

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

**First-Second draft for discussion with Member States on September 09, 2020**

**Commission guidance in accordance with 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**

## Contents

<b>Part 1: General scope and definitions</b> .....	<b>32</b>
<b>1. INTRODUCTION</b> .....	<b>32</b>
<b>2. GENERAL TERMS AND DEFINITIONS</b> .....	<b>54</b>
2.1 Plastic definition (Article 3(1)) .....	<b>54</b>
2.1.1 Polymer definition .....	<b>54</b>
2.1.2 Can function as a main structural component of final products .....	<b>65</b>
2.1.3 Natural polymers that have not been chemically modified .....	<b>86</b>
2.2 Single Use Plastic Product (Article 3(2)).....	<b>108</b>
2.2.1 Plastic content: ‘wholly or partly made of plastic’ .....	<b>108</b>
2.2.2 Single-use .....	<b>109</b>
2.2.3 Life span of the product .....	<b>119</b>
2.2.4 Refillable and reusable nature of the product.....	<b>1244</b>
3. Interplay with relevant waste legislation: Directive 94/62/EC .....	<b>1442</b>
ANNEX Overview of SUP products and relevant requirements laid out in the SUP Directive.....	<b>1846</b>
.....	<b>2</b>
INTRODUCTION.....	<b>2</b>
2. GENERAL TERMS AND DEFINITIONS .....	<b>4</b>
2.1 Plastic definition (Article 3(1)) .....	<b>4</b>
2.1.1 Polymer definition .....	<b>4</b>
2.1.2 Can function as a main structural component of final products .....	<b>5</b>
2.1.3 Natural polymers that have not been chemically modified .....	<b>6</b>
2.2 Single Use Plastic Product (Article 3(2)).....	<b>8</b>
2.2.1 Plastic content: ‘wholly or partly made of plastic’ .....	<b>8</b>

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

2.2.2	Single use .....	9
2.2.3	Life span of the product .....	10
2.2.4	Refillable and reusable nature of the product .....	11
3.	Interplay with relevant waste legislation: Directive 94/62/EC .....	12
	ANNEX Overview of SUP products and relevant requirements laid out in the SUP Directive .....	16

DRAFT

## Part 1: General scope and definitions

### 1. INTRODUCTION

This document provides guidance to the Member States on the implementation of 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 (hereafter referred to as the “SUP Directive”)<sup>1</sup>.

Article 12 of the SUP Directive mandates the Commission to develop guidelines, including examples of what is to be considered a single use plastic product for the purposes of the Directive. The focus of these guidelines is on the “single-use plastic products listed in the Annex” (Article 2(1)), with the exception of fishing gear (see section ~~Error! Reference source not found.2.4~~) and products made from oxo-degradable plastic. The objective of these guidelines is to ensure a harmonised implementation of the Directive by providing national authorities and economic operators with technical ~~and legal~~ clarifications, along with illustrative examples, to determine whether a product is considered a single-use plastic product for the purposes of the Directive.

The Guidelines are structured as follows:

- **Part 1** – General terms and definitions, notably in relation to the definition of plastic, plastic product, the concept of single-use and links with ~~Directive on packaging and packaging waste 94/62/EC<sup>2</sup> (hereafter referred to as “PPW Directive”)~~~~the Packaging and Packaging Waste Directive~~.
- **Part 2** – Single-use plastic product definitions and criteria: guidance on defining the single-use plastic products covered by the SUP Directive, including product-specific criteria and illustrative examples.
- **Annex** – Overview of SUP products and requirements.

The SUP Directive applies to all ~~the~~ single-use plastic products listed in the Annex to the Directive, including all products made from oxo-degradable plastics, and fishing gear, containing plastic. The following articles are the most relevant for defining the scope of the SUP Directive:

- Article 2(1) [Scope]:

<sup>1</sup> ~~OJ L 155, 12.6.2019, p. 1~~ ~~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. Legislative text: <https://eur-lex.europa.eu/eli/dir/2019/904/oj>~~

<sup>2</sup> ~~OJ L 365 31.12.1994 p. 10~~

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

*“This Directive applies to the single-use plastic products listed in the Annex, to products made from oxo-degradable plastic and to fishing gear containing plastic.”*

- Article 3(1) [plastic definition]:

*“‘plastic’ means a material consisting of a polymer as defined in point 5 of Article 3 of Regulation (EC) No 1907/2006, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified”*

- Article 3(2) [definition single use plastic product]:

