

Single Use

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Subject: Insomnia Coffee Company - Circular Economy (Environmental Levy) (Single Use-Cup) Regulations - Retailer Consultation
Attachments: Insomnia Coffee Company - Retailer Consultation.pdf

Hello

Please find enclosed the submission as part of the retailer consultation for the Circular Economy (Environmental Levy) Single Use – Cup Regulations

I have already filled in the online survey and referenced this email

Kind regards

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**Insomnia Coffee Company
Retailer Consultation
Circular Economy (Environmental Levy - Single-use
cup) Regulations**

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Introduction to the Company

Insomnia Coffee Company is Ireland's leading independent coffee shop chain and the 20th largest in Europe. We are Irish owned and operated, we are delighted to be celebrating 25 years in business this year having grown from a single location in a Galway Bookstore in 1997 to over 170 stores throughout Ireland and the UK, both on the high street and in partnership with retailers such as SPAR, EUROSPAR, Londis, Mace, Primark, Central England Co-op, Eason, Meadows & Byrne and Maxol. The company also has over 550 self-service locations in operation in Ireland and the UK.

Insomnia currently employs 500 people throughout Ireland directly in its company-owned stores, along with a further 350 people through its concessions and franchised stores. As an indigenous, 100% Irish owned company, Insomnia is committed to supporting local businesses suppliers, including Broderick's Bakery, Around Noon Sandwiches, Sweet Things Bakery, Galway-based Solaris Herbal Tea, and Keogh's Crisps.

Insomnia Shackleton and Insomnia Thurles were named as Restaurant | Coffee House of the Year at the Retail Excellence Awards 2021 & 2022 respectively. While Insomnia's Treats Loyalty Programme was awarded Retail Loyalty Programme and Loyalty Programme of the Year as voted for by the Public at the Irish Loyalty Awards 2022. Insomnia was named as a Deloitte Best Managed Company in 2019, successfully requalifying in each year since and was awarded Retail Franchise of the Year at the Irish Franchise Awards 2022 and "National Café Chain of the Year" at the Irish Quality Café Awards.

Sustainability and Ethical Sourcing – is very much and has always been part of our strategy. We were the first coffee chain in Ireland to move to paper straws and the first to launch compostable cups in the market. Moving forward, our target over the next three years to achieve Origin Green certification from Bord Bia.

We have developed a five-year sustainability action plan with target areas in:

- 1) Sustainable sourcing (Suppliers & Packaging)**
- 2) Operations (Energy, waste, transport, emissions and biodiversity)**
- 3) Social Sustainability (Health & Nutrition, Community/ Employee)**

We have a number of sustainability initiatives in place including the following: rewarding our customers every time they use a re-usable cup with 20 cents extra credit on their Treats account/ 20 cents discount and we are part of the conscious cup campaign currently 1% of our customers use a reusable cup. Once our coffee is brewed, we repack our coffee grounds and give them to our customers for free. Using coffee grounds on plants and gardens is sustainable and beneficial. There are three ways to use coffee grounds on your plants: for composting, as fertilizer and to control pests. We're very conscious of the impact of energy usage within our stores and are proactively trying to reduce the amount of electricity wasted. Measures we have taken to reduce electricity wastage include LED lighting, low energy fridges, ovens turned off when not in use, dishwashers – lower water consumption per cycle. We have introduced new glassware for our iced drinks that are consumed in store. We are also planning to move the current capsules into a more sustainable long term compostable capsule in 2023 as part of our commitment to Bord Bia Origin Green. We are introducing a

new plastic free cup in Q2 in 2023 which is 100% recyclable and compostable. The new coating contains no oils or plant-based plastics, it uses a water-based barrier coating solution. All our coffee is 100% Fairtrade since 2006. There is a minimum price that will cover the cost of sustainable production. If the market price rises above the minimum price set, farmers and workers will receive the market price. FLO-Cert regularly check and audit companies to ensure that farmers and cooperatives receive the correct payment. In addition to the minimum Fairtrade price, workers and farmers also receive a Fairtrade premium, this goes towards a community or cooperative fund to improve social, economic and environmental conditions. We work on a different Fairtrade project each year. This year we donated over €20,000 to the UNEN CHOIT Co-op in Papua New Guinea. The money is going towards providing technology to improve farming and a solar solution package for energy.

