EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate B – Circular Economy
ENV.B.1 – Circular Economy, Sustainable Production & Consumption

Brussels
JR env.b.1(2022)8814262

Summary Record of the Meeting of the Waste Technical Adaptation Committee (Directive on single-use plastic)

7 September 2022

(hybrid meeting)

1. Adoption of the agenda

The Chair welcomed the participants and added the possible data breach of the European Commission's list of experts to the agenda item "AOB".

The agenda was adopted.

2. Minutes of the TAC meeting from 27 June 2022

The draft minutes of the meeting of 27 June 2022 had been sent to TAC members on 31 August 2022.

One Member State asked about an update on the question whether water-based polymer dispersion are in scope of the Single-Use Plastics (SUP) Directive. The Commission replied that water-based polymer dispersions are considered as plastic according to the definition in the SUP Directive.[1]

In absence of any further comments the minutes were adopted.

3. Draft Implementing Act on recycled plastic content in SUP beverage bottles, rules for the calculation and verification of the targets (SUPD Art. 6(5)) and format for reporting data and information (SUPD Art. 13(1, e) and Art. 13(4))

4. Updated draft Implementing Act

Eunomia presented a summary of responses to the questionnaire to Member States (post-consumer waste and target implementation). There were no comments or questions.

The Commission presented the updated draft Implementing Act, starting with the Articles.

[1] See ex-post comment on water-based dispersion at the end of this document.

Article 1

The exclusion of pre-consumer waste from the definition of 'recycled plastic' according to Article 1(2)(b) was discussed. Eunomia summarized the reasons for the exclusion:

– the intention of the SUP Directive and its focus on post-consumer waste that is littered to the environment;

– pre-consumer waste is already recycled and no additional incentives are needed;

– as the proportion of pre-consumer waste in SUP bottles is low (1-2 %), its exclusion does not reduce Member States' ability to meet the recycled content targets.

Eunomia noted that the current draft would not prohibit the recycling of pre-consumer waste but only its counting towards the recycled content targets of the SUP Directive.

The Commission added that the Circular Plastics Alliance was accepting only post-consumer waste to count towards the target of using 10 Mt of recycled plastic in new products by 2025. Moreover, the definition of packaging waste in the Packaging and Packaging Waste Directive excludes production residues, therefore it would be consistent with the exclusion of pre-consumer waste. Finally, a clear majority of Member States indicated in the questionnaire to be in favour of excluding pre-consumer waste.

One Member State highlighted that the implementing act should refer to the definitions of waste and recycling in the Waste Framework Directive. In their view, the SUP Directive does not include any reasoning that could allow the restriction to post-consumer waste only.

One Member State agreed to the exclusion, noting that during the preparation of the SUP Directive it was never intended to include pre-consumer waste.

One Member State agreed to the concern about conformity with the SUP Directive if pre-consumer waste was excluded. However, they supported its exclusion because the environmental problem addressed by the SUP Directive was caused by post-consumer waste.

One Member State stated not to be opposed to the exclusion of pre-consumer waste but being concerned that pre-consumer product waste, for example preforms with defects caused at the time they were inflated would not be recycled and used for new bottles. The Commission explained that the exclusion of pre-consumer waste referred only to the calculation of recycled content, it could still be recycled even without counting towards the recycled content targets. Eunomia added that down-cycling of pre-consumer waste from bottle production was improbable as rejected preforms would likely go back into packaging.

One Member State agreed with the exclusion of pre-consumer waste. On the definition of post-consumer waste, they asked for clarification if waste from unsold products would be considered as post-consumer waste and if all types of post-consumer plastic waste could be used for counting towards the targets, including for example textiles. The Commission replied that any material that becomes waste after having been placed on the market is considered post-consumer waste, in particular packaging from goods that remain unsold after having been placed on the market. Regarding the second question, it was clarified in the minutes of the previous TAC meeting that any post-consumer plastic waste can be used to count towards the recycled content targets, including waste resulting from textiles.

