

# Position Paper

## UEAPME<sup>1</sup> position on the proposal for a Directive of the European Parliament and the Council on the reduction of the impact of certain plastic products on the environment - COM (2018) 340 final

### Executive summary

- The Directive misses the point. It imposes measures on certain products because they are, or could be, dumped in nature by consumers. Neither the plastic plates nor other products are to blame for the environmental pollution, but their improper disposal on land and in water by the last owner instead. Functioning waste management and raising consumer awareness help to reduce littering most effectively.
- To avoid fragmentation of the European legal landscape, the Commission identified a Directive as the best legal instrument. The current implementation of the diverse waste-related Directives in fact shows the opposite: Every Member State sets Directives at their own discretion, which results in unwanted regulatory complexity as well as a fragmentation of the Single Market. Due to unclear definitions, the proposed Directive is so imprecisely organised that a harmonised implementation in Member States is not going to be expected.
- Producers should carry the costs of the collection, the transport and the treatment, whereby the costs of cleaning up “litter” and the costs of awareness raising measures are taken into account too. This would establish producer responsibility for areas (litter) that producers can have no influence over. Such an extension of producer responsibility is rejected. A more obvious solution would be to address directly those responsible for carelessly leaving plastic waste behind. Increased incentives for consumers could in this way, adjust consumer behaviour accordingly. It cannot be the case that businesses are asked to pay for the irresponsible behaviour of other actors. Final users and consumers should certainly be subject to bold political decisions.
- A separate collection of beverage bottles (Art. 9) that uses a deposit refund scheme is viewed critically.
- Provisions of article 12 on access to justice are not considered appropriate.

### I. IN GENERAL

UEAPME is aware of the marine litter issue and supports efforts to prevent and reduce any further supply of litter into in the sea. Therefore, it welcomes the Commission’s initiative to address this challenge.

---

<sup>1</sup> UEAPME subscribes to the European Commission’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

However, the proposed Directive misses the point. It imposes measures on certain products because they are, or could be, dumped in nature by consumers. It would be more constructive to tackle the root cause of the problem. The establishment of efficient waste management, which captures waste streams in a comprehensive and structured way is the cornerstone of environmental protection from waste, and to prevent littering of the environment. Neither the plastic plates nor other products are to blame for the environmental pollution, but their improper disposal on land and in water by the last owner instead. Functioning waste management and raising consumer awareness help to reduce littering most effectively.

Especially the requirements laid down in Article 8, which provide that extended producer responsibility schemes bear the costs of cleaning up litter, are putting the cart before the horse. The goal is not to remove pollution, but to minimise littering. Raising awareness is one requirement; the other one is a sufficient infrastructure for the processing of waste and recyclable materials.

A symbolic attack of a randomly selected group of products leads to the consumer's misperception that product bans prevent littering. Instead of immunising users against littering, it stigmatises a certain material (plastic) and production sector.

### **Objectives of the proposal**

The chapter "Reasons for and objectives of the proposal" reads that due to its persistency, the impacts of plastic litter are growing. This persistency is, however, one of the main advantages in using, applying, recycling or reusing plastics. Thus, the root cause is rather a problem of improper treatment of plastic. This surely cannot result in a ban on individual products.

Nevertheless, the Commission proposes the ban on products for which, according to their statement, available alternatives exist. Considering the suggested definition of *single-use plastic products* this is more than doubtful. Alternatives the Commission names in the Impact Assessment further require, to allow their functionality, at least a thin layer of plastic and would be subject to the prohibition on placing on the market. Subsequently, these products cannot be regarded as alternatives.

In order to tackle littering raising consumer awareness to change their behaviour towards using resources more carefully in the long run is in general a preferable solution compared to an overall ban of plastic products for the reason of tackling littering. By banning certain products, the problem is merely shifted towards other materials, which are then found on beaches. Littering has to be avoided in any case, whatever form of waste it concerns.

Overall, in UEAPME's view the most effective "European contribution to macro plastic marine litter" would be the financial and technological support of countries that do not yet have a waste management system like some EU countries. Worldwide, with regards to leakage of plastics into the sea, the EU as a whole is currently number 18. The 8 million tons of plastic that end up

in the sea originate primarily from only five Asian countries. In order to change those quantities, this is where to start.

## Pushing clean alternatives

On the one hand, the Commission demands lifecycle assessments in order to identify the best environmental options. On the other hand, certain plastic products should now be limited or prohibited without even analysing what the most sustainable option would be. The proposed Directive creates a major problem for producers of packaging, who intensively invest and develop sustainable and ecological packaging solutions in line with recycling and sustainability. Especially in the packaging sector, by using recyclable goods for disposable packaging, they are almost equivalent to reusable packaging in light of ecological and economic considerations. Certain disposable packaging is even superior to reusable packaging.

