing products on the Slovenian market to appoint a legal or natural person established in Slovenia as an authorised representative for the purposes of fulfilling the obligations of a producer related to extended producer responsibility schemes in Slovenia.

5) Annex F of the SUP Directive applies to all beverage bottles. 6a provision applies to PET beverage bottles; 5b provision applies to all plastic beverage bottles?

Article 6 (5) (a) refers to PET bottles and 6 (5) (b) refers to all bottles.

6) How do we distinguish between natural polymer chemically modified and not chemically modified?

The SUP Guidelines^[1] interpret this term as follows:

Recital 11 of the Directive explains that the term not chemically modified substances should be read in accordance with point (40) of Article 3 of the REACH Regulation, which states:

*“not chemically modified substance: means a substance whose **chemical structure remains unchanged**, even if it has undergone a chemical process or treatment, or a physical mineralogical transformation, for instance to remove impurities.” [Emphasis added]*

^[1] Commission notice — Commission guidelines on single-use plastic products in accordance with Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment, OJ C 216, 7.6.2021, p. 1–46

The terms “*have not been chemically modified*” in point (1) of Article 3 of the Directive, with regard to natural polymers, are to be interpreted as follows: the decision whether a polymer has been chemically modified in its production or not should take into account only the difference between the ingoing and the resulting polymer, disregarding any modifications which might have taken place during production processes, as those are not relevant for the properties and the behaviour of the polymer used and eventually potentially released into the environment.

This means that, for example, regenerated cellulose, e.g. in form of viscose, lyocell and cellulosic film, is not considered to be chemically modified, as the resulting polymers are not chemically modified compared to the ingoing polymer. Cellulose acetate is considered to be chemically modified given that, compared to the ingoing natural polymer, the chemical modifications of cellulose during the production process remain present at the end of the production process.

Where changes in the chemical structure of a polymer result from reactions that are only taking place during the extraction process of a natural polymer (e.g. wood pulping process to extract cellulose and lignin), these are not considered to result in a chemical modification of the natural polymer in the meaning of point (1) of Article 3 and Recital 11 of the Directive. Therefore, paper material resulting from the wood pulping process is not considered to be made of chemically modified natural polymers. This interpretation is also in line with the Impact Assessment accompanying the European Commission’s proposal for this Directive (hereafter, “the Impact Assessment”), in which paper-based products without plastic lining or coating have been identified as available, more sustainable, alternatives to single-use plastic products.

7) Is cutlery of CPLA material with standard EN 12875-1-2005 (for 25-times dishwashing) under the scope of SUP Directive or not?

The SUP Guidelines^[2] interpret the distinction between single-use and multi-use as follows:

The cumulative use of terms in point (2) of Article 3 requires that the product should be neither conceived nor designed or placed on the market to accomplish, within its life span, multiple trips or rotations. This should rule out situations where final products could potentially be placed on the market or marketed as multi-use or re-usable without having been conceived and designed as such, or without being placed on the market as part of a system or an arrangement to ensure their re-use.

Product design characteristics can help to determine whether a product should be considered as single- or multiple-use. Whether a product is conceived, designed and placed on the market for reuse, can be assessed by considering the product’s expected functional life, i.e. whether it is intended and designed to be used several times before final disposal, without losing product functionality, physical capacity or quality, and whether consumers typically conceive, perceive and use it as a reusable product. Relevant product design characteristics include material composition, washability and reparability, which would allow multiple trips and rotations for the same purpose as for which the product was originally conceived. For a receptacle, which is packaging, its reusable nature can be determined in accordance with the essential requirements under the Packaging and Packaging Waste Directive, including any declaration attesting to the conformity of the packaging with those essential requirements and related standards. The technical capability of being washed 25 times in the dishwasher addresses one of the relevant aspects.

^[2] Commission notice — Commission guidelines on single-use plastic products in accordance with Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment, OJ C 216, 7.6.2021, p. 1–46

8) Are paper cups that have an aqueous dispersion barrier with acrylic (certified PAP21) fall within the scope of the SUP directive?