We support initiatives to progress the circular economy that help Ireland to achieve its sustainability goals but are very disappointed with the outcomes of the legislative process for the circular economy act and proposed latte levy for the following reasons.

Environmental consequences

According to EU regulations, waste treatment cannot be limited to mere waste volume reduction, and needs first and foremost to achieve “the best overall environmental outcome” for that country’s context as stated in the WD 2008/98 Article 4,§21 explaining the principle of the Waste Hierarchy. EU Member States are instructed to implement regulations with this overarching goal front of mind, and Ireland’s proposed latte levy will fail to achieve this for the reasons outlined below.

The latte levy will not achieve “the best environmental outcome,” since:

- An ISO14040 / 14044 Compliant and 3rd party verified (by TUV) Life Cycle Analysis (LCA) study, using Primary Data Study, by Ramboll² has demonstrated that single-use paper-based packaging provides “very significant environmental benefits” compared to their reusable alternative and create 2.8 times more CO₂ and consume 3.4 times more freshwater than single-use paper cups. Following a desktop study, Ramboll can confirm this LCA is applicable to the Irish context, with specific case study research completed on Ireland-specific data that corroborated the findings of the primary study.
- The effect of the levy will be to replace renewable, recyclable and environmentally performant products with non-renewable, non-recyclable (e.g., ceramic, tableware glass) or not-yet recycled plastic products. As seen in other markets in Europe, we can expect that reusable plastic cups will be the primary replacement of paper-based cups, contributing to a massive increase in plastic products – which is in complete contradiction to the goal of plastic-reduction legislation. An uptick in reusable cups will increase the amount of plastic in circulation.
- Ireland is 20% behind target on plastic recycling targets and ahead on all other materials – but want to encourage more plastic into circulation.

¹ [DIRECTIVE 2008/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#) (As amended 2018, section 4.2)

² Comparative Life-Cycle Assessment (LCA) Single-Use And Multiple-Use Dishes Systems For In-Store Consumption In Quick Service Restaurants by Ramboll ([Publicly available via European Paper Packaging Alliance \(EPPA\)](#))

- The law doesn't even require reusable cups sold to be recyclable.
- €1 deposit 'swap cups' and cheap 'reusables' will flood the market, create litter and increase plastic circulation. We banned the plastic straw and replaced with fibre – now we're banning fibre cups and replacing with plastic
- We have invested in certified compostable or certified recyclable paper cups, yet the levy will needlessly punish them for their efforts.
- One of the advantages of Compostable paper cups certified to EN13432 & Cré Standards is that they can be environmentally disposed of in the correct waste stream easily with other compostable food packaging and food products without any need of cleaning or segregation. Compostable paper cups certified to EN13432 & Cré Standards use a plant-based polylactic acid (PLA) liner and zero petrol-chemical-derived plastic. These containers, like all other items certified to those standards for industrial composting, can be processed via both domestic and commercial brown bin pathways. There is no reason why a certified compostable cup cannot be processed by composting facilities like all other certified items using the same composition of material. Additionally, compostable paper cups certified to EN13432 & Cré Standards would also be processable via regular paper Materials Recycling Facilities and thus be compatible with both brown and blue bin streams.
- Paper cups are not waste, but a valuable secondary raw material used in the truly circular paper value chain to provide many different new products (such as cardboard and egg boxes, drinks carriers or household paper rolls).
- Reputable Life Cycle Analysis studies show that reusable items involve water use, transport and plastic packaging which creates 2.8x more carbon dioxide and uses 3.4x more freshwater than renewable paper-based single use products.

