

## Feedback

# Proposal on limiting the impact of certain plastics products on the environment



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2017, directly supports more than 4.7 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Introduction

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the European Commission's proposal aiming to reduce the impact of single-use plastic (SUP) products on the environment. Our members are already moving towards a circular economy through more sustainable product design and manufacturing processes, responsible sourcing of raw materials, engaging in partnerships to improve waste management and contributing to Extended Producer Responsibility (EPR) schemes. Examples of how our members introduced circular business models and practices are included in our [Circular Economy brochure](#), which draws from various sectors such as IT, aviation, oil refining, packaging, healthcare, construction equipment and tyres.

More can be done through various voluntary and legislative initiatives, such as the SUP proposal. However, legislators need to understand that discussions on the proposed policy options require close collaboration with business and broader stakeholders. These policies need to facilitate, rather than hinder, sustainable business solutions. In that respect, we share the following observations and recommendations.

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## Better Regulation

The timing and the scope of the SUP proposal within the context of packaging are problematic. The Waste Framework Directive (WFD) and Packaging & Packaging Waste Directive (P&PWD) have recently been finalised and are just starting to be transposed into Member State national law. Their impact on the packaging regulatory landscape can only be properly evaluated once they have been fully implemented and applied. Adding a further layer of legal provisions on packaging, prior to such an evaluation, is contrary to the principles of Better Regulation and Better Law-Making.

In addition, the need to transpose the SUP proposal into national law may delay and complicate the transposition of WFD and P&PWD. Neither the inception impact assessment, nor the public consultation addressed all the restrictions now proposed. Moreover, the Commission did not effectively consult on the use of EPR for most of the product categories now included in part E of the Annex and therefore is at odds with its own objectives within the Better Regulation guidance.

**Recommendation: The packaging regulatory landscape needs to adapt to recent changes introduced by the WFD and the P&PWD. Steps will be necessary to ensure that the adoption, transposition and implementation of the SUP directive does not interfere with this.**

## Internal Market

The legal basis of the P&PWD is TFEU Article 114 (Internal Market), while the one of the proposed SUP Directive is TFEU Article 192 (Environment). This may give rise to confusion, complexity and conflict in interpretation. Up to now, the P&PWD provided harmonised legal provisions on packaging and has been the *lex specialis* (the prime law governing specific matters in relation to packaging). With the introduction of the proposed SUP Directive, this certainty will be lost for those packaging elements listed in its various annexes. The added layer of complexity and the lack of legal certainty risks the distortion of the internal market for packaged goods as previously guaranteed under Article 18 of the P&PWD. A concrete example of this fragmentation is already

evident within the proposed text. The marking requirements under Article 7 provide EU Member States with the flexibility to choose between 5 different options<sup>1</sup>.

**Recommendation: Ensure legal certainty and preserve the internal market for packaged goods by avoiding additional layers of complexity. This requires explicit clarification of the respective scope of provisions where any overlap exists.**

## Packaging Design Criteria

The introduction of prescriptive packaging design requirements with the SUP proposal (i.e., Article 6) is inconsistent with the required pending review of the 'Essential Requirements' (ERs) within the revised P&PWD. The P&PWD is the *lex specialis* for packaging and the ERs provide guidance for all packaging. Compliance with the ERs a condition of the free movement of packaged goods under Article 18 of the P&PWD.

**Recommendation: The final SUP directive should not deviate from the agreed measures and approaches in the recently revised P&PWD. This includes the primacy of the P&PWD in terms of packaging design requirements and free movement of packaged goods. Article 6 should be amended accordingly to properly acknowledge the primacy of the P&PWD in respect of packaging design or, failing that, deleted entirely.**

## Inconsistency with the circular economy concept and Plastics Strategy

Current initiatives strive to make products circular by making them, amongst other things, more recyclable. This is one of the key objectives of the Commission's Plastics Strategy. Industry has committed to the strategy and is investing heavily in the circular economy. By contrast, this notion is mostly absent from the SUP proposal. Recyclable and recycled products would not escape the restrictions. This runs contrary to the Council conclusions on 'Delivering on the EU Action Plan for the Circular Economy', adopted on 25 June, which correctly recalled '*that an increased recycling capacity in the EU will contribute to a decrease in plastic pollution*' (para. 4). Fostering the development of both environmentally and economically sustainable, comprehensive solutions for increased recycling in the EU, which could be implemented elsewhere, would help address the global impact of marine litter.

**Recommendation: Include a reference to recycling targets, such as those in the P&PWD, in the definition of single-use-product.**

## Routes of Exposure

Given the central role of beach litter surveys in determining the scope of the proposed measures, it is necessary to understand the actual routes of exposure of marine litter. Many of the items listed are source-specific indicators of sewage pollution and arise from either a lack of wastewater treatment infrastructure or the overuse of storm-sewage overflows (SSO). Enforcement of the Urban Waste Water Treatment Directive (UWWTD) would help prevent contamination of the types of litter highlighted as well as the concurrent chemical and microbial contamination of surface waters. The associated expense of fully implementing the UWWTD has been

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<sup>1</sup> Article 7 Marking Requirements: '.....one or more of the following: (a) appropriate waste disposal options for the product or waste disposal means to be avoided for that product, (b) the negative environmental impacts of littering or other inappropriate waste disposal of the products, or (c) the presence of plastics in the product' (emphasis added).

highlighted by the Commission as problematic. However, cost has never been an acceptable rationale for non-enforcement of EU law. This need to focus on further developing wastewater treatment infrastructure is also recognised in the recent G7 Ocean Plastics Charter<sup>2</sup> signed by the EU and several Member States (i.e., France, Germany, Italy and the UK).