Recital 11 of the SUP Directive explicitly points to paints, inks and adhesives as polymeric materials, which are excluded from the scope of the Directive and not considered to fall under the definition of plastic in point (1) of Article 3. Consequently, a final (otherwise) non-plastic product to which they are applied is not a single-use plastic product under this Directive. If the aqueous dispersion barrier with acrylic is a paint, ink or adhesive it is exempt from the Directive. If the aqueous dispersion barrier with acrylic is neither a paint, nor ink or adhesive it is within the scope of the Directive, if the acrylic is a plastic under the definition of point 1 Article 3 of the SUP Directive.

9) Do varnishes belong to paints or coatings?

Recital 11 of the SUP Directive explicitly points to paints, inks and adhesives as polymeric materials, which are excluded from the scope of the Directive and not considered to fall under the definition of plastic in point (1) of Article 3. Consequently, a final (otherwise) non-plastic product to which they are applied is not a single-use plastic product under this Directive. As varnishes are not expressly exempt from the scope of the SUP Directive, they are to be included.

10) Are paper bags with plastic film (window in paper bag) for bakery products falling under scope of SUP directive or not?

Unless the plastic film is made of regenerated cellulose, or another material that is exempt from the scope of the Directive as a natural polymer without chemical modification, paper bags with films made from plastic as defined in point 1 Article 3 of the SUP Directive are to be seen as a SUP product, as point (2) of Article 3 of the Directive expressly covers as single-use plastic product “a product that is made wholly or partly from plastic...” (emphasis added).

11) Is the bag made of bleached cellulose fibres and coated with silicone coating SUP product or not?

Recital 11 of the SUP Directive explicitly points to paints, inks and adhesives as polymeric materials, which are excluded from the scope of the Directive and not considered to fall under the definition of plastic in point (1) of Article 3. Consequently, a final (otherwise) non-plastic product to which they are applied is not a single-use plastic product under this Directive. As silicone coating is not expressly exempt from the scope of the SUP Directive, they are to be included. Silicone is not interpreted as a natural polymer that has not undergone chemical modification.

Questions from Denmark:

12) Updated explanations concerning the concept of “placing on the market”

Regarding marking requirements: After 3 July 2021 empty cups are manufactured in MS 1 and transferred to an economic operator located in MS 2 who fills the cups with beverages. After being filled, the cups are supplied to consumers in MS 3. Should the cups be considered to be placed on the market in MS 2 and therefore be marked in accordance with the language of MS 2? Even though the cups are only intended for end use in MS 3? Can the place and the time differ in the context of placing on the market in this situation?

It is a situation that would require the judgement of the national authorities. As analogy we could apply the same principle of Blue Guide as the principle concerning the export from EU “*“Supplying a product is only considered as making available on the Union market, when the product is intended for end use on the Union market [in this case MS market]. The supply of products whether for further*

distribution, for incorporation into a final product, or for further processing or refinement with the aim to export the final product outside the Union market is not considered as making available.”

13) Regarding question number 31: The last sentence in the answer is a bit ambiguous. Please rephrase the answer so it becomes clearer whether or not DG ENV thinks that SUPD should be interpreted as asking Member States to take legal measures as regards companies established in the Member State placing products on the market in other Member States.

DG ENV does not think that SUPD is asking MS to take legal measures not only vis-à-vis companies placing said products on its market, but also as regards companies established in the MS placing products on the market on other member states.

14) Regarding products imported from third countries: Is it correctly understood that placing on the market can take place before the release for free circulation also in the case of sales (e.g. online sales) by economic operators located inside the EU (An economic operator in the EU sells products to EU-consumers before the products are physically moved to the Union).

“The purpose of release for free circulation is to fulfil all import formalities so that the goods can be made available on the EU market like any product made in the EU. Therefore, when products are presented to customs under the release for free circulation procedure, it can generally be considered that the goods are being placed on the EU market and so they will need to be compliant with the applicable Union harmonisation legislation. However, it may also be the case that the release for free circulation and the placing on the market do not take place at the same time. The placing on the market is the moment in which the product is supplied for distribution, consumption or use for the purposes of compliance with Union harmonisation legislation. Placing on the market can take place before the release for free circulation, for example, in the case of online sales by economic operators located outside the EU, even if the physical check of the compliance of the products can take place at the earliest when they arrive at the customs in the EU. Placing on the market can also take place after release for free circulation.”

