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DIRECTORATE-GENERAL
ENVIRONMENT
Circular Economy
Circular Economy, Sustainable Production & Consumption

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ENV.B.1/JR/

Subject: Response to questions regarding the scope of the requirement on tethered caps and lids (Art. 6(1) and 6(2) of the Single-Use Plastics Directive)

Dear TAC members,

In this letter we are replying to a number of questions we have received from you regarding the scope of the tethered-caps-and-lids requirement under the [Single-Use Plastics \('SUP'\) Directive \(Article 6\(1\) and 6\(2\)\)](#) for specific types of closures of SUP beverage containers.

First of all, please be reminded that it is the Member States' responsibility to transpose the SUP Directive into national legislation with which economic operators have to comply, and to enforce this legislation. We can share our views on the interpretation of the SUP Directive and the [Guidelines on SUP products](#) ('the Guidelines'), however, only the Court of Justice of the EU can give an authoritative interpretation of EU law. Further, it is not at our discretion to change the dates of applicability that are laid down in Art. 17(1) of the SUP Directive, which is 3 July 2024 for Art. 6(1).

Please also note that as per Art. 6(4), beverage containers that are in conformity with the [harmonized standard for test methods and requirements to demonstrate that plastic caps and lids remain attached to beverage containers](#) are presumed to be in conformity with the requirement of Art. 6(1), but not *vice versa*. This means that a beverage container does not necessarily have to comply with the harmonized standard in order to comply with Art. 6(1).

As we had discussed in the TAC meeting on 19 June 2023, the Guidelines contain an error in the last row of Table 4-6 as the word "INCLUDED" contradicts the statement that the sealing membrane was not covered by the definition of "lid". In view of the characterization of "lid" in section 4.4.2. of the Guidelines, it was concluded that the sentence under the line "INCLUDED" would be corrected into "The sealing membrane **enters** into the definition of "cap" or "lid" and **is** in the scope of Article 6". The correction procedure is currently ongoing.

Following the TAC meeting mentioned above, the general rules to decide whether a SUP beverage container with a specific cap or lid is in scope of Art. 6(1) of the SUP Directive were summarized as follows:

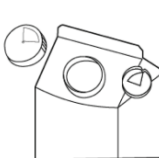
- Art. 6(1) of SUPD applies to SUP beverage containers “that have caps and lids made of plastic”. Containers with closures that do not contain plastic (as defined in Art 3(1) of SUPD) are therefore not in scope.
- As per Art. 6(2) of SUPD, “metal caps or lids with plastic seals shall not be considered to be made of plastic”.
- If a cap or lid is made of metal and has a plastic seal, it is not covered by Art. 6(1) no matter if the seal can be easily separated from the metal by the consumer or not.
- If, however, a cap or lid contains a blend of aluminium and plastic, Art. 6(2) does not apply and the beverage container is in scope of Art. 6(1).

Based on these rules and the examples given in the Guidelines, we have assessed the following specific examples of closures for beverage containers:

Example 1: SUP beverage container with plastic cap and additional plastic seal

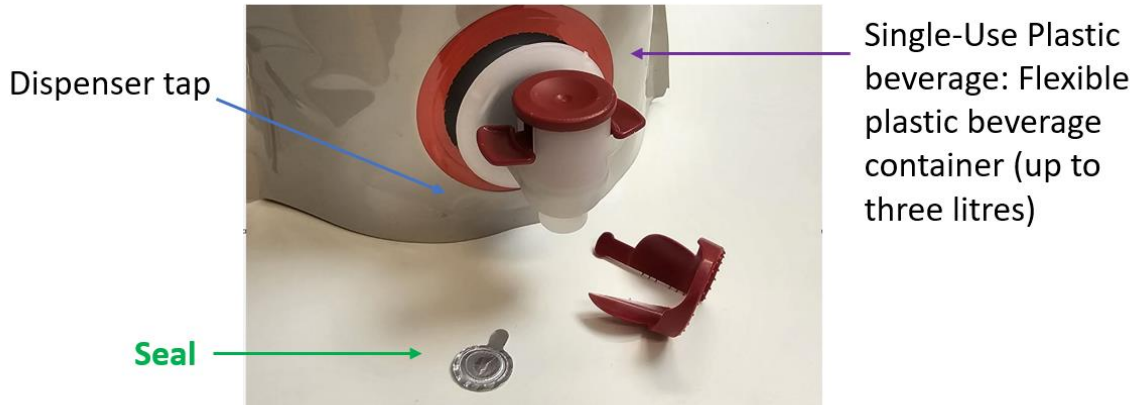


The plastic cap and the seal constitute a two-step closure as listed in Table 4-6 of the Guidelines, which shows illustrative examples of different types of caps, lids and covers:

<p>Plastic cap with separate sealing membrane (two-step closure) used in combination with a single-use plastic beverage container</p> 	<p>INCLUDED</p>
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As indicated in the table, this closure is in scope of the SUP Directive, including Article 6(1). As the seal is part of the two-step closure, it has to remain attached to the beverage container, as well as the cap.