One Member State requested that the definition of post-consumer plastic waste should take into account that recycled plastic could have already reached the end-of-waste status when being manufactured into new bottles. This material should be allowed to count towards the recycled content targets. The Commission asked the Member State to provide a written description of this issue that would allow them to consult with colleagues. Another Member State suggested to look into Recital 23 of the Waste Framework Directive for clarity.

Two Member States remarked that the definition and use of the terms "PET bottles" and "beverage bottles" was unclear and not consistent. The Commission invited Member States to submit suggestions on how to clarify the wording after the meeting.

One Member State suggested to include a definition of the term "economic operator" in Article 1. The Commission replied that the term was specified in Article 6 and that they would consider including a definition in Article 1.

One Member State asked for clarification whether segregation and controlled blending could be implemented regardless of the recycling process (chemical and mechanical recycling). The Commission proposed to discuss matters related to chemical recycling under the respective agenda item unless there was an issue with the definitions in Article 1. The Member State replied not to see an issue with the definitions.

On Article 2, there were no comments by Member States.

Article 3

The Commission noted that despite concerns raised by some Member States, it continued to consider labels and sleeves as being part of SUP beverage bottles in paragraph 1, due to the reasons explained in Recital 6. Also in view of upcoming targets in the revised Packaging and Packaging Waste Directive, the Commission aimed for consistency as labels are part of the packaging. In addition, the inclusion of labels and sleeves would incentivize to improve their design.

One Member State asked if there would be a move towards alternatives to sleeves, such as information printed on/engraved into the bottle that may hamper recyclability. Eunomia replied that while printing/engraving could be used this was not expected to hamper recyclability, as long as inks would be water soluble and engravings would not hamper NIR spectrometry.

One Member State asked for clarification if price stickers that are applied in the shops were considered as "labels". The Commission replied that price stickers placed on the bottle by retailers would not be considered as labels.

One Member State noted that in the Implementing Decision 2021/1752 on the separate collection of SUP beverage bottles, the inclusion of labels/sleeves was optional and suggested that also in this implementing decision it should be optional. The Commission highlighted an important difference between the two implementing acts, in that recycled plastic content was a product characteristic of SUP beverage bottles and using different rules for its calculation in different Member States would likely violate the single market principle.

The Commission (DG SANTE) remarked that labels/sleeves would normally need to comply with the regulations on food contact materials as plastic bottles would not comprise a fully functional barrier and materials from labels could migrate through the bottles into the beverage.

One Member State remarked that during the negotiations of the SUP Directive labels/sleeves had not been discussed as the attention had been on caps and lids. They had not intended to include it, and its inclusion would make the calculation of recycled content slightly more complicated, nonetheless they would agree to it.

The Commission thanked Member States for their insights and concluded that common agreement was reached to consider labels and sleeves as parts of SUP beverage bottles.

Article 4

The Commission explained that the recycled content in a bottle had to be calculated as the sum of recycled content in each component (cap/lid, label/sleeve and body), because the measurement point had to be set before virgin and recycled material were mixed and the components were made in different production lines. No comments or questions were put forward by Member States.

Articles 5 and 6

The Commission explained that the wording had been redrafted for clarification and highlighted the amendment of auditing requirements in Article 6(2), based on comments from Member States and suggested by Eurostat. The new proposal comprises yearly auditing but with a lower proportion of reported recycled content having to be covered each year.

One Member State remarked that the reference to "output products" in Article 5(3) was not clear and asked whether it referred to recycled materials or bottles. Eunomia confirmed that output could be either of these depending on the point in the value chain.

One Member State inquired about the question raised in the previous meeting on the legal form of the implementing act (decision or regulation). The Commission replied that the Legal Service had been consulted and confirmed that the form of an implementing decision was appropriate because the recycled content targets in the SUP Directive were addressed to Member States and not to economic operators.