Implementing act on marking

15) We have received several questions from industry concerning how to mark their products e.g. multipack wet wipes. For example if a company is selling a box of containing separately wrapped wet wipes. Does the company have to only the box, only the packagings containing the single wet wipes, or both. Our understanding is that the company will have to mark both the box and the individual packagings.

The provisions of the SUPD foresees in Art 3 that “packaging’ means packaging as defined in point 1 of Article 3 of Directive 94/62/EC;”

Article 1 of the Implementing Regulation 2020/2151 foresees, that “For the purposes of this Regulation, ‘packaging’ means sales packaging and grouped packaging as defined in point 1 f Article 3 of Directive 94/62/EC”.

Point 1 of Article 3 of Directive 94/62/EC foresees:

“ ‘packaging’ shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. ‘Non-returnable’ items used for the same purposes shall also be considered to constitute packaging.

‘Packaging’ consists only of:

- (a) sales packaging or primary packaging, i. e. packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;
- (b) grouped packaging or secondary packaging, i. e. packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final

user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;
.....”

Accordingly, all the primary and secondary packaging (as defined above) of wet wipes have to be accordingly marked.

In that regard, it is important, how these provisions were transposed in national legislation as it will be the national legislation applicable. However, from the way the Packaging Directive defines the primary packaging it would seem that it is important to determine if “separately wrapped wipes” would be considered a “sales unit to the final user or consumer at the point of purchase”.

16) Furthermore, it has come to our attention that the implementing act on marking contains a mistake (see below)

4. The marking for beverage cups made wholly from plastic shall comply with the requirements laid down in this point

(a) Position of the marking

(i) Traditional cups

The marking shall be placed horizontally on the external surface of the cup, wherever is more clearly visible. The marking shall not be placed under the base of the cup. When printed, the marking shall be placed away from the rim to avoid contact with the consumer's mouth when drinking. In the case of ridged cups, the marking shall not be embossed/engraved on the ridges.

(ii) Champagne-type cups

The marking shall be placed horizontally on the external surface of the cup, including the upper side of the base that holds the stem, wherever is more clearly visible. The marking shall not be placed under the base of the cup. When printed, the marking shall be placed away from the rim to avoid contact with the consumer's mouth when drinking. In the case of ridged cups, the marking shall not be embossed/engraved on the ridges.

Where it is not possible to place the marking horizontally due to the shape or size of the cup, it may be rotated 90° and placed vertically.

(b) Size of the marking

The marking shall be rectangular-shaped and ratio between the height and length is 1:2.

For cups with a volume of less than 500 ml, the minimum size of the marking shall be 1,4 cm by 2,8 cm (3,92 cm²).

For cups with a volume of 500 ml or more, the minimum size of the marking shall be 1,6 cm by 3,2 cm (5,12 cm²).

(c) Design of the marking

(i) Printed:

The design of the marking shall be reproduced in black ink without adding any effects, retouching or extending the background. The marking shall be reproduced at a minimum resolution of 300 dots per inch when printed in actual size. The marking should have sufficiently high contrast to the background to be highly readable. To this end, the outline of the marking should be printed in one of the following colours.

— White: C = 0 / M = 0 / Y = 0 / K = 0

— Black: C = 0 / M = 0 / Y = 0 / K = 100

— Red: C = 0 / M = 90 / Y = 60 / K = 0

— Blue: C = 60 / M = 0 / Y = 0 / K = 0.

(ii) Engraved/embossed:

The design of the marking shall be reproduced without adding effects, retouching or extending the background. The white outline as shown in the marking under point 1.2 of this Annex represents the lines to be engraved or embossed on the cup. The information text "MADE OF PLASTIC" shall be in upper case and in Helvetica Bold font. The font size shall be a minimum of 5 pt for the cups of less than 500 ml and of 6 pt for the cups of 500 ml or more.

Where the information text is translated into another or several official languages of the Member States, the translated information text shall be placed either close below the marking, or inside the rectangular black box below the first language, and shall be in both cases clearly visible. In exceptional cases due to spatial constraints on the external surface of the cup, the information text translated into another or several official languages of the Member States may be placed elsewhere on the cup as close as possible to the marking and where it is clearly visible. The translated information text shall be in upper case and in Helvetica Bold font. The font size shall be a minimum of 5 pt for the cups of less than 500 ml and 6 pt for the cups of 500 ml and more.