Commercial impact

- In the current climate of post-Covid markets recovery, record levels of inflation, pressures on commercial rates, and an energy crisis with businesses seeing 400% surges in electricity costs, the burden of the levy and prospective ban will threaten our business even further.
- Insomnia has 550 self - service locations around the country the levy would require installation of energy-intensive washing and drying equipment, which would greatly harm businesses that serve on-the-go customers.
- Studies indicate that a 'latte levy' would result in a minimum of 8% lost footfall for hot drinks, plus further losses from add-on sales from expected reduced footfall.
- The public does not support the levy: 63% of respondents in a 2022 Ireland Thinks Poll said that the Government should prioritise increasing pathways to and capacity for recycling or composting facilities, instead of issuing levies or bans on paper cups.
- 63% of 2022 Ireland Thinks Poll respondents disagree that certified recyclable or compostable paper-based cups should be banned (this figure increases to 79% if discounting the 11% of 'unsure' respondents).
- The levy will increase the cost of a daily coffee for customers by approximately 7%, notwithstanding the incoming VAT raise to 13.5%.

- RBB Economics Study 2021 Showed switching from single use to multiple use systems sees operating costs increase by 270% on average refurbishment cost impact of €140,000.

We consider it disproportionate and discriminatory to target paper-based cups via the latte levy, for the following reasons:

- Paper cups represent just 0.0003 percent of the total waste in Ireland³.
- Paper cups are ranked 47th in the list of items found on the EU beaches, together with other paper items representing 0.27 percent of the litter. According to state data collated in the National Litter Pollution Monitoring System's 2021 Report⁴, 'drinks cups' represent just 1.7 percent of litter waste – whereas many other items, such as sweet wrappers, bags and bottles of various materials that are not currently legislated for represent 18.7 percent of 'packaging litter' and other 'food-related' litter represents 11.2 percent.

While the Government and industry stakeholders alike should be seeking to reduce litter of all kinds, the evidence is clear: paper cups are not the prime offender; yet have received disproportionate 'airtime' during the legislative process for the Circular Economy Act.

- Ireland produces compostable cups for an Irish population that is equipped with a brown bins collection system dedicated to composting: the latte levy will conflict with this existing waste treatment scheme.

The latte levy will unnecessarily limit the freedom of enterprises and impose costs on the full value-chain, including consumers, for the following reasons:

- The legislation will directly impact the paper cup industry and their suppliers through the loss of sales of at least 8.4% of hot drinks sales according to a study by Ecuity⁵ in the UK, plus further lost add-on sales due to reduced footfall.
- It will directly impact Insomnia through operating costs increase of 270% and refurbishment costs estimated at an average of €140,000 per outlet (RBB Economics⁶) and these costs are proportionally higher and additionally punitive on smaller, independent businesses.
- It will impact customers by increasing the cost of a daily product by 7%, notwithstanding a further VAT rate rise to 13.5% pending.
- Insomnia is a coffee operation and by definition sells 'hot beverages' primarily using compostable, recyclable take away paper cups, other industries that use a greater amount of single use plastics are not subject to the levy as they sell cold beverages! This discriminates this sector and places the industry at a clear disadvantage where there is a rule for one but not applied consistently across all hospitality categories.

³ According figures by Environmental Protection Agency [National Waste Statistics Summary Report for 2019](#) and REPAK, where total annual waste is cited as 9.5M tons per annum

⁴ [National Litter Pollution Monitoring System Report 2021](#) (Tobin Consulting Engineers)

⁵ Economic Analysis of a Takeaway Paper Cup Levy March 2018 (Ecuity: Higgins, Jackson and Baumerte)

⁶ RBB Economics, The Economic effects of Decree no.2020-1724 (2021)

Operational complexities

The ambitions of a circular economy are admirable, and we at Insomnia want to play our part in moving towards a more sustainable Ireland. For the intentions of the circular economy legislation to be successful in achieving these goals, there are many obstacles that must be overcome that are both critical to our businesses - especially in the current climate of inflation and energy crisis which in its current format is impractical to our operation.

These distinct impracticalities highlight a lack of engagement with industry, both historically and during the legislative process, to derive solutions. It also highlights that, in preparation of the legislation, little research was undertaken to examine how workable processes would align with the actual implementation and rollout of the levy.