One Member State asked whether the audits requested by Article 6(2) should be performed by the Member States themselves or by third party certifying bodies. Regarding Article 6, paragraphs 8 and 9, they asked if different schemes could be accepted in different Member States, although they have to be mutually recognised. Guidance and examples of how this would work in practice would be helpful. Regarding the first question, the Commission replied that it would seem more practical to use third party certification, although nothing would impede Member States from conducting the audits themselves. Regarding the second question, Eunomia replied that several voluntary certification bodies already existed, which would be expected to amend their schemes as to comply with this implementing decision. Each Member State would recognise whether those schemes are acceptable, and if one scheme is accepted by one Member State, then the other Member States should accept it as well. Probably only a handful of certification bodies would have the necessary expertise. The Commission proposed to organise a TAC meeting to share good practice. The Member State welcomed this suggestion.

One Member State questioned regarding Article 6(1) if it was necessary to specify the calculation point as the point when the product is placed on the market for first time and asked for more flexibility. The Commission inquired about the reasons for needing this flexibility and asked for more information and examples of specific situations. In the upcoming Packaging and Packaging Waste Regulation, recycled content would likely become a product characteristic for a wider range of plastic packaging than bottles and it would be essential to ensure that the calculation of recycled content does not differ across Member States. The Member State replied that there might be national regulations in place according to which economic operators were already reporting data, and it should be avoided to require reporting of different data or at multiple points for the same product line. The Member State announced to provide a written remark on this matter.

Regarding Article 6(2), one Member State asked for clarification of possible synergies with the verification process for food contact materials. Regarding Article 6(3), the Member State remarked that the standard EN 15343 included pre-consumer waste and questioned its applicability given that according to the definition of recycled plastic pre-consumer waste was to be excluded. Regarding Article 6(5), the Member State inquired why an annual self-declaration was necessary at each point of origin of plastic waste and if this requirement would also apply to consumers as the source of household waste. Regarding the first question, the Commission (DG SANTE) replied that probably there would be no synergies between the new food contact regulation and this implementing decision as recycled plastic as defined in the former might also contain a virgin component depending on the recycling process. Regarding the second question, Eunomia replied that the standard EN 15343 gave a framework for the work of operators and recyclers. A scheme that excluded pre-consumer waste could still be based on standard EN 15343. The Commission announced to include a recital to clarify this aspect. Regarding the third question, the Commission clarified that citizens would not be required to provide any self-declaration and pointed to the last sentence of Article 6(5) in which the point of origin was specified. The requirement of an annual self-declaration had been included to ensure that the chain of custody was complete. However, the Commission announced to examine whether this provision could be simplified.

One Member State asked whether members of the Circular Plastics Alliance (CPA) had been consulted on this draft implementing decision. The Commission replied that it had not disclosed any documents on this act to industry, in particular not to CPA-members, and that the public feedback period would constitute a later step in the process.

Article 7 and Annexes

The Commission noted that this article had not been changed and that it was linked to Annex II on the format for the reporting of data.

One Member State commented on Annex II that the reporting tables were similar to those in the implementing act on separate collection, with the difference that in the latter the fields asking for data on imports and exports were not compulsory to fill in. They inquired why they were compulsory in the present implementing decision, which would create additional administrative burden. Another Member State joined this question. The Commission explained that the fields in the tables were the consequence of the formulation in Article 3, which is different in the two implementing acts. In the act on separate collection the adjustment for imports, exports and intra-EU movements is optional, whereas in the present draft implementing decision on recycled content it is obligatory, in order to avoid double counting of bottles and recycled content in different Member States. The Member State remarked that the adjustment was only necessary in case of "significant" movements without the term being specified. They suggested to delete the word "significant" for clarification. The Commission announced that it would either define the term "significant" in the present context or shift from an obligatory to an optional provision. In the sequel it was discussed why the provision had been chosen to be optional in the implementing act on separate collection. The Member State recalled that it had been introduced based on requests by two Member States who had significant exports by private individuals. One of these Member States confirmed that approximately 10 % of SUP beverage bottles were moved to its neighbour country. Another Member State agreed that a common understanding of "significant movements" was needed. The Commission concluded that no final decision would be reached in the present meeting and asked Member States to submit their views on this matter in the further process.