When printed, the colours having the following colour codes shall be used:

— White: C = 0 / M = 0 / Y = 0 / K = 0

— Black: C = 0 / M = 0 / Y = 0 / K = 100.

Does this mean, that the background color is free of choice (not only white), as long logo is black and the outline one of the following colors?

This entire section seem to have been indented under headline (ii), but should potentially cover both (i) Printed and (ii) Engraved/Embossed. At least it doesn't make sense that the last section, initiated by; "When printed, the colours..." sits under the headline Engraved/Embossed. To be consistent with "Design of the marking" for cups partly made of plastic, this section should probably cover both (i) Printed and (ii) Engraved/Embossed logo

Furthermore there is no black box below the first language in the black/white logo, only in the red/blue logo for cups made partly of plastic

1. As the Marking Regulation sets that “The marking should have sufficiently high contrast to the background to be highly readable”, yes it is our understanding too that the background color is free of choice.
2. Indeed the entire section on several languages should be applicable to both (i) and (ii).

Questions From Portugal

17) Scope of the SUP - Wet Wipes - recital 12

- Question put to COM on 10.11.2020 (email with Portugal's comments on the Draft Guidelines, the Draft IAs on separate collection of Beverage bottles and on Fishing gear)

“In the SUP Directive context, recital 12 states that:

“(…) Wet wipes for personal hygiene and domestic use should also fall within the scope of this Directive, while wet wipes for industrial use should be excluded. (…)”

Regarding this matter, we know that a company is currently producing wet disinfectant wipes (with and without alcohol) for the Aviation sector, to clean the plane's surfaces and clean the hands of its passengers, as a preventive measure in the current world pandemic panorama. These wipes are sold to airlines and who later made them available to passengers, in a safety kit, so that they can "sanitize / disinfect" the location/surfaces they will use during the flight.

We kindly ask the Commission to clarify how these products should be considered under SUP directive scope: for domestic or industrial use? In case they would be to consider for industrial use, the individual packaging message applies and should exclusive use for aviation be specified?"

In that regard the Guidelines foresee:

"The point of purchase, distribution channel and type of end user are important elements that should be considered in order to determine whether certain wet wipes are intended for domestic or professional use. For instance, wet wipes sold through professional distribution channels e.g. business-to-business channels, and which are used by healthcare professionals are considered to be intended for professional use and would not be included in the scope of the Directive. However, wet wipes which are sold in business-to-consumer channels and distributed to non-professional consumers, e.g. wet wipes, which can be purchased by individual consumers at a pharmacy and used at home, are not considered as professional use. These products are therefore included in the scope of the Directive."

Accordingly, it is for the member state in every situation to decide or to determine, if they consider the specific wipes to be of domestic or professional use.

In this particular situation DG ENV would tend to think, that the disinfecting wipes sold via professional (business –to-business) channels and used in a specific space and time by consumers (in the plane during the flight) - meaning not in domestic premises - would point more to professional use.

18) Marking

"We have had questions from the industry regarding the marking, since the Regulation (EU) 2020/2151 defines the Helvetica Bold font as the font to be used in the pictograms, but the pictograms made available (vectorised files) are with the Helvetica Bold Condensed font.

The question we want to clarify is related to the type of font that should be used: Helvetica Bold or Helvetica Bold Condensed?

Can any of them be applied? Can we give an indication that the industry should use the pictograms provided?

We appreciate if you can send a reply as soon as possible."

The response was given in the TAC meeting of June 2, 2021:

The markings as provided in Commission Implementing Regulation (EU) 2020/2151 in respective language (Helvetica Bold or Helvetica Bold Condensed respectively) and on SUP website https://ec.europa.eu/environment/topics/plastics/single-use-plastics/sups-marking-specifications_en is considered as meeting the requirements of the Regulation.

19) Also, we would like to know If a packaging made from sugar cane bagasse, when not coated with a plastic film, are or are not within the scope of SUP Directive."

Products made only from sugar cane bagasse without a plastic lining or coating would not be considered as single-use plastic products in the meaning of the Directive.