*“‘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 a producer for refill or re-used for the same purpose for which it was conceived.”*

The SUP Directive targets the single-use plastic products (hereafter: ‘SUP products’) that are most often found in plastic marine litter on European beaches and in oceans (Recital 7). The top ten most commonly found SUP products targeted by this Directive account for 86% of all SUP products in beach litter and are responsible for more than half of plastic marine litter. These SUP products are characterised by their high tendency to becoming marine litter as they are designed to be used just once before being thrown away; and consequently end up as marine litter due to inappropriate disposal, e.g. littered on streets, flushed down toilets. In addition, Article 2 defining the scope of the Directive also includes products made from oxo-degradable plastic, which in Article 3(3) is defined as *“plastic materials that include additives which, through oxidation, lead to the fragmentation of the plastic material into micro-fragments or to chemical decomposition.”*

As stated above, the focus of these guidelines is to provide clarifications on defining the SUP products covered by the Directive (except for fishing gear and products made from oxo-degradable plastic), which are included in its Annex and listed below in alphabetical order:

- Balloons;
- Balloon sticks;
- Beverage containers with a capacity of up to three litres, including their caps and lids;
  - Beverage containers made of expanded polystyrene, including their caps and lids;
  - Beverage bottles with a capacity of up to three litres, including their caps and lids;
- Beverage stirrers;
- Cotton bud sticks;
- Cups for beverages;
  - Cups for beverages made of expanded polystyrene, including their covers and lids;
  - Cups for beverages, including their covers and lids;
- Cutlery (forks, knives, spoons, chopsticks);
- Food containers;
  - Food containers made of expanded polystyrene;
- Lightweight plastic carrier bags;

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

- Packets and wrappers;
- Plates;
- Sanitary towels (pads), tampons and tampon applicators;
- Straws;
- Tobacco products with filters and filters marketed for use in combination with tobacco products;
- Wet wipes.

## 2. GENERAL TERMS AND DEFINITIONS

### 2.1 Plastic definition (Article 3(1))

The definition of **plastic** is provided in Article 3(1):

*“plastic’ means a material consisting of a **polymer as defined in point 5 of Article 3 of Regulation (EC) No 1907/2006**, to which additives or other substances may have been added, and which **can function as a main structural component** of final products, with **the exception of natural polymers that have not been chemically modified**” [Emphasis added]*

Article 3(1) refers to the definition laid out in Regulation (EC) No 1907/2006 (hereafter the “REACH Regulation”) as the starting point and adds further elements to introduce an adapted and a separate definition (Recital 11). Several of the terms and concepts used in Article 3(1) and Recital 11 require further clarification due to the relatively high flexibility in interpretation. As such, the subsequent sections provide guidance on the following key terms:

- “polymer”<sup>4</sup> (see section [3.2.31.1](#));
- “can function as a main structural component of final products” (see section [3.2.13.2](#)); and
- “natural polymers that have not been chemically modified” (see section [3.2.31.3.2](#)).

#### 2.1.1 Polymer definition

The SUP Directive in Article 3(1) refers to the definition of “polymer” in Article 3(5) of the REACH Regulation, which reads as follows:

---

<sup>3</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Legislative text accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907>

<sup>4</sup> In accordance with Article 3(1) of the SUP Directive; and as defined in Article 3(5) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation).



*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

*“polymer: means a substance consisting of molecules characterised by the sequence of one or more types of monomer units. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. A polymer comprises the following:*

*(a) a simple weight majority of molecules containing at least three monomer units which are covalently bound to at least one other monomer unit or other reactant;*

*(b) less than a simple weight majority of molecules of the same molecular weight.*

In the context of this definition a "monomer unit "means the reacted form of a monomer substance in a polymer".

To complement the definition of "polymer" laid out in the REACH Regulation cited above, additional guidance can be drawn from the European Chemicals Agency (ECHA) Guidance for polymers and monomers<sup>5</sup>:

*"A polymer, as any other substance defined in Article 3(1) [of REACH], can also contain additives necessary to preserve the stability of the polymer and impurities deriving from the manufacturing process. These stabilisers and impurities are considered to be part of the substance."*

### 2.1.2 Can function as a main structural component of final products

~~Assuming that the final product placed on the market contains a polymeric material, it is~~ necessary to determine whether ~~that a~~ polymeric material can function as a main structural component of a final ~~product~~products.