**Recommendation: Ensure the proper enforcement of the provisions on wastewater treatment infrastructures and operation of storm-sewage overflows (SSO) within the UWWTD.**

## Proportionality of EPR

The minimum requirements for EPR schemes under Article 8a of the revised WFD limits producer obligations to those operations designed to meet EU targets as well as ‘*other quantitative targets and/or qualitative objectives*’ set by the Member States. As stated above, this new proposal would create multiple, partly overlapping but different EU EPR regimes (e.g. for packaging and now SUP products), which will result in confusion. Furthermore, as Parliament and Council have recently expressed in the revised Waste Directive (EU2018/831);

*‘The fight against litter should be a **shared effort** between competent authorities, producers and consumers. Consumers should be incentivised to change their behaviour including through education and awareness raising, while producers should promote the sustainable use of and contribute to appropriate end-of-life management of their products.’ [recital 34]*

This should not cover the cost for litter clean-up as the consequences of the actions of uninformed consumers/citizens and inadequate waste management provisions beyond the direct control of producers. Obliging producers to take sole responsibility is therefore directly contrary to the principle of ‘shared responsibility’ recently enshrined within Directive EU/2018/851. Any obligation for producers to cover litter clean-up costs can therefore only be proportional to the roles and responsibilities of all actors in the value/waste chain.

In many EU Member States, littering will be illegal. Better enforcement is required and fines could be increased (e.g., high on-the-spot fines are successful in Singapore and Canada). Likewise, (illegal) discharges of untreated wastewaters with entrained macro-plastics need to be addressed. Any costs imposed upon obligated industries, therefore, need to reflect the reality of the roles and responsibilities of all actors in the value/waste chain. The key role of individual consumers/citizen behaviour cannot be ignored. Industry can and does contribute to awareness raising along with other actors, but cannot be held solely responsible for the illegal acts or omissions of others. Litter is out of the control of producers and needs to be recognised as part of a wider societal problem. It is therefore disproportionate to extend producer responsibility to costs for actions, such as litter clean-up. Public awareness raising measures can be supported by obligated industries along with other actors. This is already the case in a number of countries (e.g., Fost-Plus in Belgium).

Those packaging elements falling within the scope of the SUP directive will already be subject to existing EPR requirements under the P&PWD and WFD. Article 8 of the SUP directive is therefore in conflict with the provisions of the P&PWD and WFD in respect of packaging. The indication that the requirements in Article 8 in some way ‘*supplement*’ these provisions does not provide any clarity. There is also an additional risk that any new requirements on single-use plastics will interrupt or otherwise complicate the successful Member State transposition of EU/2018/815 (revised Waste Directive) and EU/2018/852 (revised Packaging & Packaging Waste

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<sup>2</sup> G7 Charlevoix Blueprint for Healthy Oceans, Seas and Resilient Coastal Communities. Annex on Ocean Plastics Charter: <https://g7.gc.ca/wp-content/uploads/2018/06/OceanPlasticsCharter.pdf>

Directive). This may well delay the entry into force of the legislation and thereby hamper their effectiveness and potential for improvement of waste management.

**Recommendation: Any obligation for producers to cover litter clean-up costs must be proportional to the roles and responsibilities of all actors in the value/waste chain and consistent with existing law. Littering and other sources of environmental exposure of macro-plastics must be better enforced in EU Member States. Conflicts between existing EPR provisions should be avoided, in order to preserve regulatory consistency and clarity.**

## Definitions

The definition of plastics in Article 3 within the proposed SUP Directive encompasses all polymers and does not sufficiently exclude even natural polymers or naturally derived polymers. Whilst all plastics are polymers, not all polymers are plastics. The potential for confusion is high. The reference to polymers *‘that have not been chemically modified’* needs clarification. For example, viscose is not a plastic. It is a man-made fibre derived from plant cellulose (e.g., wood pulp) and retains the same structure as natural cellulose at the end of the manufacturing process<sup>3</sup>.

The definition of a *‘single-use plastic product’* in Article 3(2) is likewise problematic. As currently defined<sup>4</sup> the quasi-totality of packaged goods would fall within the definition of a single-use plastic product, even where packaging is separately collected and recycled under EPR schemes. The proposal introduces an overly broad definition of SUP into EU law that can be applied to an exceptionally high number of plastic products. This is being done regardless of their litter potential or the length of their use phase, during which plastic products serve many EU objectives, such as energy efficiency and avoiding food waste. Some of the product categories in the Annex, which co-determine the scope of the proposal, in particular *‘food containers’*, are also ill-defined, and do not take into account that in particular packaged products can be used in multiple different ways (i.e., dependent on portion/pack size), leading to a vastly diverging risk of littering.

**Recommendation: The definitions need to be further refined to better reflect a more appropriate definition of both plastic<sup>5</sup> and single-use plastic products. This is particularly crucial to protect those firms investing in R&D to develop alternative polymeric materials to plastic (including those that are natural in origin) that are both safe for human use and the environment. Additional criteria to describe those types of food packaging more prone to littering from those more likely to be used and disposed of within the home are necessary.**

<sup>3</sup> Depolymerisation of plant cellulose with alkali sodium hydroxide and carbon disulphide is followed by hydrolysis with sulphuric acid to yield regenerated cellulose fibres identical in structure to natural cellulose.

<sup>4</sup> Article 3(2) Definitions: *“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 reused for the same purpose for which it was conceived;*

<sup>5</sup> Within Article 3(1) in respect of the definition of plastic this might be achieved by the following amendment *‘...with the exception of natural polymers that have not been chemically modified or maintain the same natural composition after modification;*