



Placing Single-Use Plastics on the market

This paper highlights the risk of market fragmentation posed by the Single-Use Plastics Directive, resulting from the narrow interpretation of the definition of ‘placing on the market’.

CONTEXT

According to the [EU Blue Guide on the implementation of EU product rules](#), a product is considered as placed on the market when it is made available for the first time on the EU market, i.e., when it is first supplied for distribution, consumption or use on the market during a commercial activity, whether in return for payment or free of charge.

This provision is based on the principle of mutual recognition, according to which products lawfully manufactured or marketed in one Member State should move freely throughout the Union where such products meet equivalent levels of protection to those imposed by the Member State of destination.

LEGAL FRAMEWORK

[Directive \(EU\) 2019/904](#) on single-use plastics (SUP Directive) provides for a harmonised framework to tackle plastic marine littering and pollution by, inter alia, phasing out single-use plastics, introducing economic incentives to reduce consumption and transition to reusable systems, and establishing high collection rates and extended producer responsibility schemes (EPR). All EU Member States had to transpose and implement the SUP Directive into their national legislation by mid-2021, therefore prohibiting the placing on the market of all single-use plastics covered.

In the current form of the SUP Directive, the ‘placing on the market’ of certain products would be restricted to the territory of a Member State, rather than the Union Market, impeding the principles and definitions established by the New Legislative Framework (NLF) and the Commission’s Blue Guide. This narrow definition creates pre-conditions for market fragmentation and further harms the Single Market.

EXAMPLE

According to the 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



Showcasing Single Market problems – under existing EU legislation

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.

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. Finally, 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. However, its transposition could result in serious market fragmentation due to insufficiently defined provisions, narrow interpretation of established concepts such as 'placing on the market' and severe delays with the adoption of guidelines and implementing measures.

HOW TO ACHIEVE BETTER RESULTS

The European Commission, as the guardian of the treaty, should not introduce pre-conditions for market fragmentation in legislative proposals that are aimed at harmonising the single market. Single Market legislation should consistently reflect the market integration ambition through reduction of barriers and be future proof.

Further **opening and integration of the markets in the EU need to be based on optimally harmonized rules** so that citizens and businesses can easily see they would be treated equally across the EU and can benefit from greater competition across EU countries. Where full harmonisation is not necessary, the **mutual recognition principle** should be respected and solutions for its practical enforcement found, including in the area of services. This approach should also work to ensure smooth pan-European trade flows with our closest European trading partners.

CONTACT INFORMATION

Michelle Marie Philipp, Adviser, Internal Market Department,
mm.philipp@businesseurope.eu