In many production processes of materials other than plastic, some polymers are used ~~in ancillary functions~~ to achieve specific material properties as well as higher process efficiencies. Those polymeric materials are usually synthetic chemical additives. Such polymeric materials used ~~e.g. as "speciality chemicals", "retention agents or binders, and processing aids in ancillary functions~~ in production processes of materials are to be seen as not able to function as a main structural component in final products.

An illustration with regard to paper- and board-based products is provided because they have been specifically assessed for their potential to be seen as a sustainable alternative to single-use plastic products in the preparation of the legislative proposal for the DirectiveImpact Assessment<sup>6</sup>. Paper-/board-based single use products would generally not be considered as single use plastic products made up of only paper- and board-based material in view of the above considerations. However, a

<sup>5</sup> European Chemicals Agency (2012). Guidance on polymers and monomers. Section 3.2.1.3. Retrieved from: [https://echa.europa.eu/documents/10162/23036412/polymers\\_en.pdf/9a74545f-05be-4e10-8555-4d7cf051bbed](https://echa.europa.eu/documents/10162/23036412/polymers_en.pdf/9a74545f-05be-4e10-8555-4d7cf051bbed)

<sup>6</sup> SWD(2018) 254 final, Part 3/3, Commission Staff Working Document Impact Assessment Reducing Marine Litter: action on single use plastics and fishing gear Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment.

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

polymeric coating or lining that is applied to the surface of paper-/board material for the purposes of the final product to provide ~~additional~~ resistance against water and fat is to be considered as able to function as a main structural component as it provides the necessary water and fat resistance to paper-based products for the consumption of beverages (cups) or moist and fat containing food (food containers, plates). Plastic coating and lining of otherwise paper- ~~or board~~-based products for the purpose of the Directive is seen as creating multi-layered products. ~~A clear~~ indication that the legislator intended to include plastic coatings and linings within the scope of the SUP Directive is that the exemption for coatings, which was included in Recital 8 of the Commission proposal<sup>7</sup>, has been deleted by the legislators from the corresponding Recital 11 of the final text of the Directive.

Another illustration is composite beverage packaging that generally consists of several layers of paper, polymeric and aluminium for the purpose of providing the required technical properties of the beverage carton, include oxygen and water barriers that therefore should be considered as able to function as a main structural component.

Paper-based products without a plastic lining or coating have been identified as an available and more sustainable alternative to single-use plastic products ~~in the Impact Assessment~~<sup>8</sup>. In contrast, for example, paper cups with a plastic layer have not been identified as single-use non plastic alternative option, as they are described in the Impact Assessment as not plastic free and therefore no marketing restriction was introduced for single-use plastic cups. Furthermore, single-use plastic plates are subject to marketing restriction in the SUP Directive, because paper- ~~or board-based~~ plates without a plastic lining or coating are available as a single-use non plastic alternative.

~~Another illustration is composite beverage packaging that generally consists of several layers of paper, polymeric layer and aluminium layer for the purpose of providing the required technical properties of the beverage carton, include oxygen and water barriers that therefore should be considered as able to function as a main structural component.~~

In addition, some applications of polymeric material- that ~~have clear ancillary functions and~~ cannot function as a main structural component of final products, ~~like namely~~ paints, inks and adhesives, are explicitly excluded from the scope of the Directive as referred to in Recital 11 and therefore should not render a final product to which they are applied to a single-use plastic product under this Directive.

#### **Table 1 Characteristics of paints, inks and adhesives**

---

<sup>7</sup> COM(2018) 340 final Commission Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment, 28.5.2018

<sup>8</sup> SWD(2018) 254 final, Part 3/3, Commission Staff Working Document Impact Assessment Reducing Marine Litter: action on single use plastics and fishing gear Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment, pp. 29-31.

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

These polymeric materials have the following specific characteristics:

Paint: pigmented material which forms an opaque film with decorative, protective or other technical properties

Inks: component which forms print designs on materials once applied

Adhesives: compound which adheres or bonds substances together.

