



## Single-Use Plastic Directive and Product Packaging

### Navigating the Complexities Beyond the (Plastic) Bottle

The Single-Use Plastic Directive (the 'SUP Directive') is a legislative framework adopted by the European Union to address the environmental impact of single-use plastic products. Effective since 2019, the directive aims to reduce plastic pollution and promote a circular economy. The implicit objective is to shift our behaviour in terms of producing and using single-use plastic products, by making those products more expensive or banning them. The SUP Directive is more than a simple regulatory measure. It's a resounding signal to society at large: We need to start seeking alternatives to plastics we use once and then discard.

The urgency of such legislation is underscored by concerning statistics on plastic use and pollution. Did you know each European generates almost 190 kilograms of packaging waste annually? Although the SUP Directive encompasses more than just packaging, such as items like fishing nets and tobacco products, this article will focus on the implications of the SUP Directive for product packaging. The single-use nature of these items, coupled with their environmental impact, has escalated the necessity for change.

Key provisions of the SUP Directive include **bans** on such items as single-use plastic cutlery, plates, straws and cotton buds. Additionally, EU member states must implement measures to achieve **significant reductions** in the use of certain single-use plastic items, such as food containers and beverage cups. The directive also sets **targets for recycling** single-use plastic bottles, requires certain disposable products to be **appropriately marked** and introduces **'extended producer responsibility' (EPR)**.

In this article, we explore some of the complexities and recent developments surrounding the SUP Directive, particularly those relevant to companies in the FMCG industry and the food sector.

## 1. The complexities of 'extended producer responsibility'

The EPR scheme, under the SUP Directive, makes producers of SUP products responsible for managing those products' end-of-life stage. Essentially, producers must contribute to the costs associated with waste management, which includes collection, transportation, treatment, clean-up and awareness-raising measures.

The 'producer' of the EPR means every company bringing products with SUPs to the

market, not just the manufacturer of SUPs. Therefore the impact of the EPR extends to supermarkets, restaurateurs, cafés and food-producing companies.

Despite the necessity of the EPR in aligning with the 'polluter pays' principle, several complexities emerge with this assignment of responsibility:

- The SUP Directive does not specify the exact methodology for calculating the costs of managing products' end-of-life stage, leaving it to the discretion of each EU member state. This poses challenges for ensuring compliance with the SUP Directive and places an additional burden on producers.
- How producers are charged with the costs can also vary. In some cases, they may pay a fee to a producer responsibility organisation, responsible for managing the waste from the producers' products. In other cases, producers may be directly responsible for managing and financing the handling of waste from their products.
- There is also the potential for passing the costs onto customers, leading to discrepancies in pricing across different EU member states. This is especially burdensome for companies that operate in more than one EU market, as they have to adhere to all the local rules and legislation tied to the SUP Directive.

## 2. The proposed ban on 'forever chemicals' in food contact packaging

PFAS (per- and polyfluoroalkyl substances) are man-made chemicals that have been in use since the 1940s. Being resistant to heat, water and oil, PFAS are called 'forever chemicals' and have a broad range of applications. The EU has been exploring ways to regulate these substances, given their persistence in, and harm to, the environment, as well as the associated health risks. Recent developments indicate a push from the European Parliament to ban products containing PFAS under the SUP Directive. This is an interesting development from a few perspectives.

With the introduction of PFAS restrictions under the SUP Directive, the scope of the product ban would significantly expand, to encompass all products made from PFAS (not just those in the product categories listed in the SUP Directive's Annex B). This could lead to a focus of manufacturers on the use of microplastics in packaging (to avoid their packaging being banned on the market), instead of focusing on the consumption and use of plastic packaging in the first place. One could also argue that PFAS should be regulated under existing frameworks – such as related to chemicals (e.g. the REACH Regulation) or consumer health – instead of introducing new restrictions under the SUP Directive that expand the scope beyond its original purpose.

### 3. Different perspectives per member state

The effectiveness of the SUP Directive depends on the national implementations by EU member states. All member states were required to incorporate the SUP Directive into their national law by 3 July 2021. However, **national adoption and implementation had not been finalised in all EU member states before the attributed deadline.** The delays can be attributed to COVID-19 and related hygienic benefits of disposable plastic, as well as the chemical industry's opposition to the introduced market restrictions on disposable plastic, among other circumstances.

The SUP Directive emphasises a shift in how we use and handle disposable products, but it lacks clear guidance on how to recycle or reduce use. Stakeholders have vocalised the need for a uniform waste-management framework in the EU, prior to implementing bans or recycling requirements.

