

Comments from Ireland on first Presidency compromise text on the 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

14 September 2018

Ireland thanks the Presidency for the compromise text proposal on the Commission proposal to tackle single use plastic items and fishing gear and looks forward to working with the Presidency over the coming months to produce workable Directive to tackle these difficult items.

Ireland makes the following updated observations on the revised text (Document 11831/18) subsequent to the Working Party meeting held on the 10th September. Notwithstanding these observations, Ireland would like it noted that we will maintain a scrutiny reservation on the entire text.

Impact Assessment

We previously noted that the justification for action is based on the 10 most common items found on European beaches. The evidence for these figures from the JRC work has not been provided. We understand that this study is now published and wonder if this could be circulated to all Member States?

Article 1 – Objectives

Ireland considers that the phrase “internal market” may need to be defined in Article 3.

It is noted that part of the overall objective of this proposal is to contribute to the efficient functioning of the internal market. Is EU Treaty Article 192 sufficient in this regard or should it also be referenced back to the Packaging Directive which is made under Treaty Article 114?

Article 2 – Scope

As mentioned in our last correspondence, Ireland has no comment at this point in time to make on this Article. However, we would again point out that Industry in Ireland has indicated concerns in relation to the lack of definition and scope of the items listed in the Annex to the proposal.

Article 3 - Definitions

General comments:

- a. As mentioned above, we wonder if a definition of internal market needs to be included.
- b. Furthermore there are a number of items which have very vague definitions in the Annex such as beverage cartons (no reference to size), beverage cups, food containers, packets and wrappers, wet wipes etc. As mentioned above, our industry is concerned about the lack of definition around these items and the definition of single use plastics as mentioned below.

(2) Further to the clarification from the Commission it our understanding that the definition of single use plastics is intimately linked to recital 8 which provides further clarification. However it is also our understanding that the recitals are not legally binding and we would be concerned as to whether this is strong enough basis to clarify the definition. We listened with interest to the discussion at the recent WPE in relation to mirroring the Packaging Directive and providing examples of items falling within or outside the scope of the definition of single use plastics.

We understand that bio plastic and/or compostable items fall within the definition of “single-use plastic product” and furthermore we now understand that tetrapack also falls within the definition. We would be grateful for absolute clarification on this.

(3) and (4) Fishing gear and waste fishing gear – we note that neither definition mentions plastics although is referenced in the recitals. Perhaps a reference to plastics should be inserted to provide further clarity.

(5) and the deleted (6) Placing on the market and making available on the market. Further to the recent discussion on this, we are of the opinion that consideration should be given to our previous suggestion to use the example of the F gas Regulation which combined both. The relevant text of that regulation is quoted below for information:

“‘placing on the market’ means supplying or making available to another party in the Union for the first time, for payment or free of charge, or using for its own account in the case of a producer, and includes customs release for free circulation in the Union;”

Furthermore the issue of customs codes as discussed at the meeting is addressed in the implementation of this Regulation and more information can be provided.

(10) We wonder if the definition of “producer” gives rise to a potential conflict between this Directive and the Packaging Directive, given that the latter does not contain such a definition and the SUP proposal includes some packaging items? In addition, in light of the proposal to expand the definition, additional text may be required to clarify that “the natural or legal person who professionally develops, manufacturers, treats, fills, sells or imports” is placing their product on the EU market. For example, a manufacturer could potentially develop a single use plastic product within the EU for markets out of EU.

Article 4 – Consumption Reduction

Ireland noted the recent discussion on a “sustained reduction” and the clarification from the Presidency that this is based on wording using in other EU Directives specifically the Plastic Bag Directive. However this Directive also places specific reduction targets and timelines which clarifies what is meant by sustained reduction which is not the case here. We note that the Commission will be obliged to adopt an implementing act and must ensure the ambition of sustained reduction is equal across all Member States. We believe that a deadline must be inserted for the adoption of this implementing act and the 2 years for Member States to implement these measures should commence following the adoption of the implementation act.

Article 5 – Restrictions on Placing on the Market

As mentioned in our previous correspondence, our Industry has queried whether sufficient time is being afforded to adequately research and guarantee the food safety and quality regulatory standards for alternatives to items restricted from coming onto the market.

Article 6 - Product requirements

6.1 – Industry has expressed concern about the requirement that beverage containers can only be placed on the market if caps and lids remain attached during the products use stage. While it is acknowledged that caps and lids are a significant component of marine litter it is important that whatever action is taken here will facilitate recycling of such items including the caps and lids. It has been suggested that such containers will be more difficult to recycle since the caps and lids are currently different plastic types than the rest of the container.

It is important to coordinate this work with the review of the Essential Requirements and will it be necessary to complete the work on the Essential Requirements before any work on EU wide harmonised standards can commence.