One Member State remarked that the footnotes to tables 1 and 2 of Annex II were not clear on what columns need to be filled. The Commission clarified that either columns 1 and 2 or columns 1 and 3 would have to be filled and will amend the footnote accordingly.

One Member State noted a mistake in formula 5 of Annex I, which the Commission will correct.

Recitals

On recital 2, the Commission remarked that the wording had been amended in order to clarify that it does not intend to prejudge the discussion on chemical recycling.

One Member State thanked the Commission for the amendment but noted that it did not consider the recital to be necessary at all as the Commission could

propose a revision at any time and also because targets could be met through mechanical recycling alone. The Commission replied that the recital had been included to explain the logic of the two-step approach, also in view of the public feedback period.

One Member State called for a stronger commitment to review the implementing decision to include a mass balance approach because of three reasons: (i) otherwise certain chemical recycling technologies would be excluded, (ii) investment plans of the chemical recycling industry would depend on the recognition of chemical recycling, and (iii) mass balance would not only be relevant for bottles, but also for other packaging. It suggested to replace the word "may" in recital 2 by the word "shall". The Commission replied that the current wording had been carefully drafted to balance diverging views of Member States and that the outcome of the discussion could not be prejudged.

One Member State noted on recital 10 that they could not get access to ISO 22095-2020 in time and might come back on this point in writing, as well as on recital 12 with a suggestion to refer to the auditing system therein.

The Commission welcomed all input provided and announced to revise the draft implementing decision as necessary, although the scope of these changes would not be significant.

The Commission detailed the timeline for the next steps:

– Member States to submit written comments on the updated draft to the Commission by Friday 16th September.

– Internal interservice consultation within the Commission planned for end September until mid October (3 weeks).

– Public feedback from mid October to mid November (4 weeks).

– Vote at the end November via written procedure

– Delegated act adopted and published in December

5. Discussion of Member States' feedback regarding chemical recycling and mass balance methods

Eunomia presented on developing a mass balance method for chemical recycling, explaining the different chain of custody models.

One Member State asked whether segregation referred to the input step or the output step, as this had not been clear from the table. Eunomia confirmed that it was very unlikely that a segregated process could be used from start to finish across the whole value chain. Probably blending of the recycled material with virgin polymers, for example additives, would take place at some point. Once such blending has occurred, it would not be possible to return to the segregated model in the reporting. Similarly, once a mass balanced method has occurred, it would not be possible to return to controlled blending in the reporting.

One Member State noted that according to the questionnaire responses, six Member States preferred applying the recycled content targets on average for economic operators and asked if this would imply that for instance producers of HDPE bottles would not be able to reach the targets. Eunomia replied that if the targets were applied as average across each market, it would possible to have larger amounts of recycled plastic in PET bottles balancing less – or none, as long as no mass balance method is accepted – recycled plastic in HDPE bottles. However, if the targets were applied by sub-sector or by operator this might indeed cause the problem described by the Member State.

One Member State enquired if the figure of 97% of SUP beverage bottles being PET bottles was referring only to the body of the bottles or including caps and labels. Eunomia replied that current data would not give this detail, so the figure was an estimate.

Eunomia presented a decision tree for developing a mass balance method. The Commission asked Member States for opinions on rolling average versus credit method.

One Member State confirmed their support for the credit method as stated in the questionnaire, but only between the same type of products and polymers and under the condition that credits can be moved only within the same company and within geographical boundaries (EEA). They requested more impact assessment of one method against another and highlighted the importance of a harmonised and regulated system. The Commission replied that advantages and disadvantages of the different options were provided in the background document that had been sent to Member States prior to the meeting.

One Member State commented that credit transfer should be restricted to each Member State because recycling obligations and consumers' demand for recycled content were different across Member States. Big producers that are active in more than one Member State could have unfair advantage. They could choose not to develop production as far as possible but only to the bare minimum, transferring recycling claims from one country to another instead. The Member State noted that a rolling average could also be a useful method.