### 2.1.3 Natural polymers that have not been chemically modified

The exemption laid out in Article 3(1) for “natural polymers that have not been chemically modified” is further clarified in Recital 11:

*“Unmodified natural polymers, within the meaning of the definition of ‘not chemically modified substances’ in point 40 of Article 3 of Regulation (EC) No 1907/2006..., should not be covered by this Directive as they occur naturally in the environment. Therefore, for the purposes of this Directive, the definition of polymer in point 5 of Article 3 of Regulation (EC) No 1907/2006 should be adapted and a separate definition should be introduced” [Emphasis added]*

*“Plastics manufactured with modified natural polymers, or plastics manufactured from bio-based, fossil or synthetic starting substances are not naturally occurring and should therefore be addressed by this Directive. The adapted definition of plastics should therefore cover polymer-based rubber items and bio-based and biodegradable plastics regardless of whether they are derived from biomass or are intended to biodegrade over time” [Emphasis added]*

While the term “natural polymer” is not specifically defined in the SUP Directive, there is a clear reference to the REACH Regulation for the term “that have not been chemically modified”. In order to ensure harmonious interpretation of the exception provided in Article 3(1) of the SUP Directive for “natural polymers that have not been chemically modified”, it is essential to establish a common understanding of “natural polymers” in relation to “that have not been chemically modified”. These terms are further described below.

#### - Natural polymers

~~While there is no universally agreed definition for “natural polymer”, the term ‘natural polymer’ has been defined within the ECHA Guidance for monomers and polymers and monomers (hereafter referred to as “ECHA Guidance”) as follows:~~

*“Natural polymers are understood as polymers which are the result of a polymerisation process that has taken place in nature, independently of the extraction process with which they have been extracted.”*



*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

*“This means that natural polymers are not necessarily ‘substances which occur in nature’ when assessed according to the criteria set out in Article 3(39) of the REACH Regulation.” [Emphasis added]*

~~The ECHA Guidance refers to Article 3(39) of the REACH Regulation with respect to defines “substances which occur in nature” as follows:~~

*“substances which occur in nature: means a naturally occurring substance as such, unprocessed or processed only by manual, mechanical or gravitational means, by dissolution in water, by flotation, by extraction with water, by steam distillation or by heating solely to remove water, or which is extracted from air by other means.” [Emphasis added]*

~~First and foremost, it is essential to underline the fact that the terms “naturally occurring substance” and “natural polymer” and “naturally occurring substance” are two distinct terms and should not be confused. The key distinction relates to the extraction methods allowed. The scope of the former (natural polymers) refers to a broader group, independent of the extraction method used to extract the substance from nature.~~

~~“Natural polymers” as laid out in the ECHA Guidance are the result of a polymerisation process that has taken place in nature, independent of the extraction process with which they have been extracted, whereas “substances which occur in nature” as laid out in REACH, Article 3(39) refer to a specific and limited range of extraction methods. Furthermore, it should also be noted that Article 3(39) of the REACH Regulation is not directly referred to in the SUP Directive as such.~~

~~The distinction between “natural polymers” and “substances which occur in nature” is important. The scope of the former (natural polymers) refers to a broader group, independent of the extraction method used, while the scope of the latter (substances which occur in nature) is restricted to a given range of extraction methods.~~

Based on REACH Regulation and ECHA guidance, ~~under the registration obligations under REACH,~~ polymers produced via industrial fermentation process are not considered ‘natural polymers’ since polymerisation has not taken place in nature. In order to align the implementation of the SUP Directive, the same interpretation of the term ‘natural polymer’ should be applied. Therefore, polymers resulting from biosynthesis through artificial cultivation and fermentation processes manufactured in industrial settings, e.g. polyhydroxyalkanoates (PHA), should not be considered natural polymers which have resulted from a ‘polymerisation process that has taken place in nature’.

- **Not chemically modified**

Recital 11 of the SUP Directive explains that the term “not chemically modified substances” should be understood in accordance with Article 3(40) 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 term “not been chemically modified” (SUP Directive, Article 3(1)), with regard to natural polymers, has to be interpreted as follows: the decision whether a polymer has been chemically

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

modified or not should look only at the difference between the ingoing and final polymer, disregarding any modifications which might have happened during production processes, ~~but which are reverted~~. If ingoing and final polymer have the same chemical structure ~~and approximately the same molecular weight distribution~~, they are considered to be the same. This means that regenerated cellulose, e.g. in form of viscose and lyocell, is not included in the SUPD, as the resulting polymer is not chemically modified compared to the ingoing polymer, however cellulose acetate is included in the SUPD, as chemical modifications compared to the ingoing natural polymer cellulose remain at the end of the process.