- There will be added administration required to use any mechanism of reporting levies to Revenue and this has an economic impact on business (new menus, till changes, staff training as well as accounting procedures).
- The transition means higher costs to a business to employ both staff and cleaners to clean reusable cups
- Our **Self-service** category will either require consumers to self-declare the levy payable – or have an additional burden on the business and its employees to ensure exemptions are declared.
- Costly, valuable-energy-consuming equipment may be required to either wash customer cups or to offer customers a space to wash their own reusable cups. This presents operational, health and safety and insurance complications and burdens and is also anti-competitive to certain parts of our business (e.g., self-service and drive-thru).
- This places complexity and burden on our staff to ‘police’ reusables and the condition these cups are presented in, will result in lost sales and increase service time for others, all resulting in a loss of trade during an exceptionally difficult time.
- There are concerns that self-washing facilities would increase liability – and therefore insurance costs – due to the added risks of slippage and injury on premise, in addition to extra responsibility on staff members to keep these areas hygienic and safe.
- Insurance Liability requirements are unclear. According to the Food Safety Authority: *“Your business could be liable if a customer became ill as a result of the overall hygiene within the business, which could potentially be due to accepting reusable containers and cups that were not clean or in good condition (e.g., cracked or chipped)”*. An example of this liability has been shown with Irish Rail where, for hygiene and safety liability purposes stipulated by their indemnifier (in addition to incompatibility with dispensing machinery spouts), staff were required to use a disposable cup to decant drinks into a reusable container presented by the customer. If insurers stipulate this protocol to operators, would this disposable cup be subject to the levy – and subsequent reporting requirements - and incur a levy charge to the customer or business regardless? If not, how will we be required to report on number of cups used in service versus those charged a levy at point-of-sale?
- Insomnia operates **Drive Thru** locations and forms part of the strategic development of the brand, it is impractical for customers to handover cups during the transaction for washing causing congestion in the customer experience and running counter

intuitive to the concept of a Drive Thru model resulting in an increase in service interaction times and therefore impact revenue, notably at peak times.

- What has government done to ensure that we as a café chain can be satisfied that 'suitable reusable alternatives' placed on the market are manufactured to suitable food-safe standards? The vast majority of to-go Operators in Ireland are serving takeaway drinks in renewable fibre cups domestically manufactured in a BRCGS AA-rated High Hygiene facility.
- Regulation on whether we as operators should accept cheap 100% plastic reusable alternatives levy-free has not been clarified.
- What are the planned Public Health protocols in relation to single-use items for reacting to sudden outbreaks of infectious diseases or prolonged periods of pandemic restrictions and conditions in relation to reusable items?
- The CE Act enforces backdoor waste segregation, which is positive and segmented backdoor waste should be recycled, including paper cups. So, if, for example, an EN13432 or Cré-certified compostable salad bowl can go in the brown bin without levy – why is an EN13432 or Cré-certified compostable paper cup of identical material composition denied this pathway via the brown bin route both currently and following the introduction of an outright ban?

Has there been a Lifecycle Analysis to the required ISO14040 / 14044 standards stipulated by the EU Waste Directive to define the treatment of specific single use items carried out to measure the impacts of each specific single-use item in relation to reusable alternatives to clarify the nuances between each category of single-use item?

Government analysis of the levy relies on incorrect market facts

- A levy places a disproportionate focus on coffee cups, even though the National Litter Pollution Monitoring System reports that 'drinks cups' represent just 1.7% of Irish litter.
 - When comparing the total volume of cups to the total volume of waste as reported in the Environment Protection Agency's 2019 report, paper cups represent just 0.0003% of the total waste in Ireland.
 - Paper cups are ranked 47th on the official EU Marine Litter list (SUPD survey).
- The Department of the Environment, Climate and Communications commissioned a Regulatory Impact Analysis to examine the prospective benefits of the latte levy. An RIA is designed to deliver a structured approach to assessing positive and negative effects of proposed regulations and should deliver an evidence-based justification for policy makers across a range of scenarios.
- We at Insomnia believe is fundamentally flawed and have provided a summary as follows:
 - ✓ **Market Data:** The data was only taken from six universities and one hospital which clearly does not represent the entire market. The RIA report grossly overestimates the current coffee market size and claims that there is a 25% uptake of reusable cups in the takeaway market, when in reality this figure is less than 1% at the moment for Insomnia and was only ever at 4% at the peak in 2019 and we are the largest coffee chain in the country which would represent the mass market.

