

Comments from Ireland on third 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

16 October 2018

Ireland again thanks the Presidency for the third 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 12767/18) subsequent to the Working Party meeting held on the 11 October. **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 20

Ireland fully welcomes the acknowledgement in the text that separate collection can include co-mingled collection. However, we question whether the new sentence in this recital could lead to confusion as it references “high-quality recycling in line with the waste hierarchy in accordance with the provisions in Article 10(2) and (3)” of the WFD. These provisions of the WFD apply to all recovery operations and not just recycling.

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

This article states the objective of the proposed Directive. However, this objective differs from the “aim of the Directive” as outlined in the new opening text of the Annex and that of Recital 21 (should this text of this recital remain).

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 Ireland still has concerns in relation to the lack of definition and scope of the items listed in the Annex to the proposal. (See further comments below on Annex).

Article 3 - Definitions

General comments:

- a. We noted with interest the Commission's presentation on food containers. However, we are still 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.
- b. We understand that the Commission will provide a similar presentation on their understanding of "beverage containers". We welcome this development and we look forward to obtaining more clarity on the issue as Industry in Ireland has questioned the scope of this term and asked if it includes dairy or other foodstuff such as soups.
- c. (2) Further to the clarification from the Commission it is our understanding that the definition of single use plastics is intimately linked to recital 8 which provides further clarification. We question again, 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. In addition, we would suggest that "rearing" may not be the best word in 3(3) as it could be open to interpretation. We would suggest that a definition of aquaculture should be included.

(5) and the deleted (6) Placing on the market and making available on the market. We have in our earlier comments provided a definition from the EU F gas regulation which could allow for these 2 terms to be confined. Notwithstanding this, as outlined at the meeting, we consider that should the present definition be retained for "Placing on the market", Member State should be replaced by Union.

(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

This is one of the most important provisions in the proposal and needs to demonstrate a high level of ambition. We are concerned that in the absence of Union wide targets the level of ambition is

being left to Member States. As outlined at the WPE meeting on 11 October, Ireland believes that the level of ambition for reduction targets should be the same for all Member States, if the measure is to have real effect and the success of this Directive depends entirely on all Member States acting unilaterally.

That said, we understand the concern of setting targets in the absence of data. We believe, however, that a possible compromise (as suggested at the meeting) should be considered which would indicate that the provisions contained in this Article be viewed as a transitional arrangement until targets are set during the review in accordance with Article 15.

Ireland suggests that the following amendment to the third paragraph of Article 4(1) be considered as such a compromise:

“In order to comply with the first subparagraph, each Member State shall monitor the products listed in Part A of the Annex placed on the market and the reduction measures taken in accordance with Article 13(1), with a view to informing the Commission’s evaluation on establishing binding targets in accordance with Article 15(3)(b).”

This provision would necessitate a possible amendment to Article 15 which we outline below.

We wonder if the voluntary agreements mentioned in this Article will be subject to the provisions of Article 17 or are they to be left to MS discretion.

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”. We welcome the clarity provided in relation to composite materials. We would like to restate our Industry’s 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 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 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 fully support the current proposal 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.

Finally, as mentioned at the meeting we would not favour the deletion of the last sentence in 2b. We believe that the Commission must publish guidelines on the distribution of cost to clean up litter. If there are no guidelines there is potential for different approaches by MS.

Article 9 – Separate Collection

As mentioned above, the success of this Directive depends entirely on all Member States acting unilaterally and the graded approach to achieving target is sensible for ensuring all MS move towards target at the same rate.

Ireland welcomes the new provision in the proposed Article 9(2). However, we would like clarification on the status of the implementing act being introduced in this provision in light of the clarification in 9(1) which states that MS may use the same calculation method as laid down in Article 6a(1)(a) of the Packaging Directive. The latter will also be the subject of an implementation act that is currently being negotiated but is due for completion by March 2019. We understand that the Commission will look at reformulating this text.

Article 13 - Information on monitoring of implementation

We again ask, again, 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

We suggest that the Commission's evaluation should also include an assessment of whether home compostable products will still be subject to the restrictions of the directive. In order to capture this and further to our comments on Article 4 above, we would suggest the following amendment to Article 15(3):

"3. The report shall also indicate ~~whether~~:

- (a) Whether the Annex listing single-use plastic products needs to be reviewed;
- (b) ~~It is feasible to establish~~ binding quantitative Union targets for the consumption reduction of, in particular, single-use plastic products listed in Part A of the Annex;
- (c) Whether sufficient scientific and technical progress has been made, and criteria or a standard for biodegradability in the marine environment and home composters applicable to single-use plastic products within the scope of this directive and their single-use substitutes have been developed, in order to determine which products no longer need to be subject to the restrictions on placing on the market, where appropriate.

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.

Annex

We have some concerns about the new operational text as outlined earlier as it does not align fully with the stated aims of the Directive as stated in Article 1 and Recital 21. We question whether the explanation at the start of the Annex is robust. In particular "...the item's tendency of being littered..." does not appear to us to be legally binding. We welcome the new text regarding the Commission's obligation to publish guidelines on examples on what is to be considered as single use plastic products. We would prefer if this text were moved to the main body of the Directive. Also, we would suggest that clarity is needed in relation the Commission's obligation, specifically, how those guidelines are to be developed and when they will be available.