Eunomia replied that the restricted credit transfer as presented referred to transfer among the same product/material and company. It would provide flexibility for companies to use the credits where the demand was largest at the cost of transparency and potential credibility issues. Companies claimed that credit transfer would allow for logistical benefits, however, to date no evidence had been provided to substantiate this claim.

One Member State asked whether the present discussion was limited to the context of the SUP Directive, which the Commission confirmed.

One Member State stated to be in favour of restricted credit method with the geographic boundary being the EEA.

One Member State noted that they had not been able to answer to the questionnaire yet but would provide it after the meeting.

One Member State noted a discrepancy between requesting a strict auditing of economic operators on one side but accepting a “black box” of chemical recycling on the other side. Eunomia’s study would not address energy consumption and energy losses concerning chemical recycling. The Member State supported a call for a full impact assessment. The Commission noted that within a couple of weeks a comprehensive study would be published by the JRC which would not only consider energy consumption but compare several aspects of environmental impact of chemical recycling versus mechanical recycling versus incineration and virgin production. A link would be sent to Member States once the study would be available. Regarding the perception of chemical recycling as a “black box”, the Commission remarked that this was only partly the case because rules could be defined to ensure credibility. The Commission pointed out that a full impact assessment of the different mass balance methods has not been scheduled as this was an implementing decision and an impact assessment had been conducted for the SUP Directive. Nonetheless, the Commission would seek to provide further information.

One Member State announced to support the credit method but considered the rolling average method to be also acceptable. The implementation rules should be defined at European level as much as possible. They agreed with another Member State regarding the need to assess the impact of the different rules for allocation and credit transfers. They asked whether credit transfer would not lead to a competitive advantage to vertically integrated companies and to windfall effects, and at which order of magnitude transport could be avoided thanks to such transfers. Eunomia replied that there had been no previous evidence of competitive advantage to vertically integrated companies and asked the Member State to share any examples of its occurrence. The question on windfall effects could not be fully answered because of insufficient information. Regarding transport that could be avoided by credit transfer, industry had to date not shared any data or evidence. The Commission pointed out that as the chemical plastics-to-plastics recycling was still in its pilot phase, it was difficult to project what would happen when reaching full commercial scale. At this point, the Commission would not expect windfall effect to be problematic, yet they would try to gather more information on this question.

Eunomia continued its presentation on developing a mass balance method for chemical recycling, focussing on allocation methods.

One Member State asked for examples of possible outputs to which the term "other products" would refer. Eunomia referred to the example of a naphtha steam cracker and noted that some outputs were used in polymers while some heavy weight hydrocarbons were used for other products, for example other chemicals and resins, and other outputs were used as fuels. The Commission added that the definition of recycling in the Waste Framework Directive was not restricted to polymer outputs but excluded only fuels.

One Member State asked what would be the subsequent step following the steam cracker in the example and what would happen at the end of the value chain. Eunomia replied that the focus was on the steam cracking stage because this was the point where the mass balance was taking place. Further downstream in the value chain, ethylene would be polymerized into polyethylene, and as this was not a multi-output process, no mass balancing would be necessary. Similarly,

upstream to the steam cracker, the pyrolysis oil resulting from the pyrolysis process was always 100% recycled content, hence no mass balancing was required.

The Commission asked Member States to submit any remarks on chemical recycling/mass balance methods until 16 September, to ensure that it can prepare for the next stage of the discussion.

6. AOB

(a) HDPE recycling under the new food contact regulation:

One Member State asked whether recycled high density polyethylene (HDPE) would be accepted as food contact material in the new food contact regulation and how long the approval process would take.

The Commission (DG SANTE) replied that the regulation of recycling technologies that had been filed in the past would be terminated. In the first instance, HDPE recycling into food contact materials would not be permitted, only mechanical recycling of PET and controlled closed loop recycling would be included in the list of suitable recycling technologies. The new regulation would enter into force in October and set out a detailed approval procedure. The timing would depend on business operators submitting their applications but also on the collection system for the input waste.