## 2.2 Single Use Plastic Product (Article 3(2))

**Article 3(2)** of the SUP Directive provides the following definition for “single-use plastic product”:

*“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;**” [emphasis added]*

### 2.2.1 Plastic content: ‘wholly or partly made of plastic’

**Article 3(2)** of the SUP Directive provides the following definition for “single-use plastic product”:

*“a product that is made **wholly or partly** from plastic (...)” [emphasis added]*

Single-use plastic products listed in the Annex of the Directive fall within its scope also if they are made partly from plastic, regardless of the amount of plastic contained. The Directive does not envisage any *de minimis* threshold for the plastic content in a product. This aspect of Article 3(2) has to be interpreted in close connection with the definition of plastic in Article 3(1) (see paragraph 2.1).

### 2.2.2 Single-use

**Article 3(2)** of the SUP Directive provides the following definition for “single-use plastic product”:

*“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;**” [emphasis added]*

**Recital 12** of the SUP Directive provides further clarification for the interpretation of “single-use”:

*“... Single-use plastic products are typically intended to be used just once or for a short period of time before being disposed of.”*

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

It is also important to note the cumulative nature of the terms as Article 3(2) requires that the product should be neither **conceived nor designed nor 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/ 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.

This section provides further clarification of the following terms used for distinguishing between single and multiple-use products:

- “life span”
- “multiple trips or rotations by:
  - being returned to a producer for **refill**”
  - being “**re-used** for the same purpose for which they are conceived”

Interpretation of these terms is based on **product design characteristics**, which indicate whether the final product has been purposely conceived, designed or placed on the market for single or multiple use. Design characteristics can vary widely at product-specific level, but in general include specifications such as **shape, weight, dimension, durability, functionality, and intended use**.

Additional characteristics may also include anticipated performance and technical aspects, such as the expected number of times the product can be used; expected number of washing or dishwasher cycles; ease of use features, etc. Further guidance on distinguishing between single and multiple-use at product-specific level are provided in Part 2 of the Guidelines in relation to the specific product categories.

### 2.2.3 Life span of the product

**Life span** generally refers to *the length of time for which something exists*<sup>9</sup>. In the context of the SUP Directive, the “life span” of a product can be understood as the interval anticipated by the manufacturer in view of the specific product design characteristics, starting from when the product is placed on the market until final disposal; during which time the product remains ‘usable’ i.e. technically and physically able to carry out the primary intended function for which it was originally conceived, designed and placed on the market taking into account normal use and care of the product and likely consumer behaviour. As such, a product’s life span excludes recycling activities as they ~~would~~ occur after disposal.

Contrary to multiple-use products, single-use plastic products are generally characterised by short life spans. Specific ~~product~~-durability aspects of the product design allow them to be used “just once” or for “a short period of time”, after which the product can no longer fulfil its original purpose at the same level of intended performance. ~~In this context, it is important to note that the intended life span of a product may not always reflect how it is used in practice, taking account of real life~~

<sup>9</sup> Derived from Cambridge Dictionary definition of “lifespan”: <https://dictionary.cambridge.org/dictionary/english/lifespan>

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

~~consumer behaviour<sup>10</sup>. As such, the intended product life span is not necessarily the same as a product's actual service life i.e. the time that the product is used between point of sale and point of discard.~~

~~Product life span is closely linked to the concept of how durable the product is. A product can be defined as durable if it is: "able to be used and re-used without becoming damaged or weaker"<sup>11,12</sup>. A study<sup>13</sup> carried out for the European Commission, DG ENV, defines product durability as follows:~~

~~"Durability is the ability of a product to perform its function at the anticipated performance level over a given period (number of cycles – uses – hours in use), under the expected conditions of use and under foreseeable actions".~~

Examples of product design characteristics indicating a life span that is intended for more than a single use include the ability of products to withstand multiple cleaning cycles between uses i.e. for food hygiene purposes. For some products the number of dishwasher cycles that the product was proven to withstand under the technical conditions applied during testing and calibration of the devices<sup>14</sup>, is mentioned on the product itself.

In this context, it is important to note that the intended life span of a product may not always reflect how it is used in practice, taking account of real-life consumer behaviour<sup>15</sup>. As such, the intended product life span is not necessarily the same as a product's actual service life i.e. the time that the product is used between point of sale and point of discard.

Product-specific characteristics related to life span are considered in the Part 2 of these guidelines in relation to specific product categories.