20) “We have had a high number of questions from the industry regarding the scope of the SUP Directive to which we urgently need to respond.

For this, we request clarification regarding the inclusion in the scope of the SUP Directive (article 4) of cups and / or containers made of the following materials:

1 -Cardboard with “polyethylene” coating made from sugar cane fibers ” (“ green PE ”).

The following response is largely based on the SUP Guidelines^[3] that further interpret the term chemical modification:

Recital 11 of the Directive explains that the term not chemically modified substances should be read in accordance with point (40) of Article 3 of the REACH Regulation, which states:

*“not chemically modified substance: means a substance whose **chemical structure remains unchanged**, even if it has undergone a chemical process or treatment, or a physical mineralogical transformation, for instance to remove impurities.” [Emphasis added]*

The terms have not been chemically modified in point (1) of Article 3 of the Directive, with regard to natural polymers, are to be interpreted as follows: the decision whether a polymer has been chemically modified in its production or not should take into account only the difference between the ingoing and the resulting polymer, disregarding any modifications which might have taken place during production processes, as those are not relevant for the properties and the behaviour of the polymer used and eventually potentially released into the environment.

This means that, for example, regenerated cellulose, e.g. in form of viscose, lyocell and cellulosic film, is not considered to be chemically modified, as the resulting polymers are not chemically modified compared to the ingoing polymer. Cellulose acetate is considered to be chemically modified given that, compared to the ingoing natural polymer, the chemical modifications of cellulose during the production process remain present at the end of the production process.

Also for the so-called green PE, a bio-polymer that replicates PE, but is made of 100% natural material, those interpretations are to be followed. Only if the resulting polymers are not chemically modified compared to the ingoing polymers the natural material is not considered to be chemically modified and then to be exempt. As PE is not a natural polymer, and the natural materials used do not resemble PE, chemical modifications of the ingoing natural polymers have been taken place on the way to produce bio-based PE.

Consequently a paper cup with green PE coating is within the scope of SUP Directive.

21) *Cardboard covered with a composite material (PLA).*

Unless the plastic cover is made of a material that is exempt from the scope of the Directive as a natural polymer without chemical modification, cardboard covered with a composite material made from plastic as defined in point 1 Article 3 of the SUP Directive are to be seen as a SUP product as point (2) of Article 3 of the Directive expressly covers as single-use plastic product “a product that is made wholly or partly from plastic...” (emphasis added).

PLA is not interpreted as a natural polymer that has not undergone chemical modification.

^[3] Commission notice — Commission guidelines on single-use plastic products in accordance with Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment, OJ C 216, 7.6.2021, p. 1–46

Questions of the Czech Republic

22) Beverage cups on durable milk products

It is not clear whether plastic beverage cups containing liquid durable dairy products (such as acidophilic milk, kefir milk), which are not consumed immediately after purchase and are taken home by the consumer, fall within the scope of the Directive, as “cups for beverages” or as “food containers” (see image below). It is not clear to us whether these cups must also meet the new marking requirements? The current draft Guidelines do not mention this type of product. We have already sent you this question several times together with illustrative images of these products. We haven’t received any answer from you yet.

We believe that the new marking obligation should only apply to single-use beverage cups sold, for example, in fast-food restaurants, in coffee machines or in coffee beverage cups sold in supermarkets. We ask you to confirm our interpretation and we firmly believe that you will help us clarify this issue as soon as possible.



Following the explanation in the Guidelines, namely section 4.5.1, we can determine that product at issue contains beverage, as a” beverage product is sold and consumed in liquid form, and can be consumed through drinking”. In that regard also the “unit in which the quantity of the food or beverage product is expressed” could be checked, to our understanding the products at issue are expressed in volume (e.g. millilitres), and therefore would also point to being beverages.

In order to determine in the product is a beverage container or a cup for beverage one should turn to section 4.5.3 of the Guidelines. While it is true that these specific products are not directly depicted in the Guidelines, the Guidelines provide that “The key element for distinguishing between the three product categories is their shape.” Concerning cups the Guidelines explain that “Cups for beverages are typically round, usually bowl-shaped drinking vessels with or without a cover or a lid, sold empty or containing beverages”. As the shape of the products depicted in your question is round, bowl-shaped DG ENV would tend to think that the products at issue are cups. However as the products depicted are not directly addressed in the SUPD and also not directly addressed in the Guidelines, finally it is for the Member State to determine if it considers these products to be beverage containers or cups for beverages.

