

Single Use

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Sent: Wednesday 23 November 2022 13:08
To: SingleUse
Subject: Retailer Response to the Consultation on Single-Use Disposable Cups [DWFLLP-Active.FID4056891]

FAO: Circular Economy - Materials Management Division

We represent a chain of quick-service restaurants based in Ireland, which offers for sale food and drink, including hot drinks, primarily to take away. Below we have outlined four key questions/concerns, on their behalf, in response to the consultation papers on single-use disposable cups, which we hope will be carefully considered and clarified before any levy is introduced.

1. Cost to Business

We understand that the purpose of the levy is to change consumer behaviour and incentivise them to *choose* to re-use and to help reduce single-use waste; and not to raise funds. However, one unintended consequence that seems to have been overlooked is the impact of the levy on businesses that are not able to accept customers' own re-usable cups (i.e. for health, safety and hygiene reasons) and are therefore not able to incentivise their customers to have a choice. Such businesses, like our client's, have no option but to either charge their customers the levy and deal with the impact of reduced consumer demand as a result of increased prices or offer hot drinks for sale in a costly re-usable cup that the customer doesn't want/intend to keep and re-use in any event.

We assume that the regulations will not make it mandatory for businesses to offer consumers an option to avoid the levy but this is not clear. If businesses are not able to give their customers that choice, how does the levy imposed on them serve to meet its purpose?

2. Other Legislation

The consultation paper and other supporting documents compare the proposed single-use cup levy with the plastic bag levy. Whilst it may be intended that the single-use cup levy will be collected in the same way as the plastic bag levy, we are concerned there are obvious differences between the two, which have not been taken into consideration, specifically the issue of health and safety and food hygiene. The plastic bag levy encourages consumers to use a reusable bag to carry their shopping in, which does not present any additional health and safety or hygiene concerns compared to using a single-use plastic bag. Consumers' reusable cups, however, pose additional risks which cannot be ignored if our client is to continue to comply with their other legal obligations.

a) Health & Safety

Our client operates a high level of health and safety across all their establishments, in order to keep their staff and customers safe and meet their legal health and safety obligations. There are health and safety risks to staff and consumers in accepting customers' re-usable cups (i.e. if a cup is accepted which, despite its visual appearance, is unfit to store very hot drinks, and/or is incompatible with our client's hot drinks machines, and/or which is made of material which is unsuitable for handling hot drinks and causes injury by scolding as a result). By mandating their staff to accept customers' re-usable cups our client risks exposing them, and others, to unacceptable injury, as well as exposing the business to criminal liability for regulatory offences and civil liability for personal injury, which increases their legal and reputational risks.

b) Food Hygiene

Our client also operates a high level of food hygiene across all their establishments, as part of their food safety management system, and in order to meet their obligations under food hygiene regulations. If staff accept their customers' re-usable cups and those cups are contaminated; something which is not always obvious on appearance, they risk serving drinks which do not comply with Ireland's strict food hygiene measures and expose their staff and customers to an unacceptable health risk and their business to the resulting legal and reputations risks associated with such breaches.

Further to risk assessments of their business operations, our client has therefore made it their policy not to accept *any* reusable cups and this policy is based entirely on protecting their staff and customers and their

obligations to comply with health and safety and food hygiene legislation. Our concern is that not enough has been done to consider the safety and hygiene risks arising from the only feasible way for businesses to avoid the levy (i.e. the consumers' own re-usable cup). We note that the RIA Report includes a paragraph concluding that food hygiene does not appear to be a substantive issue that cannot be overcome. However, our concern is that this conclusion is based purely on the fact that many major retailers in Ireland already offer a facility to use a reusable mug, rather than being based on any actual evidence relating to risk.

3. Waste Material Comparison

Section 11(3) of the Circular Economy Act 2022 (CEA 2022) states that Regulations may only be made in relation to the supply of a single-use item (or a re-usable alternative item) where the Minister is satisfied that such items with a lower level of material wastage, having regard to the purpose for which, and circumstances in which, they are supplied, are or could be made, readily available. It is unclear whether the obligations on the Minister as detailed in Section 11(3) CEA 2022 have been satisfied.

We would like to understand:

- a) What is meant by 'lower level of material waste' as the Act, nor the draft regulations, provide a definition. For example, does it take into account the life-cycle of both single-use cups (regardless of material) compared to re-usable cups (regardless of material) including the wastage from the raw materials and production processes, as well as end of use disposal? There may be circumstances where, taking into account the life cycle of both products, a compostable cardboard cup could have a lower level of material waste than a plastic re-usable cup that is not suitable for recycling (and could end up in landfill having not necessarily been used multiple times). This would not achieve the aim of the government's Waste Action Plan or section 11(3) CEA 2022.
- b) Taking this and the below into account, how has the Minister satisfied themselves that all cups that fall within the definition of 're-usable' regardless of their material and life cycle have a lower level of material wastage compared to all single-use cups regardless of their material and life cycle?
- c) What evidence, objectively comparing all re-usable cups with all single-use cups, has been relied upon which would help us to better understand the comparison and be confident that re-usable cup usage is, in all cases, better for material wastage and the environment than single-use cups, including those which are genuinely made from material which can be recycled or composted in their entirety?
- d) Has any consideration been given to exempting single use cups that can be shown from life cycle assessments and comparisons to have a lower level of material wastage than re-usable cups?

4. Simplification of single-use and re-usable

We are concerned that the definitions of 'single-use' and 're-usable' have been over-simplified and does not take into account the circumstances and occasions in which consumers buy hot drinks. We note that there is a definition of 're-usable' in the Act; "conceived, designed or placed on the market so as to accomplish, within a single life span of the product, multiple trips or rotations by being refilled". Given this vague definition, we understand that businesses could avoid the levy by selling hot drinks to consumers in cups supplied by the business, provided that those cups could, in theory, be used more than once. Our concern is that these 're-usable' cups (likely made from plastic) will end up in landfill, because of the situation in which the hot drinks are purchased (i.e. people 'on-the-go' without the practical means or inclination to continue carrying the cup around with them for further use).

We look forward to receiving clarity on the above points in due course.

Kind regards,

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