## 2.2.4 Refillable and reusable nature of the product

In accordance with Article 3(2) of the SUP Directive, a single use product is 'a product... that is not

<sup>10</sup> Brook Lyndhurst (2011). Public understanding of product lifetimes and durability. Research report carried out for UK Department for Environment, Food and Rural Affairs

<sup>11</sup> Derived from the Cambridge Dictionary definition of "durable": <https://dictionary.cambridge.org/dictionary/english/durable>

<sup>12</sup> Derived from the Collins Dictionary definition of "durable": <https://www.collinsdictionary.com/dictionary/english/durable>

<sup>13</sup> Ricardo (2015). The Durability of Products Standard assessment for the circular economy under the Eco-Innovation Action Plan. Report for European Commission, DG Environment. Retrieved from: [http://publications.europa.eu/resource/cellar/6c325b55-7352-11e5-86db-01aa75ed71a1.0001.01/DOC\\_1](http://publications.europa.eu/resource/cellar/6c325b55-7352-11e5-86db-01aa75ed71a1.0001.01/DOC_1)

<sup>14</sup> As defined in the relevant design standard EN 12875 Part 1, which specifies a test method to assess the resistance of domestic articles made from materials, including plastic, against the combined chemical, thermal and mechanical stresses of mechanical dishwashing in domestic dishwashers. This standard has also been considered by the French Ministry of the Environment as an appropriate indication that a cup, a glass or a plate can be considered reusable: Ministère de la Transition écologique et solidaire. (2017). Questions / Réponses sur la limitation des gobelets, verres et assiettes jetables de cuisine pour la table en matière plastique. Retrieved from: [https://www.ecologique-solidaire.gouv.fr/sites/default/files/FAQ\\_vaisselle\\_jetable\\_VF\\_Juin2017.pdf](https://www.ecologique-solidaire.gouv.fr/sites/default/files/FAQ_vaisselle_jetable_VF_Juin2017.pdf) It should be noted that this document consists in guidance to the implementation of national regulations and has no legal value.

<sup>15</sup> Brook Lyndhurst (2011). Public understanding of product lifetimes and durability. Research report carried out for UK Department for Environment, Food and Rural Affairs



*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

conceived, designed or placed on the market to accomplish, within its lifespan, multiple trips and rotations by:

- being returned to a producer for refill; or
- reused for the same purpose for which it was conceived.’

To identify the criteria for determining which products comply with these conditions and are thus not to be considered ‘single use’, inspiration is drawn from the PPWackaging and Packaging Waste Directive, in particular from the definition of “reusable packaging” and the relevant part of the essential requirements for ‘reusable packaging’. Under Article 3(2a) PPW\_Directive, “reusable packaging shall mean packaging which has been conceived, designed and placed on the market to accomplish within its lifecycle **multiple trips or rotations by being refilled or reused for the same purpose for which it was conceived**”.

Whereas under the reusable packaging definition “refill” is considered as a part of **re-use**, in the context of the SUP\_Directive the two concepts are mentioned separately, with no reference to the need of ‘being returned to a producer’ in the case of re-use (see also explanation below).

Under Annex II PPW\_Directive, which sets out the essential requirements for packaging, reusable packaging should, among others, have “**physical properties and characteristics**”, which “enable a number of trips or rotations in **normally predictable conditions of use**”. Detailed conditions for compliance with these conditions are specified in the harmonized standard EN 13429:2004 Packaging - Reuse. The product requirements listed in that standard for considering the reusable nature of packaging include<sup>16</sup>:

- Intention that the package is reused (i.e. *purposely designed, conceived and placed on the market*);
- Design of the package enables to accomplish a number of trips or rotations;
- The package can be emptied/unloaded without significant damage, and without risk to the integrity of the product, and health and safety;
- The package can be reconditioned, cleaned, washed, repaired, whilst maintaining its ability to perform its intended function;
- Arrangements are in place to make reuse possible, i.e. a re-use system is set up and operational.

One of the conditions is that a reuse system for refill/reloading is in operation. Such a system could include postal or courier packaging or drop-boxes in store. In a functioning refill system, the product’s functionality, physical capacity and quality are not modified by the producer and/or distributor between refills<sup>17</sup>.

---

<sup>16</sup> Part C

<sup>17</sup> National Law Review (2019). The New EU Single-use Plastics Directive EU to Adopt Law on the Reduction of the Impact of Certain Plastic Products on the Environment. Retrieved from: <https://www.natlawreview.com/article/new-eu-single-use-plastics-directive-eu-to-adopt-law-reduction-impact-certain>



*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

However, whereas the standard requires such a system to be in place for packaging to be considered 'reusable', the SUP Directive only refers to such arrangements for refill<sup>18</sup>, and not as regards 're-use'. This implies that 're-use by a consumer', *without* the product being returned to a system for refill/reloading, would be sufficient in the context of the SUP Directive not to qualify a product as 'single-use', provided it is re-used for the same purpose as for which it was conceived/ designed. In this case the characteristics of the product related to its conception and design are particularly important.