23) France would like to know whether these products, which are designed to contain and preserve, milk, coffee or vegetable drinks sold in particular in supermarkets, are included in the scope of SUPD, and if so, should they be considered as cups for beverages or rather beverage containers?



The same answer as above.

24) Beverage cups wholly plastic vs. partly made from plastic

In Annex IV. Article 2 Regulation 2020/2151 defines the obligations of beverage cups made “wholly from plastic”. In connection with this, we have a question, does this apply to the case when all parts of

the cup, including the "sleeve" and the lids are made of plastic, or if only the body of the cup itself is made of plastic. What if, for example, the cup and topper are made of plastic (see image below)?, but are wrapped in a paper sleeve? In such a case, in our opinion, it should be a cup "partly made from plastic".



Taking into account the purpose of the marking – to inform the consumer- DG ENV does not disagree with such interpretation.

25) Beverage cups with grooves

We have been approached by beverage cup manufacturers, who produce beverage cups for hot beverages that are vertically grooved (see image below) over their entire outside surface. This grooving serves to protect the consumer from scalding with a hot beverage. We assume that due to the fact that there is nowhere else to place the new marking, the marking must be printed over the grooves.



Yes. Printed or engraved/embossed if it is an option in case of wholly plastic cups.

26) Presentation on the term “Placing on the market”

We thank the European Commission (hereinafter “EC”) for presenting and clarifying some issues related to the interpretation of the term "placing on the market". It is very useful for us. We would appreciate if the EC, as discussed on the last on-line meeting of the TAC Expert Group, could also explain on the role of the “physical handover of the product” which according to the definition in the Blue Guide by EC is not a requirement for determining whether a product has been placed on the market.

See points 5)-9) of the document on “placing on the market” shared by the Commission.

27) Ice-cream containers

We would like to repeatedly ask you, if the marketing ban for expanded polystyrene food containers applies to food containers for frozen ice cream? From our point of view, it is not always a food intended for immediate consumption (large family packages can be stored in the freezer for several months and it is not necessary to consume them immediately). Moreover, in the case of ice-cream in large family packages (see image below), in our opinion it is not a food that is typically consumed directly from the container.

The Guidelines for certain plastic products determine that food containers containing frozen food do not fall within the scope of the Directive. However, it is not stated here whether ice cream is also considered as such food.

We therefore believe that food containers containing frozen ice cream with attached cutlery should be prohibited in particular. In such a case, it is clear that it is used for immediate consumption and consumption directly from the container. Please confirm this interpretation.



Firstly, just for the sake of clarity - the product depicted is not made from expanded polystyrene. As the product depicted here is not the product concerned by your question it is difficult for the Commission to respond to this question.

For example the Guidelines do list in table 4-2 “Ice-cream container made of cardboard with plastic liner, from which the food is typically directly consumed” as a product include in the scope of the Directive.

As the products that you are referring to are not directly addressed in the SUPD and also not directly addressed in the Guidelines, in the end it is for the Member State to determine if it considers these products to be “Food containers, i.e. receptacles such as boxes, with or without a cover, used to contain food which:

- (a) is intended for immediate consumption, either on-the-spot or take-away,
- (b) is typically consumed from the receptacle, and
- (c) is ready to be consumed without any further preparation, such as cooking, boiling or heating, including food containers used for fast food or other meal ready for immediate consumption, except beverage containers, plates and packets and wrappers containing food.”