- ✓ **Market data:** RIA cites Bord Bia data that annual coffee shop/café consumer spend is €397M – but claims there are 884M cups p.a. sold. This would suggest a coffee is charged at less than €0.50 cents and underlines the lack of credibility to the research core market data.
- ✓ **Lifecycle Analysis (LCA) and environmental impact:** only one report UNEP (meta study) is consulted (a ‘study of studies’) - no primary data used, no Irish context considered, not ISO compliant and no 3rd party verification of data.
- ✓ **Consumer behaviour survey data:** The survey results are misguided, as survey participants were asked questions on the understanding that the levy would pay for improved infrastructure for SUDCs.
 - **Waste Stream:** Previous worthwhile suggestions in 2019 consultation are ignored, such as simplification of the waste stream and no blanket levy - despite this being referenced as a success in Berkeley California (compostable exemption example).
 - **Market estimations:** used have vastly overestimated the current % share of reusables in the takeaway market at 25% when they are currently running at <3%. RIA also overestimates the takeaway market size at 633M cups p.a. (472 paper + 161 reusable).
 - **Usage:** this RIA report predicts an 18% drop in SUDCs (Single Use Disposable Cups), a 58% increase in reusable uptake and claims a subsequent market drop of 5% would be offset by forecast market growth. Note, all their market predictions are based on incorrect market scope and incorrect facts of current reusables share of takeaway market.
 - **Reusable Share:** if the report data is updated to reflect the correct reusables share at 1- 3%, then the reports behavioural conclusions would result in a market drop of 22%. Such a market drop would result in a net loss to the exchequer, the closing of 660 coffee shops and the loss of 3300 jobs.
 - **Litter:** the RIA report also relies on incorrect data on littering of coffee cups and fails to use the 1.7% figure as reported by the state’s own National Litter and Pollution Monitoring System.

In summary the RIA report again highlights and clearly illustrates the lack of engagement with industry to gain primary data and report based on secondary data and narrow sample surveys. This report cannot deliver adequate evidence-based justification for legislators and proceeding with a levy based on these facts is fundamentally flawed.

Legal Observations – Disproportionality & Misalignment with EU Directives

The government has been clear that their aim in [‘Phasing out disposable coffee cups’](#) (*‘Ultimately, the ambition is to make Ireland one of the first countries in the world to eradicate disposable coffee cups’*) is focused on one specific segment of the packaging sector, by legislating for the hot cup alone within the beverage container category, that in reality encompasses cups of all constructions across a range of the varied drinks segment of the wider food service packaging industry.

Here are some points on how this specific, disproportionate-to-the-main-issues-at-hand focus sits within the context of current EU Directives in force:

- The levy is disproportionate to our industry and focuses on one product in one category. All media focus by and language from government is on ‘coffee cups’, when all types of paper cups, for hot and cold drinks (total combined paper and coatings) only represent 0.0003% of total waste and were just the 54th most-littered item shown in pre SUPD litter proliferation studies.
In June 2022 the CEO of REPAK publicly stated *“The reality is that the latte levy will have no material consequences on the recycling statistics for Ireland”* and, when he was asked about cups being a litter issue, he stated *“It’s wrong to deal with any particular item in isolation, it must be in the context of the overall”*.
- Even prior to legislation, certified products are currently denied legitimate waste pathways and routes to circularity – e.g., compostable paper cups certified as EN13432 or by Cré are not accepted onto existing recycling or brown bin lists issues by MyWaste.ie. The new requirement for segmentation for backdoor collection, as mandated in the CE Act, can facilitate this loop to be closed and become truly circular. Yet currently this pathway is kept linear by the exclusion of paper cups of all types from recycling lists. Additionally, compostable paper cups certified to EN13432 & Cré Standards would also be processable via regular paper Materials Recycling Facilities and thus be compatible with both brown and blue bin streams.
- The Legislation contrasts the principles of EU Waste Directive 2008/98/EC, article 4§2: *“When applying the Waste Hierarchy, Member States shall take measures to encourage the options that deliver the **best overall environmental outcome**. This may require specific waste streams departing from the hierarchy where this is **justified by life cycle thinking** on the overall impacts of the generation and management of such waste.”* This requires a Lifecycle Analysis (LCA) compliant to ISO 14040 and 14044 processes to define whether the ‘reuse’ level of the hierarchy should be discounted when a better overall environmental outcome can be achieved by another system. No such study has been carried out by or accepted by government to clarify whether this is the case.
- The Legislation contrasts the principles of EU Waste Directive 2008/98/EC, article 4§2 in relation to economic and social impacts: *“Member States shall take into account the general environmental protection principles ... overall environmental, human health **economic and social** impacts in accordance with Articles 1 and 13”*. Therefore, government must fully consider not just the environmental effects of legislation, but also the economic and social impacts on both the consumer and businesses when enacting legislation.