A food contact material conceived, designed and placed on the market to accomplish, within its lifespan, multiple trips and rotations through re-use by a consumer has to be clearly marked with instructions for consumers on the requirements for re-use to ensure food safety and hygiene.

It is noted that reuse systems for the service of food and drinks implemented and managed effectively by operators may provide a more consistent assurance that the reusable items (e.g. cups, containers and cutlery) are properly sanitized to guarantee hygiene, protect public health and ensure customer and employee safety.

Further product-specific characteristics related to re-use/multiple-use (as opposed to 'single-use') are provided in Part 2 of these Guidelines.

### 3. Interplay with relevant waste legislation: Directive 94/62/EC

Further clarification is needed to identify single use plastic products covered by the SUP Directive that are also considered packaging as defined in Article 3(1) of the ~~PPWackaging and Packaging Waste~~ Directive<sup>19</sup>. Those products need to comply with the requirements in both Directives.

As stated in recital 10 of the SUP Directive, in the event of conflict between the two Directives, the SUP Directive ~~should~~ shall prevail. That is the case for restrictions on placing on the market. As regards consumption reduction measures, product design requirements, marking and extended producer responsibility, the SUP Directive supplements the ~~PPWackaging and Packaging Waste~~ Directive.

An overview of these products, as well as the SUP products that do not constitute "packaging", is provided in ~~Error! Reference source not found.~~ Table 2.

<sup>18</sup> According to the Ellen McArthur Foundation, there are two standard 'return to producer' refill systems available:

- "return from home" where packaging is collected directly from the consumer, refilled by the producer and returned to the consumer; and
- "return on the go" where consumers return the product for refill via a store or drop-off location.

<sup>19</sup> Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

**Table 12:** SUP products that do and do not constitute packaging under the PPW Directive

SUP products that constitute packaging	SUP products that DO NOT constitute packaging
<ul style="list-style-type: none"> <li>• Filled food containers; beverage containers, beverage bottles and cups for beverages, packets and wrappers, lightweight plastic carrier bags and plates (fulfilling criterion (i) of Article 3(1) of the PPW Directive)</li> <li>• Food containers, beverage containers, beverage bottles, cups for beverages, packets and wrappers and plates placed on the market empty but intended to be filled at the point of sale (fulfilling criterion (ii) of Article 3(1) of the PPW Directive)</li> <li>• Caps, lids, covers, straws, stirrers and other types of packaging components and ancillary elements, when they form an integral part of the packaging (fulfilling criterion (iii) of Article 3(1) of the PPW Directive)</li> </ul>	<ul style="list-style-type: none"> <li>• Cutlery, straws and stirrers as they do not typically perform a packaging function (not fulfilling criterion (iii) of Article 3(1) of the PPW Directive)</li> <li>• Empty receptacles, including food containers, beverage containers and beverage bottles (including their caps and lids)<sup>20</sup>, cups for beverages (and their covers and lids), that are placed on the market empty and not intended to be filled at the point of sale (not fulfilling criterion (ii) of Article 3(1) of the PPW Directive)</li> <li>• Products that do not constitute packaging by default:               <ul style="list-style-type: none"> <li>○ Cotton bud sticks</li> <li>○ Balloons</li> <li>○ Sanitary towels (pads), tampons and tampon applicators</li> <li>○ Wet wipes</li> <li>○ Tobacco products with filters, and filters marketed for use in combination with tobacco products</li> </ul> </li> </ul>

The SUP products that do not constitute packaging are only subject to the requirements of the SUP Directive, even though they may have similar functionalities or properties to packaging.

<sup>20</sup> Food containers, beverage containers and beverage bottles that are placed on the market empty and not intended to be filled at the point of sale are included in the scope of SUP as according the product definitions (see part C), the products are “used” to contain respectively food and beverage

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

**Table 3: Overview of provisions of SUP Directive and PPW Directive that apply to certain SUP products**

Product category	Marking requirements		Market restriction		Consumption reduction		Product design requirements		Extended producer responsibility (EPR)		Separate collection		Awareness raising	
	SUPD	PPWD	SUPD	PPWD	SUPD	PPWD	SUPD	PPWD	SUPD	PPWD	SUPD	PPWD	SUPD	PPWD
Food containers			X**		X				X	X			X	X
Cups for beverages*	X	X	X**		X				X	X			X	X
Packets and wrappers									X	X			X	X
Beverage containers*							X	X	X	X			X	X
Beverage bottles*							X	X	X	X	X		X	X
Plates			X											
Lightweight carrier bags						X			X	X			X	X

\*Including their caps, lids and covers.

