

16 April 2021

Excellency,

Important specification on the interpretation of “placing on the market”

Following the Joint industry statement on the implementation of the harmonised marking requirements under Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment co-signed by 20 European and national associations, the undersigned European associations wish to complement it with an *important additional element to uniformly and correctly interpret the definition of “placing on the market”*.

Placing on the market is defined in Article 3 of the SUP Directive as “*the first making available of a product on the market of a Member State*”. The Blue Guide on the implementation of EU products rules defines “making available on the market” as:

*“an offer or an agreement (written or verbal) between two or more legal or natural persons for the transfer of ownership, possession or any other right concerning the product in question after the stage of manufacture has taken place. **The transfer does not necessarily require the physical handover of the product.**”* (Highlighting added by us)

According to this Blue Guide definition, *any order for banned products or unmarked cups placed by a customer with a manufacturer before 3 July 2021 can be delivered at any time after 3 July 2021*, provided that these articles have also been manufactured before 3 July 2021.

By uniformly applying this interpretation in every EU country, manufacturers, distributors and users will be able to *utilize pre-existing stocks to face summer 2021 demand and avoid, at the same time, unnecessary waste*. This would also allow manufacturers to be granted a buffer period in which they will be able to comply with the directive by introducing the marking on their cups while exhausting unmarked stocks. You will be well aware that the considerable delays in finalizing the Commission Regulation (EU) 2020/2151 has, in practice, made it difficult and in many cases impossible for manufacturers to adapt plant and machinery to apply the markings on time.

In addition, deviating from this definition would put national implementing measures in conflict with primary EU law and open to legal challenge.

We are confident that both Member States and the European Commission will act as defenders of the Single Market principle and ensure the free movement of goods across the EU through a uniform implementation of the Directive (EU) 2019/904 according to the established, well accepted legal guidance as contained in the Blue Guide.

In conclusion, we would like to reiterate that the signatories are concerned that many of the provisions of the directive will be difficult to implement in time due to the delays in providing legal clarity.

About the Signatories:



360° Foodservice unites companies that provide reuse and/or single use solutions for safely serving food and beverages to millions of Europeans every day, regardless of the materials that are used. These products play an essential role in ensuring hygiene, public health and consumer and employee safety in the food service sector and have been especially important during the pandemic.



The European Balloon & Party Council represents approximately 50 major balloon & party product manufacturers and distributors across Europe. Our work ranges from helping to improve standards as members of CEN to educating consumers worldwide on the safe and responsible use of our products.



The association brings together folding carton organisations; carton businesses, national carton associations and suppliers to the carton industry. ECMA represents 500 carton producers in nearly all countries in the European Economic Area. Around 70% of the total carton market volume in Europe, and a current workforce of about 45.000 people are represented in ECMA.



The pan-European association for the coffee service and vending industry represents national vending associations and companies active in 22 European countries, operating 4.1 million machines with a hot drinks ratio of 63%. It has a total turnover of €34.9 billion employing 85,000 directly and many indirectly in the supply chain.



The alliance represents manufacturers of paper and fibre-based food and foodservice packaging as well companies supplying paper and board.



The European association that represents companies that convert plastics into products of all types, used every day and in every way all across Europe. These products are often an integral part of other businesses. The association represents 28 national associations and 18 sectorial organisations.



The European association representing independent retailers, associations representing groups of independent retailers and wider service organizations built to support independent retailers or groups of independent retailers. Operating at the heart of local communities, a vital part of many of these businesses is serving food and drinks to millions of EU consumers every day



The German Association for Plastics Packaging and Films represents 300 member companies. Besides mostly medium-sized businesses in the plastics processing industry, their members also include around 50 supporting members from various industrial sectors.



The European Association of Carton and Cartonboard manufacturers represents 21 companies across Europe that provide cartons and cartonboard for packaging.



The branded food and beverage service association represents some of the most well-known food service businesses in Europe, including Burger King, Domino's, Häagen Dazs, KFC, McDonald's, Pizza Hut, Popeyes, Starbucks, Subway, TacoBell, & Tim Hortons. Operating extensively on a franchising model, the chains are run on a day-to-day basis by small and medium sized companies across Europe, employing hundreds of thousands in local communities.