It is completely unclear why this Directive includes bio-based compostable and biodegradable products and therefore imposes a prohibition on placing on the market and measures on consumption reduction. Especially because these products are promoted in other waste related directives, e.g. in the recently agreed upon Waste Framework Directive (recital 40) or in the Packaging Directive (recital 7). In those Directives, they are even considered as alternatives and opportunities for the future.

The interaction of the recently agreed amendments in the field of waste with this Directive is generally unclear. The Waste Framework Directive as well as the Packaging Directive cover areas and introduce measures that are also addressed by this Directive. However, the two approaches do not correspond.

This proposed Directive poses a threat to all forms of packaging. Especially to those businesses active in the field of recycling and bio-based plastics have been working on and investing in for years with major successes. Thus, all packaging policy measures should always be designed by keeping in mind their ecological purpose.

While in Austria for example in 2010, the CO<sub>2</sub>-rate of PET-recycling was still at 50 % and a share of 30% was recycled, the industry has now advanced much further. In 2010, a 500 ml PET bottle weighed around 20 grams. Today, these bottles only weigh 16 grams, which corresponds to a weight reduction of 20 percent. In addition, bottles made of 70 % recycled material are widespread in the market today. Furthermore, the industry significantly improved the CO<sub>2</sub>-rate of recycling processes. Compared to new PET-goods with a 2.15 kg CO<sub>2</sub>-equivalent per kilogram, today PET-goods with 0.21 kg per kilogram are produced. For these bottles, the comparison of disposable to reusable of 2010 is no longer up-to-date.

Comprehensive measures are intended for the food sector, but often there are no adequate packaging alternatives available. There is a strong trend towards the convenience-food sector and packaging was – in accordance with demand – adapted for single households in order to prevent unwanted food waste. In light of its relevance to health, food safety has to be a priority in

the fields of food contact materials as well as the compliance with hygiene requirements. It is equally a priority in the constantly growing sector of delivery services. Many restaurants and delivery services are already increasingly moving towards sustainable packaging, but in many cases, the application is simply impossible. The market must be able to provide alternative products in a sufficient quantity and quality. While environmentally friendly alternatives exist in part for the products in this sector listed in the annex, they are often not at the same product and cost level as current plastic products.

### **Directive as an ill-suited legal instrument**

To avoid fragmentation of the European legal landscape, the Commission identified a Directive as the best legal instrument. The current implementation of the diverse waste-related Directives in fact shows the opposite: Every Member State sets Directives at their own discretion, which results in unwanted regulatory complexity as well as a fragmentation of the Single Market. Due to unclear definitions, the proposed Directive is so imprecisely organised that a harmonised implementation in Member States is not going to be expected.

The restrictive measures intended by the Directive inter alia product bans disadvantage single-use plastic without simultaneously creating incentives that would influence consumer behaviour and thus tackle littering.

In general, it should be noted that in UEAPME's view the proposal is ill-conceived, inconsistent and unclear. In order to reach the principal goal in avoiding littering a fundamental revision and realignment of the proposed draft would be required.

## **II. ON THE VARIOUS PROVISIONS**

### **On Article 1 and 2 – Objectives and scope**

In principal, the term “Single Use Plastic” used by the Commission seems to be misleading in the given context, as it suggests these products would be generally avoidable. It should be noted that there are enough reasons for the single use of certain plastic products with regards to e.g. hygiene, safety and transport requirements. This fact should be taken into account in the wording. In this context, it should also be noted that used plastic does not constitute useless waste but important raw material for industry and trade, which can be appropriately and sustainably recycled as well as re-used.

### **On Article 3 – Definitions:**

Generally, the Directive leaves large scope for interpretation due to unclear and missing definitions. The question arises what falls under a product that is made partly from plastic for example. Furthermore, it includes definitions such as “plastic” or “single-use plastic” which extend the scope of application to certain products that contradict the Directive's intentions. Does it also extend to e.g. natural polymers or yoghurt cups? Additionally, what are natural polymers that have not been chemically modified supposed to be?

The definition of *single-use plastics* reads as follows:

*“single-use plastic product” means 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 the producer for refill or re-used for the same purpose for which it was conceived;*

The definition of a single-use product is misleading and does not correspond to any industrial categorisation. There is a large number of single-use products (more precisely: cycle products) e.g. composite materials, which do not have plastic as a carrier, but nonetheless contain a thin plastic coating (plus potentially aluminium foil). By using the wording “wholly or partly from plastic” and interpreting the term narrowly, these products that are made partly from plastic could also fall under the Directive’s scope of application. However, the Commission indicates some of these products as alternatives. Thus, UEAPME rejects such an understanding of Article 3.