\*\* Food containers and cups for beverages (including their caps and lids) are subject the requirements of Article 4 of the SUP (on consumption reduction measures) which

**This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.**

---

states that “Member States may impose marketing restrictions in derogation from Article 18 of Directive 94/62/EC for the purposes of preventing such products from becoming litter in order to ensure that they are substituted with alternatives that are re-usable or do not contain plastic”.

DRAFT

EN

EN

**This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.**

## ANNEX Overview of SUP products and relevant requirements laid out in the SUP Directive

**Table 3: SUP products listed in Annex and relevant product descriptions**

SUP products	Annex of SUPD and requirements		Product descriptions
Balloons	Part E	EPR (Art. 8(3))	Annex, Part EII(2)
	Part G	Awareness raising (Art. 10)	Annex, Part G(7)
Balloon sticks	Part B	Restrictions on placing on the market (Art. 5)	Annex, Part B(6)
Beverage bottles ≤ 3L, including their caps and lids	Part C	Product requirements (Art. 6(5))	Annex, Part F
	Part F	Separate collection (Art. 9)	
Beverage containers ≤ 3L, incl. their caps and lids	Part C	Product requirements (Art. 6(1) to (4))	Annex, Part C
	Part E	EPR (Art. 8(2))	Annex, Part EI(3)
	Part G	Awareness raising (Art. 10)	Annex, Part G(3)
Beverage containers made of expanded polystyrene, incl. their caps and lids	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided
Beverage stirrers	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided
Cups for beverages	Part D	Marking requirements (Art. 7)	
Cups for beverages, incl. their covers and lids	Part A	Consumption reduction (Art. 4)	No product-specific descriptions provided
	Part G	Awareness raising (Art. 10)	
	Part E	EPR (Art. 8(2))	
Cups for beverages made of expanded polystyrene, incl. their covers and lids	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided
Cotton bud sticks	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided
Cutlery (forks, knives, spoons, chopsticks)	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided



***This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.***

SUP products	Annex of SUPD and requirements		Product descriptions
Food containers	Part A	Consumption reduction (Art. 4)	Annex, Part A(2)
	Part E	EPR (Art. 8(2))	Annex, Part EI(1)
	Part G	Awareness raising (Art. 10)	Annex, Part G(1)
Food containers made of expanded polystyrene	Part B	Restrictions on placing on the market (Art. 5)	Annex, Part B(7)
Lightweight plastic carrier bags	Part E	EPR (Art. 8(2))	Article 3(1c) of Directive 94/62/EC <sup>21</sup>
	Part G	Awareness raising (Art. 10)	
Packets and wrappers	Part E	EPR (Art. 8(2))	Annex, Part EI(2)
	Part G	Awareness raising (Art. 10)	Annex, Part G(2)
Plates	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided
Sanitary towels (pads), tampons and tampon applicators	Part D	Marking requirements (Art. 7)	No product-specific descriptions provided
	Part G	Awareness raising (Art. 10)	
Straws	Part B	Restrictions on placing on the market (Art. 5)	No product-specific descriptions provided
Tobacco products with filters and filters marketed for use in combination with tobacco products	Part D	Marking requirements (Art. 7)	Article 2(4) of Directive 2014/40/EU (tobacco products) <sup>22</sup>
	Part E	EPR (Art. 8(3))	
	Part G	Awareness raising (Art. 10)	
Wet wipes	Part D	Marking requirements (Art. 7)	Annex, Part D(2)
	Part E	EPR (Art. 8(3))	Annex, Part EII(1)
	Part G	Awareness raising (Art. 10)	Annex, Part G(6)

<sup>21</sup> European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste Legislative text: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:31994L0062>

<sup>22</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC Text with EEA relevance. Legislative text : [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2014\\_127\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_127_R_0001)

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the European Commission. The information transmitted is intended only for the Member State or entity to which it is addressed for discussions and may contain confidential and/or privileged material.*

DRAFT