

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

Following the meeting of the Waste Technical Adaptation Committee on 26 March 2021, the undersigned associations wish to reiterate their critical concerns about the interpretation provided by the European Commission's services of the concept of 'placing on the market' and its impact on the existing stocks and the integrity of the Single Market, with regards to the implementation of the harmonised marking requirements under the Single-Use Plastics Directive and the Implementing Regulation (EU) 2020/2151.

According to this narrow interpretation of the definitions of 'placing on the market' and 'making available on the market', which are set out in Article 3 of the SUP Directive, existing stocks without the relevant marking would only be compliant if the products remain in the same Member State where they were already placed on the market prior to 3 July 2021. This would result in a prohibition of making available those products for final distribution to another Member State after that date.

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"*. Similarly to other EU product legislation a product can only be placed on the market once, namely when "first made available on the market", which is also in line with the European Commission's Blue Guide on the implementation of EU products rules. Indeed, more guidance on this can be found in the Blue Guide which clearly states that:

- *"A product is placed on the market when it is made available for the first time on the Union market."*
- *"Products must be in compliance with the Union harmonisation legislation applicable at the time of placing on the market."*
- *"the placing on the market is the most decisive point in time concerning the application of the Union harmonised legislation."*

Furthermore, the Blue Guide clearly states that "the manufacturer and the importer are the only economic operators who place products on the market." Therefore, distribution by logistics or wholesale partners cannot constitute a new placing on the market.

According to the Blue Guide and other EU product legislation, the decisive moment for the harmonised marking requirements to apply is when the product is first made available "on the Union market." The SUP Directive has a slightly different definition, referring to "the market of a Member State." Both definitions, however, have the same meaning: if a product is first made available on the market of one of the EU Member States it is also first made available on the Union market and vice versa. Moreover, if a product is compliant at the time of placing on the market, it can continue to be made available along the supply chain. Therefore, once a product is "placed on the market", a further making available on the market of another Member State does not constitute a new "placing on the market". The SUP Directive does not state that the markings are mandatory if the product is placed on the market "in that specific Member State" as of 3 July 2021. It merely states that products must bear the marking if they were first made available "in a Member State" as of 3 July 2021. Based on the above applicable legal definitions, products manufactured and placed on the Union market (i.e. first made available on the market of a/any Member State) before 3 July 2021 without the harmonised marking specifications are still compliant and can continue to be sold throughout the EU.

Any decision to move away from “placing on the (Union) market” as the single decisive moment to apply the harmonised markings would be clearly inconsistent with the Single Market principles and would result in both negative economic and environmental impact. Further limiting the time available for economic operators to utilise the existing stocks transition options, by forcing a very narrow interpretation of the meaning of “placing on the market”, will have a significant impact on industry and on the distribution value chain. It should be noted in this regard that the option of affixing the marking by means of stickers is for industry a resource intensive last resort. Last but not least, it makes the legislation potentially discriminatory towards distributors active in smaller Member States as products without the marking placed on their territory would not be allowed for final distribution in other Member States.

Furthermore, the potential destruction of the existing unmarked stocks placed on the Union market before 3 July 2021, as the result of disproportionate limits on their distribution throughout the EU, would lead to an unacceptable waste of resources and a significant negative environmental outcome.

In light of the above arguments, the undersigned associations ask that the situation is clarified by confirming that, once a product is placed on the Union market, a further making available on the market of another Member State cannot constitute a new “placing on the market” and that products manufactured and placed on the Union market before 3 July 2021 without the harmonised marking specifications are still compliant and can continue to be sold throughout the EU.

This clarification should be provided as soon as possible to remedy the increasing confusion spreading amongst economic operators. Persisting ambiguities coupled with the severe delays with the adoption of Implementing Regulation 2020/2151 and its subsequent Corrigendum are jeopardising industry ability to be compliant with the new marking requirements by the set legal deadlines.

The undersigned organisations are as follows (in alphabetical order):



ACE – The Alliance for Beverage Cartons and the Environment



AIM – European Brands Association



A.I.S.E. – The International Association for Soaps, Detergents and Maintenance Products



AMCHAM – American Chamber of Commerce to the EU



CIRFS – European Man-Made Fibres Association



Cosmetics Europe – The Personal Care Association



ECMA – European Carton Makers Association



EDANA – The Association of the Nonwovens and Related Industries



EPPA – European Paper Packaging Alliance



EUMEPS – European Manufacturers of EPS



EuPC – European Plastics Converters



EUROPEN – The European Organization for Packaging and the Environment



EXPRA – Extended Producer Responsibility Alliance



Independent Retail Europe



Industrievereinigung
Chemiefaser e. V.

IVC - The Association of the German, Austrian and Swiss Man-Made Fibres Industries



360° Foodservice – Collaborative Platform for Sustainable Service of Food and Drinks in Europe



PlasticsEurope – Association of Plastics Manufacturers



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Pro Carton - European Association of Carton and Cartonboard manufacturers



Serving Europe – Branded Food and Beverage Service Chains Association



EVA – European Vending & Coffee Service Association