Regarding the size of the family package pictured, the SUP Guidelines provides some interpretation in section 4.1.1:

In addition to these three cumulatively applicable criteria, Article 12 of the Directive adds a criterion related to the tendency of a food container to become litter, due to its volume or size, in particular single-serve portions. While the reference to the notion of single-serve portions in Article 12 is mentioned as a decisive guiding element, no definition, nor common understanding, of a single-serve portion is provided in the Directive. Recital 12 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. In particular, the exemption of single-serve portion-sized food containers sold in more than one unit indicates that the concept of single-serve portion could relate to a portion that typically can be consumed by one person in one meal session. However, the relevant volume and the size can vary in function of the nutritional value of the food items contained and consumption habits across the Union. Furthermore, with regard

to beverage containers, a clear volume and size threshold of three litres above which the Directive does not apply is established in Part C, point (3) of Section I of Part E and point (3) of Part G of the Annex to the Directive. This threshold suggests that it is considered relevant to prevent littering of single use plastic products which are portioned in a way to be typically consumed in a single serving by several people. By analogy, the same volume is suggested to be used as an upper threshold regarding food containers to determine if a portion typically can be consumed in one meal session.

In that regard you can use as guidance section 4.1 of the Guidelines.

28) CMYK colors

According to the regulation 2020/2151, colors with the following color codes are to be used for printing pictograms:

White: $C = 0 / M = 0 / Y = 0 / K = 0$;

Black: $C = 0 / M = 0 / Y = 0 / K = 100$;

Red: $C = 0 / M = 90 / Y = 60 / K = 0$;

Blue: $C = 60 / M = 0 / Y = 0 / K = 0$.

The question is what are the corresponding codes for these CMYK colors in the color swatch from Pantone (a worldwide company)? According to a preliminary finding on the Pantone website, their swatches always record colors with certain deviations from the parameters given in the Implementing Regulation 2020/2151 (eg. for white the swatches record the closest corresponding white color under Pantone code "663 C", expressed in CMYK format: $C = 5 / M = 6 / Y = 0 / K = 0$). We would like the EC to confirm that slight variations in color shades will be tolerated.

It is the responsibility of the Member State to enforce the regulation 2020/2151, accordingly it is the decision of the Member State, how in practice it will deal with slight color variations.

29) Fishing gears

The Czech Republic has repeatedly asked the EC in writing and verbally to answer issues of compliance with fishing gear obligations. At many meetings, the Czech Republic was already promised that the EC would address this issue and consult it with the Legal Service. However, to date, no answer has been given to us. The Czech Republic sees fundamental ambiguities in Article 8 (9) of the Directive which obliges Member States to ensure that producers of plastic fishing gear set up extended producer responsibility systems and thus cover the cost of separate collection of plastic waste gear, the cost of the subsequent transport and processing of such waste. This obligation is imposed by the Directive on all Member States, including landlocked Member States (the Directive does not provide an exemption for landlocked states). For this reason, the Czech Republic has several fundamental questions.

- How can extended producer responsibility organization established e.g. in the Czech Republic realistically perform the relevant obligations (reimbursement of costs for collection, transport and processing of waste from fishing gear) when these wastes are not generated in the Czech Republic and the respective infrastructure does not exist and cannot be created?
- What activities, under the Directive, should organizations within extended producer responsibility in landlocked countries actually carry out?
- What specifically should the financial contributions of producers paid to the relevant producer organizations with extended producer responsibility be used for?
- The Directive defines in Article 3 (4) fishing gear as any item or piece of equipment that is used in fishing or aquaculture to target, capture or rear marine biological resources or as that which is floating on the sea surface, and is deployed with the objective of attracting and capturing or of rearing such marine biological resources. In our opinion "fishing gear" is therefore tied to use in the sea. Is it the case that in the event of a possible use of the fishing gear at sea, the manufacturer is always obliged to comply with all the relevant obligations? If the answer to this question is affirmative, does it mean that all manufactures of fishing gear have to comply by these obligations? These questions are essential for producers in landlocked countries whose gear is primarily sold within the landlocked

country for the purpose of being used in freshwater environments but whose gear can also be used in practice in marine environments.

It was our recollection that the answer in that regard was provided in TAC, please excuse us if it was not the case. In any case the full response to this question was sent to you by letter of 25/06/2021 from Director General FINK-HOOIJER Florika.

In case it is of interest for the other Member states please see the response:

Article 8(8) of the Directive does not exempt landlocked Member States from the obligation to ensure that EPR schemes are established for fishing gear containing plastic and placed on the market in their territories, nor from the reporting obligation regarding fishing gear placed on the market and waste fishing gear collected. It exempts them only from the obligation to set national minimum annual rates for the collection of waste fishing gear containing plastic for recycling.

