



The Hague, 15 June 2020
Reference: LN/HvS/EP20-077

Subject: Arguments demonstrating that polymer-coated paper products should not be included in the scope of the SUP Directive

Dear Madam/Sir,

Our Associations represent the circular forest fibre-based packaging ecosystem. Our members innovate and invest to offer sustainable, circular, renewable and recyclable packaging solutions made and recycled in Europe, from European sustainably grown forests. Our sector invests in Europe twice the amount compared to manufacturing in average and is increasingly digital. Paper and board packaging, manufactured and recycled in every EU member state, can replace fossil-based materials, and is the most recycled packaging material in Europe at 86%. The sector directly employs more than 250 000 people and supports, amongst others, the foodservice market (takeaway and home delivery), which is estimated at EUR 70 billion, employs 1.6 million people and supplies 160 million consumers across the EU.

We understand that the Commission is considering including polymer-coated paper fibre products in the scope of the SUP Directive. The inclusion of those products in the scope of the SUP Directive would seriously affect the whole foodservice industry as well as the upstream and downstream supply chains, putting the employment of several hundred thousand people at risk.

The inclusion of paper fibre products in the scope of the SUP Directive would be flagrantly contrary to the spirit, the scope, and the objectives of the SUP Directive and to fundamental principles of EU law.

At the outset, it must be recalled that pursuant to its Article 2 the SUP Directive ONLY “applies to the single-use plastic products listed in the Annex”. Thus, any attempt by the Commission to include ALL “single-use products” – whether or not made from plastic,

including paper fibre products – in the scope of the SUP Directive would amount to de facto EXTENDING the scope of the SUP Directive. As you will realise, any expansion of the scope of the Directive – which was adopted by the participation of the Council and the European Parliament – by the Commission alone would constitute an ultra vires act which would deprive the EU legislator – and so the Member States – of the powers conferred to them by the Treaty.

To be more clear, it should be recalled that the European Parliament and the Council, in the context of the ordinary legislative procedure, limited the competence of the Commission to the adoption the Guidelines providing “examples of what is to be considered a single-use plastic product for the purposes of this Directive”. This implies that the competence conferred by Article 12(2) of the SUP Directive only allows the Commission to provide interpretative guidance as to the notion of “single-use plastic products” within the meaning of Articles 3(1) and 3(2) of the SUP Directive.

In the exercise of this interpretative competence, the Commission cannot re-draft the SUP Directive. Therefore, any attempt to include ALL single-use products in the scope of the Directive would be contrary to the limits set out in Article 12(1) of the SUP Directive. Furthermore, the extension of the scope of the Directive would violate the principle set by Article 13(2) TEU and of the principle of institutional balance, according to which it is for the European Parliament and the Council alone to decide the content and scope of a legislative act, such as the SUP Directive.

Bearing the above in mind, I would like to draw your attention to the following considerations showing that paper fibre products logically should not fall within the scope of the SUP Directive:

1. The objectives of the SUP Directive are to prevent and reduce the impact of certain plastic products on the environment, in particular the aquatic environment, and to promote circular economy (Article 1). Hence, the SUP Directive only applies to certain single-use plastic products representing around 86% of the single-use plastics found on beaches in the Union (Recital 7 of the SUP Directive).
2. Paper fibre products are not among the items most frequently found on beaches, as reported by the Impact Assessment. Quite the contrary, the paper fibre products are in the 55th place of the list of the marine litter found on beaches and only account for 0.27% of such products. Moreover, paper fibre products are by far the most recycled in Europe, with a ratio of 85.6% in 2017 (Eurostat).
3. Paper fibre products significantly contribute to circular economy. Unlike plastic products, recycling paper fibre products is economically profitable. Furthermore, reusable plastic systems may have higher carbon and water footprints and are unlikely to be recycled in existing streams.
4. In accordance with the principle of proportionality, the SUP Directive must not go beyond what is necessary to achieve its objectives. In the Report accompanying the SUP Directive’s Proposal, the Commission stated that “[t]his initiative focuses on the ten most found SUP items representing 86% of all SUP items by count (constituting thus 43% of all marine litter). Regulating all single-use plastic products, as found on beaches, would not be proportionate compared to the potential added value.” This passage is reflected into Recitals 5 and 7 of the SUP Directive. The limits set by the principle of proportionality must be

respected by the Commission in the framework of the adoption of the Guidelines. Therefore, the Commission should not include paper fibre products in the scope of the SUP Directive, since, as said, they are not among the ten most found SUP items on beaches.

5. The end-of-life processing cycle of paper fibre products confirms that they can be a key part of the circular economy. After use, the paper fibre products can be recycled as paper. After collection in paper bins, the paper fibre products are placed in a blender, which mechanically separates the paper from the polymer (so-called Re-pulping phase). The polymeric component (representing not more than 10% of the final product) is then reused to produce new plastic products (e.g. garden items, building material, electric cabling) while the paper component (the Pulp, representing 90% or more) is recycled into paper fibres and used again as a raw material for new paper products.

6. The polymeric coating is not a “main structural component” of paper fibre products (see Article 3(1) SUP Directive). It represents a minimal share of the finished product and merely allows paper fibre products to contain and protect food and drink. This conclusion cannot be called into question by the fact that Recital 8 of the SUP Directive’s Proposal of 28 May 2018 – which provided that certain polymeric materials are not capable of functioning as a main structural component of final materials and products, such as polymeric coatings, paints, inks, and adhesives” – was not subsequently transposed into the approved text of the SUP Directive. The mere fact that this sentence was not included in the final text of the SUP Directive cannot in any way lead to the conclusion that polymeric coating must be considered as a “main structural component” of materials and finished products, within the meaning of Article 3(1) of the SUP Directive.

All of the above considerations clearly demonstrate that paper fibre products are not covered by the SUP Directive and that any inclusion of those products in the scope of the SUP Directive would be unjustified.

We respectfully urge you to object to any proposal to include polymer-coated paper fibre products in the scope of the SUP Directive.

Yours sincerely,



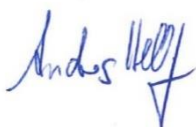
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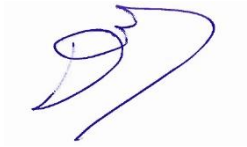
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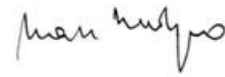
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