Proposals & Alternative Solutions

Legislators in other EU jurisdictions have opted for alternative mechanisms to meet their obligations to reduce waste and meet targets, such as for plastic reduction. It is telling that

the CE Act does not address plastic reduction (where shortfalls in meeting reduction targets have been highlighted by REPAK⁷) or focus on the most prolifically littered items.

Several questions remain on how waste and plastic reduction will be measured and approached - and where government's focus should be prioritized - while other solutions have been overlooked, as are outlined below:

Instead of a levy impacting industry, hospitality and customers, an improved circular economy could be achieved through:

1. Investment in waste infrastructure would deliver greater circularity. Additional street bins and enhanced waste pathways are needed regardless of the presence - or lack of - paper cups. Although there is currently no paper/renewable fiber recycling on-island, facilities exist at the locations where Irish fiber waste is exported to both recycle and measure figures of quantities recycled of all types of paper cups. >95% paper content products such as paper cups could and should be included on the recycling list and reach these EU and UK recycling facilities where data can be captured, as they do in those other jurisdictions. (A large percentage of paper cups currently placed on the Irish market are certified compostable to EN13432 and Cré standards and are already processed domestically and return material to the biosphere.) Industry is already making progress in demonstrating data surfacing of items processed for composting and is enabling pathways to facilities actively seeking volumes of paper cups for recycling into valuable, in-demand fibre materials that demonstrate true circularity.
2. Reducing plastic waste and plastic littering, in compliance with the EU Single-Use Plastics Directive (SUPD), using decreasing plastic thresholds like the ones France implemented for cups, with 15% plastic maximum allowed in 2022 and 8% in 2024. Ireland could also follow Italy's example by setting a maximum 10% plastic threshold for single use cups.
3. Modulating Extended Producer Responsibility (EPR) fees to tackle waste according to the priority environmental and littering impact.
4. Deploying collecting schemes for paper-based recyclable products [targeted on littering spots] whether the recycling occurs in Ireland or in other EU countries and the UK.
5. Upgrading composting schemes through increased efficiency targets and financial support.

⁷ [REPAK Annual Reports](#)

Conclusion

- The levy will not deliver the best environmental outcome – there will be more 100 percent plastic cups in circulation, 2.8x more carbon dioxide and 3.4x more freshwater used (Ramboll).
- Each time a reusable cup is used, a washing cycle is needed, and this cycle consumes more energy and water than the production, use and end-of-life of a single-use paper cup (whether it is recycled or not).
- The levy has a disproportionate focus on paper coffee cups.
- The levy will unnecessarily limit the freedom of enterprise and impose costs across the value chain, including consumers.
- Other options are open to legislators that do not levy consumers and do not put costs on businesses.
- Industry stands ready to engage with officials on this issue, and feels it was not adequately consulted up to this point despite the fact that they will be bearing the brunt of implementing this levy. 100 percent plastic bottles have incentivisation schemes (e.g., Deposit/Return Schemes) in place, yet renewable fiber products are facing punitive action.