(b) Possible data breach of the European Commission's list of experts:

The Commission informed about an e-mail sent by UNESDA (the European association representing the interests of the European soft drinks industry) to the members of the Waste Technical Adaptation Committee and Commission officials on 11 August 2022, in which professional e-mail addresses had been disclosed to all recipients of that e-mail. The Commission had agreed with UNESDA that they would delete the mailing list in question. The Commission asked the participants if the processing of personal data by UNESDA had caused any problems to them and if they would like the Commission to take any additional measures in this regard. The participants did not report any issues nor requested further action.

The Chair closed the meeting, thanking participants for the constructive discussion and reminding them to submit feedback the draft implementing act on recycled plastic content in SUP beverage bottles, as well as on chemical recycling/mass balance methods until 16 September 2022.

Participant list

European Commission, DG Environment, ENV.B.1

EU Member State	Department
Austria	Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology
Belgium	OVAM
Belgium	SPF Santé Publicque Environnement
Cyprus	Department of Environment
Czech Republic	Ministry of the Environment
Estonia	Ministry of the Environment of Estonia
Finland	Finnish Safety and Chemicals Agency (Tukes)
Finland	Ministry of the Environment
Finland	Pirkanmaa ELY-Centre
Finland	Finnish Safety and Chemicals Agency
France	Ministry of ecological transition
Germany	Bundesministerium für Umwelt, Naturschutz, nukleare Sicherheit und Verbraucherschutz
Germany	Umweltbundesamt
Greece	Hellenic Ministry of Environment and Energy
Greece	Hellenic Recycling Agency
Hungary	Ministry for Technology and Industry
Ireland	Department of Environment, Climate and Communications
Ireland	EPA
Italy	Ministry of Ecological Transition
Latvia	Ministry of Environmental Protection and Regional Development
Lithuania	Ministry of Environment

Luxembourg	Ministère de l'Environnement, du Climat et du Développement durable
Malta	Circular Economy Malta
Malta	Environment and Resources Authority
Poland	Ministry of Climate and Environment
Portugal	APA
Romania	Ministry of Environment, Waters and Forests
Slovenia	Ministry of Environment and Spatial Planning
Slovakia	Ministry of Environment
Spain	Ministry for the Ecological Transition and the Demographic Challenge
Sweden	Swedish Environmental Protection Agency
The Netherlands	Ministry of Infrastructure and Water management
EEA Country	**Department**
Norway	Norwegian Environment Agency

Annex: Ex-post comment on water-based polymer dispersion

The question is whether packages made of wood fibres which contain water-based, aqueous, opaque dispersion barriers to provide for fat and water resistance without forming a separate plastic layer qualify as a 'single-use plastic product' according to the SUP Directive.

Art. 3(2) of the SUP Directive defines a 'single-use plastic product' as

> "a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived;"

'Plastic' is defined in Art. 3(1) of the SUP Directive as

> "a material consisting of a polymer as defined in point 5 of Article 3 of Regulation (EC) No 1907/2006, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified;"

Therefore, if a polymer that is used for the water-based, aqueous, opaque dispersion barrier qualifies as 'plastic' according to Art. 3(1), then single-use board packages containing this polymer are to be defined as a 'single-use plastic products' according to Art. 3(2) of the SUP Directive.

In addition, depending on the process by which the barrier is formed, the cellulose from the wood fibres might qualify as 'plastic' according to Art. 3(1) of the SUP Directive. This would be the case if a chemical reaction was taking place between the water-based dispersion and the cellulose that would stop the cellulose from being chemically unmodified (see the Commission guidelines on single-use plastic products in accordance with the Directive on single-use plastics, section 2.3.1.(ii)).

Acting on the assumption that the polymer that is used for the water-based, aqueous, opaque dispersion barrier and/or the cellulose from the wood fibres qualify as 'plastic' according to Art. 3(1), the Commission considers single-use products containing water-based, aqueous, opaque dispersion barriers as single-use plastic products and therefore within the scope of the SUP Directive.

The views expressed by members of the Commission are not legally binding, since only the Court of Justice of the EU can give an authoritative interpretation of EU law.