Example 2: Tamper-evident dispenser tap ('bag-in-box-sealings')



- In analogy to example 1, all parts – the tap, the tamper-evident feature and the seal – are considered to constitute **one** closure (consisting of different steps) that is in scope of the SUP Directive, including Article 6(1). Therefore, all parts have to remain attached to the beverage container.
- That the tamper-evident feature should be considered as a part of the closure is indicated by the characterization of “cap” in section 4.4.2. of the Guidelines as
“closures that are fitted onto beverage containers or beverage bottles, for example, in order to prevent the contained liquid from leaking (also after for example a lid has been removed) and to allow for safe transportation. [...] Sports caps can in turn be either of the push-pull shutter or flip-top types which by nature are designed to remain attached to the beverage container. This type of cap will often **include a tamper-evident feature.**”
[emphasis added]

Example 3: Containers for (a) drinkable yoghurts and (b) fruit purees

The Guidelines state in section 4.5.1.:



“Certain foods, such as soups, **yoghurts (unless they are drinkable)** and **fruit purees** should not be classified as beverages for the purposes of the Directive, as they are typically not consumed through drinking and cutlery is typically used for their consumption, which distinguishes them from beverage products.”

From this, it follows that:

- (a) SUP containers for drinkable yoghurts qualify as SUP beverage containers. Therefore, if they have caps or lids made of plastic, they are in scope of Art. 6(1) of SUPD.
- (b) SUP containers for fruit purees do **not** qualify as SUP beverage containers. Therefore, they are **not** in scope of Art. 6(1) of SUPD (independent of the specificities of their caps and lids)

NB: There is no contradiction with Table 4-9 of the Guidelines, which contrasts SUP **food** containers with SUP **beverage** containers and lists a plastic multilayer pouch containing fruit puree as an example of a SUP **food** container:

Table 4-9

Single-use plastic <u>food</u> container		Single-use plastic beverage container	
Plastic multilayer pouch containing <u>fruit puree</u> (150 ml)		Plastic multilayer pouch containing fruit juice (150 ml)	

Example 4: Bottles of food supplements



- (i) The SUP Directive does not generally exclude beverage containers for food supplements but only beverage containers intended and used for food for special medical purposes as defined in point (g) of Article 2 of Regulation (EU) No 609/2013 of the European Parliament and of the Council (3) that is in liquid form.
- (ii) Regarding the understanding of “beverage”, the Guidelines elaborate in section 4.5.1.:

“Certain products in liquid form, even where they are drinkable (e.g. vinegar, liquid toppings, soya sauce, lemon juices, edible oils, products requiring dilution before consumption such as cordials, squashes, syrups or concentrates) **are not consumed directly from the container or need further dilution before being drinkable**. For that reason, **they do not qualify as beverages** under the Directive, as they are not consumed and ingested through drinking.” [emphasis added]
- (iii) The consideration whether a bottle is usually emptied after its first opening or closed and reopened several times does not affect the question whether it qualifies as a SUP beverage bottle under the SUP Directive or not.

From points (i) – (iii) above it follows that, if the food supplement is in scope of Article 2(g) of Regulation (EU) No 609/2013, or if it is not to be consumed directly from the bottle or if it requires further dilution, the bottle does **not** qualify as a beverage container under the SUP Directive, otherwise it does (as long as it contains plastic^{*}). If it does qualify as a beverage container and has a cap or lid made of plastic^{**}, Art. 6(1) of SUPD applies. This reasoning applies also to the special case of soda-type drinks that are marketed as food supplements.

*) NB: In the picture above, the two bottles on the right could also be made of glass. If so, they would not qualify as SUP beverage containers under the SUP Directive.

**) NB: In the picture above, the bottle on the right looks like it might have a metal cap with a plastic seal, which results in the cap not counting as “made of plastic” pursuant to Art. 6(2) of SUPD. If so, Art. 6(1) of SUPD would not apply.

Example 5: “One-shot” ampoules of liquid food supplements



The same reasoning as in example 4 applies. The liquid is usually consumed from the ampoules directly without requiring further dilution. Therefore, unless the food supplement is in scope of Article 2(g) of Regulation (EU) No 609/2013, the ampoules qualify as beverage containers under the SUP Directive.

Consequently, if they have a cap or lid made of plastic, it has to remain attached pursuant to Art. 6(1) of SUPD.

NB: The example on the right is mentioned in the last row of Table 4-7 of the Guidelines:

One piece plastic beverage container with a moulded break-off closure	YES	YES	YES	YES	INCLUDED (Beverage Container)
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Additional clarification on food and beverage containers that are sold empty:

The wording in paragraph of point 4.1.1 of guidelines:

“It should be pointed out that food containers used to contain food meeting the requirements set out in the Directive, which are sold empty and **not** intended to be filled at the point of sale, are also covered by the Directive” [emphasis added]

is correct. As the footnote to Table 3-1 of the Guidelines indicates, “[f]ood containers, beverage containers and beverage bottles that are placed on the market empty and not intended to be filled at the point of sale are included in the scope of SUP Directive [...], as the products are ‘used’ to contain respectively food and beverage.”

NB: Food containers used to contain food meeting the requirements set out in the SUP Directive, which are sold empty and **are** intended to be filled at the point of sale are also covered by the SUP Directive.

We hope you will find these explanations helpful.

Yours faithfully,

Emmanuelle Maire
Head of Unit