The definition of *producer* reads as follows:

*“Producer”: any natural or legal person that, irrespective of the selling technique used, including distance contracts within the meaning of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 50 , places on the market single-use plastic products and fishing gear containing plastic except persons carrying out fishing activities as defined in Article 4(28) of Regulation (EC) No 1380/2013 of the European Parliament and of the Council 51;*

The packaging will not be returned to the “producer”, but to the “distributer”, who makes a certain product available on the market. Within the proposed text, one definition is written, but another one intended. In the case of packaging, the situation is particularly delicate as the packaging producer and partly the packaging filler is not the same as the distributer. This proposal seems to infer the distributer, whereas the text expressively names the producer. This misconception is essential for the proposal’s feasibility.

### **On Article 5 – Restriction of placing on the market:**

The blanket bans on certain single-use plastic products as proposed by Article 5 or more specifically in part B of the annex seem to be too restrictive and hardly proportionate. This is why we urge the legislators to create a greater scope for Member State action. Countries that have well-established, advanced and well-functioning waste management systems, high capture and recycling rates, and efficient separate collection should be able to find alternative routes to achieving objectives. The Commission proposes the ban on products for which, according to their statement, available alternatives exist. Considering the proposed definition of single-use plastic products this is more than doubtful. Alternatives as listed in the Impact Assessment further require, allowing their functionality, at least a thin layer of plastic and would thus be subject to the prohibition on placing on the market.

Sticks for balloons are mainly made from recyclable plastic and cannot yet be manufactured with different materials. However, they are indispensable for balloon sales. Sticks were not expressively mentioned during the analysis of the types of waste. Therefore, it is not clear why

they are included into the scope of the ban. Moreover, balloons assembled with sticks cannot typically fly and thus be leaked into the environment.

### **On Article 6 – Product requirements:**

It is of vital importance that the requirements for the product design of drinking containers as intended by Art. 6 are developed with the involvement of all parties concerned from an early stage. UEAPME thus deems the proposed approach via the European standardisation bodies to be, in principle, sensible. In doing so, it is imperative to ensure that the concrete standards or product requirements are made flexible enough to avoid restricting producers in their innovation and production processes.

### **On Article 8 – Extended producer responsibility:**

According to the proposed Directive, producers should carry the costs of the collection, the transport and the treatment, whereby the costs of cleaning up “litter” and the costs of awareness raising measures are taken into account too. This would establish producer responsibility for areas (litter) that producers can have no influence over. Such an extension of producer responsibility is rejected. A more obvious solution would be to address directly those responsible for carelessly leaving plastic waste behind. Increased incentives for consumers could in this way, adjust consumer behaviour accordingly. It cannot be the case that businesses are asked to pay for the irresponsible behaviour of other actors. Final users and consumers should certainly be subject to bold political decisions.

### **On Article 9 – Separate collection**

A separate collection of beverage bottles (Art. 9) that uses a deposit refund scheme is viewed critically. Especially from some countries’ perspective, such a system seems disproportionate from both a waste and economic perspective. It is questionable whether the increase of the beverage bottles coverage, which is already very high today, would be proportionate compared to the costs and additional efforts caused by such a system. The example of Germany shows clearly that the introduction and running of a deposit refund scheme involves significant additional economic costs. At the same time, it did not lead to the anticipated increase of the proportion of reusable packaging, but rather the opposite. Apart from this, particular beverage producers and bottlers, trade and administration are confronted with significant logistical challenges. The costs for investments, logistics and systems (e.g. for collection systems, recycling, reverse vending machines, deposit clearing, additional storage space and personal costs) would mainly be borne by these stakeholder. This, in turn, would affect product prices.

Moreover, a possible deposit refund scheme must not be considered in isolation, but in the context of the respective waste regime in the different countries and the existing “culture of waste collection”. Besides the relatively low benefits, a deposit refund scheme would cause additional complexity, bureaucracy and costs (see above). It should also be questioned whether the well-functioning, established collecting and sorting culture as well as system, which was socialised over decades, should be levered out without actual reason. Therefore, the introduction of such a system contradicts the generally expressed requirements of deregulation and bureaucracy reduction.

It can further be assumed that persons who carelessly leave beverage packaging behind would not be dissuaded from doing so with a deposit-refund of 20 cents per package either (see D). The deposit would have to be disproportionately high in order to achieve strong effects.

Uncertainty also surrounds the interaction with the recently published adapted Packaging Directive, which requires an obligatory EPR-System for packaging as of 2025.

This Directive requires an EPR-System for few products that partly fall under the Packaging Directive, but earlier. There should at least be a focus on the obligations agreed upon in the Packaging Directive.

### **On Article 12 – Access to justice**

UEAPME rejects this Article emphatically. Directives are (as a rule) legislative mandates for Member States. With quantitative targets, the level of ambition is sometimes very high.

They should be understood more as an expression of utmost endeavour than a legal obligation. There has to be a distinction between environmental matters that EU citizens and environmental NGOs can sue for and the goals Member States want to approach within the limits of their abilities.

Brussels, August 2018

**For further information on this position paper, please contact:**

Guido Lena  
 Director for Sustainable Development  
 E-mail: [g.lena@ueapme.com](mailto:g.lena@ueapme.com)