In addition, each EU member state has the flexibility to implement the requirements of the SUP Directive in a way that meets their specific needs. These differences pose significant challenges for producers of plastic packaging.

EU member states have different interpretations of the EPR. Issues arise on several topics;

- varying methods of calculating the costs of collecting, disposing of and recycling single-use plastic waste;
- different requirements on labelling of products related to recyclability;
- different costs on SUP products often to be paid by the end-consumer, under the EPR scheme;
- Supervision of compliance with the SUP. Some EU member states, such as the Netherlands, refrain from conducting supervision of compliance with the SUP tax under the EPR scheme, due to the heavy administrative burden the EPR tax poses on producers.

The room for interpretation complicates compliance with local implementation, whereas the supervision differences per member state spell uncertainties for companies having to invest in administrative technology to comply with the SUP Directive.

### 4. A call for innovation

Disposable-plastics manufacturers' opposition to the SUP Directive has sparked a call to action for innovation in dealing with SUPs. From the perspective of plastic manufacturing companies, **chemical recycling** is the innovation that can accelerate the reuse and recyclability of plastics, transforming polymer waste into high-quality, secondary raw material while eliminating the need for complete segregation – one of the big challenges of recycling. Those manufacturers have emphasised the need for renewable energy sources to enable chemical recycling, rather than eliminating the use of plastics.

As the SUP Directive continues to evolve, Deloitte is committed to providing businesses with the insights needed to make strategic choices around plastic packaging (alternatives). We help our clients through conducting comprehensive research into potential alternatives, analysing the financial, legal, operational, and environmental implications of each option. In doing so, we do not only focus on compliance, but also on accelerating the transition to a circular economy through innovation.

## 5. Future perspective: The EU's ambition for plastic reductions

The EU is taking a leading role in global action on plastics, as demonstrated by its support for setting up the [High Ambition Coalition to End Plastic Pollution](#) and the regulations implemented under the [Circular Economy Action Plan](#). The coalition advocates an ambitious and effective treaty covering the entire plastics lifecycle, to end plastic pollution by 2040.

The SUP Directive is one example of the stance the EU takes against the mindless use of disposable plastic. The directive is clear on 'purpose over profit', considering that plastic will – for the foreseeable future – remain cheaper than the alternatives.

The coming years will be crucial in demonstrating the effectiveness of the SUP Directive, and what the effects on plastic pollution will be. Future developments of the directive could include a broader-scope ban of products, or stricter rules with regard to recyclability. Whatever the outcome, it is clear that EU member states and producers need more guidance on various requirements of the SUP Directive, and a harmonised waste-management framework across EU member states; this would enable effective and uniform compliance with the SUP Directive.

### Summary

The SUP Directive is a necessary measure to combat plastic pollution, even if adhering to it poses several challenges, as explained above. Embracing the directive not only positions us as responsible stewards of the environment, it aligns seamlessly with the broader regulatory sustainability landscape and the EU's commitment to a transition to a circular economy. For instance, compliance with the SUP Directive supports target-setting requirements on material topics like circularity as stipulated in the Corporate Sustainability Reporting Directive (CSRD). Let's seize this opportunity to pioneer positive change, as we collectively work towards fostering a sustainable and circular world.

Legislation	EU Single-Use Plastic Directive
Application	<ul style="list-style-type: none"><li>• The market restrictions and marking-of-product rules apply from 3 July 2021; the product-design requirements for caps and lids of SUP beverage containers apply from 3 July 2024.</li><li>• The EPR measures for tobacco products with filters, and filters marketed for use in combination with tobacco products, apply from 5 January 2023.</li></ul>
Scope	<p>The directive applies to certain SUP products, products made from oxo-degradable plastic and fishing gear containing plastic. SUP products are wholly or partly made of plastic, and are typically intended to be used just once or for a short period of time before being thrown away. The 10 items the directive addresses are:</p> <ul style="list-style-type: none"><li>• Cotton-bud sticks</li><li>• Cutlery, plates, straws and stirrers</li><li>• Balloons and sticks for balloons</li><li>• Food containers</li><li>• Cups for beverages</li><li>• Beverage containers</li><li>• Cigarette butts</li><li>• Plastic bags</li><li>• Packets and wrappers</li><li>• Wet wipes and sanitary items</li></ul>
In effect from	3 July 2021

**Randy Jagt**

Partner

Tel: +31650083845

Email: [rajagt@deloitte.nl](mailto:rajagt@deloitte.nl)

**Simone Pelkmans**

Partner

Tel: +31653174778

Email: [spelkmans@deloitte.nl](mailto:spelkmans@deloitte.nl)

---

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s more than 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte organization shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2024. For information, contact Deloitte Netherlands.