Ireland would, therefore, like clarification on how long the standardisation process is likely to take.

We also consider that the implementation deadline should only commence following the conclusion of the work on the essential requirements and the publication of the relevant standards.

Article 7 – Marking Requirements

While it is acknowledged that the detail of the marking requirements will be worked out with Member States during the development of the implementing act, we are of the opinion that option (a) in 7.1 should possibly be mandatory rather than an option as it is important to inform consumers of “appropriate waste disposal options for the product or waste disposal means to be avoided for that product”. We are also open to mandating all 3 requirements for the produces concerned. We are in agreement with the insertion of the new wording “or their packaging”.

Article 8 – Extended Producer Responsibility

We welcome the proposed split in this revised article between packaging and non-packaging items. However, we share the concerns voiced by some other Member States about the appropriateness of EPR schemes for the non-packaging items listed in point 2 of Part E of the Annex. We believe, that the new provision which does not require producers of these products to collect and pay for the separate collection of these wastes, points to the core of the difficulty with EPRs for these products. It is not possible to organise their separate collection. This leads to many difficulties for an EPR Scheme including not being able to differentiate market share of members and an inability to obtain accurate data be obtained for the purposes of target setting, reporting etc.. As currently envisaged, the proposed EPRs would be established solely for litter and awareness-raising. We are of the opinion that this is not an effective use of the EPR model.

As mentioned previously, industry in Ireland has expressed concern about EPRs being used to cover the cost of litter. In particular, they expressed concern about the proportionality of the requirement in 9.2 to include the cost of litter clean-up in EPR schemes and the proposal should recognise the

shared responsibility approach of all actors including the consumer. Confining this to the items covered by this proposal could be difficult particularly in the case of existing schemes such as for packaging.

We note with interest the Commission's non-paper (WK 10308/2018 INIT) on the link between the SUP Directive and other EU legislation. In particular, it remains unclear to us how the SUP Directive complements the minimum requirements in Article 8a of the WFD. Article 8a(1)(b) does not contain any objectives for EPR schemes in relation to the clean-up of litter and the financial responsibility of the producers to fulfil that objective. In addition, we do not see that Member States have an obligation under 8a(1) to set up litter clean-up obligations for the EPR. We note the reference to the WFD Article dealing with waste prevention, reduction and management under Articles 9(1)(1), 28(3)(f) and 36(1). However, we would suggest that the implementation of these Articles is a matter for individual Member States as part of their Waste Management Planning.

As mentioned before, we question whether a mandatory EPR is the right approach for lightweight plastic bags given that there are already very successful initiatives under way under the 2015 amendment to the Packaging Directive to reduce the consumption of such bags.

In relation to fishing gear, we welcome the introduction of the EPR approach for dealing with this waste stream. Nonetheless, we are of the opinion that not all fishing gear presents the same level of risk. Some nets, such as gill nets or longlines for example, present a high risk to the environment as they are frequently lost, float in the water column and ghost fish, rather than sink; and are often made of monofilament materials.

Article 9 – Separate Collection

As previously outlined, Ireland would like to see the evidence base for the 90% target as the median achieved by deposit and return schemes. Furthermore we would suggest that the article be more closely aligned with Recital 20 which also provides for “any other measures they find appropriate” in the context of how Member States achieve the 90% proposed target separate collection of beverage bottles.

We also believe that further clarification is needed around what exactly is a beverage container as there is no definition in the text. For example are milk and dairy containers included?

Article 10 – Awareness Raising Measures

We would again ask whether these awareness raising measures be left to the discretion of Member States and how will these provisions be enforced?

Article 11 - Coordination of Measures

No observations at this point in time.

Article 12 - Access to Justice

No observations at this point in time.

Article 13 - Information on monitoring of implementation

We would again like clarification as to whether there will be a reference year against which to measure consumption reduction targets and when does this provision come into force?

We support the new text in relation to voluntary EPR measures and believe it complements Article 8(1) of the WFD which allows MS to choose whether an EPR scheme is an appropriate means of dealing with a waste stream.

We believe the reporting requirements under this proposed Directive may be very onerous on Member States. However, more detail on the potential reporting requirements is necessary before further observations can be supplied.

Article 14 - Penalties

No observations at this point in time. However note general concerns below in relation to transposition deadlines.

Article 15 - Evaluation and Review

No observations at this point in time.

Article 16 - Committee procedure

No observations at this point in time.

Article 17 - Transposition

Ireland suggests that the transposition deadlines proposed are challenging, in particular, the establishment of EPR schemes for non-packaging items. Also, ensuring proportionality of penalties for heretofore unchartered grounds is difficult in a short timeframe.