The Commission services consider that fishing gear, as defined in Article 3(4) of the Directive, could be placed on the market in landlocked Member States. It is true that the definition refers to ‘marine biological resources’, but this does not mean that such gear will be placed on the market only in Member States with marine waters. Just as your authorities concede that such gear can be suitable for use in both fresh and marine waters, the Commission services find that such gear falls within the scope of the Directive.

Also, ‘waste fishing gear’ may be generated in landlocked Member States. The Directive defines the term with reference to Article 3(1) of the Waste Framework Directive⁴, under which “‘waste’ means any substance or object which the holder discards or intends or is required to discard’. Therefore, fishing gear, as defined by the Directive, could be discarded in the territory of landlocked Member States. There would be no way of ensuring that it is discarded only in Member States with marine waters. While not determining the magnitude of the costs to be covered by the EPR schemes, the Directive (Article 8(9)⁵) states that these are the costs of:

- collection (in the case of landlocked Member States, from facilities other than port reception facilities);
- subsequent transport and treatment; and
- awareness-raising measures under Article 10.

For the above reasons, the Commission services conclude that the obligation to ensure that EPR schemes are established for fishing gear containing plastic placed on the market does apply to landlocked Member States. The schemes should provide for the costs of collection, transport, treatment and awareness-raising to be covered by producers of fishing gear containing plastic. It is for the national authorities to decide what form of collection system would be most appropriate and the level of contributions to be paid by the producers to cover the costs.

30) Expanded polystyrene

We would like to ask the European Commission to clarify the clear rules on the exact conditions and circumstances under which the marketing of products made of extruded polystyrene, which is expanded into expanded polystyrene and looks like expanded, should be banned. We need clear guidance on how to distinguish and interpret this, which products should be covered by the marketing ban and which should not.

Article 5 in connection with Part B of the Annex of the SUP Directive explicitly mention food containers, beverage containers and cups for beverages made of expanded polystyrene as covered by the marketing restrictions. The Directive does not distinguish between expanded polystyrene that also has gone through other processing steps, e.g. extrusion, and expanded polystyrene that has not undergone other processing steps. If polystyrene has been only extruded - but not expanded - it is not falling under the marketing restriction in Article 5, however if the extruded polystyrene is also expanded it falls under the marketing restriction in Article 5.

Some of the questions from France

31) **France** considers the following products are excluded from the scope of the SUPD:

- Mini-baby bottles that contain food;
- Powder measures, e.g. used for measuring infant formula milk.

Indeed, the Directive *prima facie* does not seem to be applicable to these products.

32) Furthermore, France would like the Commission to clarify the case of cellophane (cellulose hydrate). Since the manufacturing process consists of the extrusion of viscose, and viscose is excluded from the scope of the SUP Directive (which France strongly regrets), is it correct to consider that cellophane is also excluded?

The following response is largely based on the SUP Guidelines^[4] that further interpret the term chemical modification:

Recital 11 of the Directive explains that the term not chemically modified substances should be read in accordance with point (40) of Article 3 of the REACH Regulation, which states:

*“not chemically modified substance: means a substance whose **chemical structure remains unchanged**, even if it has undergone a chemical process or treatment, or a physical mineralogical transformation, for instance to remove impurities.” [Emphasis added]*

The terms have not been chemically modified in point (1) of Article 3 of the Directive, with regard to natural polymers, are to be interpreted as follows: the decision whether a polymer has been chemically modified in its production or not should take into account only the difference between the ingoing and the resulting polymer, disregarding any modifications which might have taken place during production processes, as those are not relevant for the properties and the behaviour of the polymer used and eventually potentially released into the environment.

This means that, for example, regenerated cellulose, e.g. in form of viscose, lyocell and cellulosic film (sometimes also referred to as “cellophane”), is not considered to be chemically modified, as the resulting polymers are not chemically modified compared to the ingoing polymer.

Cellulose acetate is considered to be chemically modified given that, compared to the ingoing natural polymer, the chemical modifications of cellulose during the production process remain present at the end of the production process.

^[4] Commission notice — Commission guidelines on single-use plastic products in accordance with Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment, OJ C 216, 7.6.2021, p. 1–46