

Comments from Ireland on second 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

03 October 2018

Ireland again thanks the Presidency for the second compromise text on the Commission proposal to tackle single use plastic items and fishing gear.

Ireland makes the following updated observations on the revised text (Document 12269/18) subsequent to the Working Party meeting held on the 28 September. **Notwithstanding these observations, Ireland would like it noted that we will maintain a scrutiny reservation on the entire text.**

Recital 5

Non-plastic fishing gear can also be problematic marine litter. While we note that the directive focuses on plastic it might be useful if recital 5 be amended from “fishing gear containing plastic” to “fishing gear, particularly where it contains plastic” to acknowledge that lost or discarded fishing gear of any type can be harmful.

Recital 8

Recital 8 makes it clear that composite plastics are subject to all measures contained in this proposal. We believe that the addition of the new last sentence in this Recital 8 may cause confusion. It is our understanding that all composite materials including beverage containers are within the scope and subject to the relevant provisions of the proposal. However, the new sentence singles out beverage containers and refers only to Article 6.

Recital 11

Ireland welcomes the new 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

While we did not mention this specifically at the meeting Ireland still 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. We noted with interest the Commission’s presentation on food containers. However, we are concerned that some packaging which has the same design specifications could be viewed as an SUP if used “on the go” and not as an SUP if used in a different context. This could cause difficulties for both enforcement and for reporting quantities placed on the market.
- c. We would ask the Commission to consider giving a similar presentation on their understanding of “beverage containers”. Industry in Ireland has questioned the scope of this term and asked if it includes dairy or other foodstuff such as soups. We would appreciate clarification on this point.

(2) Further to the clarification from the Commission of our understanding that the definition of single use plastics is intimately linked to recital 8 which provides further clarification. We question, however, whether products cannot also be returned to a body other than the producer for refill?

(3) and (4) Fishing gear and waste fishing gear – as mentioned before, we note that neither definition mentions plastics although it 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 previously is addressed in the implementation of this Regulation and more information can be provided.

In the above context, it should be noted that the latest amendment to the term “placing on the market” would appear to be incorrect, as we pointed out at the meeting.

(10) As mentioned before, 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. This differentiation between packaging items is made all the more stark with the addition of (ii). The proposal recognises distance sellers for plastic packaging (which Ireland fully supports) but not for other forms of packaging. Finally, as mentioned at the meeting, Ireland supports the move to align this definition with the WFD.

Article 4 – Consumption Reduction

We welcome the insertion of a deadline for the development of an implementation act. The reporting requirement associated with this provision is new in Ireland and baseline data is not available. It is important that clarity is forthcoming around the Commission’s intentions on timing of this provision in order to enable MS to start gathering the necessary baseline data. In addition, we believe that the timeframe for Member States to implement these measures should commence following the adoption of the implementing 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 being placed on the market.

Article 6 - Product requirements

6.1 – As mentioned above, we would like clarity on the scope of this provision and what is envisaged by the term “beverage container”. 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. In addition, industry has asked us to highlight the disproportionate burden tethered caps might have on small producers / SMEs.

Article 7 – Marking Requirements

Ireland is satisfied with the provisions of the proposed Article 7.

Article 8 – Extended Producer Responsibility

We have previously questioned the use of the EPR schemes for non-packaging items, in particular the items outlined in Part E 2 of the Annex. We note the paper circulated by our Danish colleagues and would suggest it provides a good basis for further discussion and possible re-working of this Article, subject to our comment on light weight plastic bags below. We would re-iterate our concerns in relation to EPR schemes footing the bill for litter clean-up and question the legal basis for it as explained previously. However if there are grounds for litter clean up to be part of EPR scheme costs, we welcome the move for these costs to be a fixed proportionate percentage.

As mentioned before, we also 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.

Article 9 – Separate Collection

Ireland would be anxious to ensure a level playing field for all Member States and recognises that some may have more difficulties than others in achieving the 90% within the original timeframe. Therefore, we welcome the proposed amendment in the interest of fairness to all Member States.

Clarification is required in the text of this Article and Part F of the Annex as to the scope of this provision. In particular, the differentiation envisaged between “beverage container” and “beverage bottle” needs to be expounded.

Finally we thank the Commission for the clarification provided at the meeting on 28 September that “separate collection” includes items collected as part of a co-mingled waste collection model.

Article 10 – Awareness Raising Measures

We would again ask whether these awareness raising measures are to be left to the discretion of Member States and how these provisions will be enforced. We question also use of the term “behavioural insights” in the new text and wonder how it links back to title of the Article which refers to “behavioural change”. To assist the discussion would it be useful for the Commission to provide MS with examples or case studies of what is proposed under this approach?

Article 11 - Coordination of Measures

No observations at this point in time.

Article 12 - Access to Justice

In relation to the Presidency non-paper on this Article circulated in advance of the meeting, (WK 11106/2018) – on the basis that the Aarhus Convention already applies, we do not believe it is necessary to re-state it. Therefore, Ireland confirms that it supports option 2 outlined in the paper.

However, Ireland has no objection to the restatement of the Aarhus Convention principles as is currently in the text.

Article 13 - Information on monitoring of implementation

We welcome the logical change to Article 13(1) and with regard to 13(4) we would draw your attention to our comments under Article 4. 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?

Furthermore we wonder if the Commission intends updating the List of Waste codes to facilitate data collection and reporting on the items covered within the scope of this proposal.

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. Also, ensuring proportionality of penalties for heretofore unchartered grounds is difficult in a short timeframe.

We would have concerns about the prescriptive nature of the agreements as proposed in this Article. However, we will not comment further at this point in time until it is clear how Article 8 will develop.