

26.9.25

EU Guidelines

I have been asked to advise on the EU Commission's Guidelines (C 3762) of 31st May 2021 on the interpretation of the Single-use Plastics Directive 2019/904 insofar as they relate to "oxo-degradable" plastics. I have concluded for the following reasons that they are mistaken.

They say "Article 5 of the Directive makes no distinction between oxo-degradable plastic that is biodegradable and oxo-degradable plastic that is not biodegradable." This is true – because Article does not mention biodegradable plastic at all. That does not however mean that oxo-biodegradable plastic does not exist.

Its existence is recognised by CEN TR15351, wherein:

(a) "Oxo-degradation" is defined as "degradation identified as resulting from oxidative cleavage of macromolecules." This describes ordinary plastic, (which does not contain an intentionally-added prodegradant catalyst). It will abiotically degrade by oxidation in the open environment and create microplastics, but does not become biodegradable except over a long period of time.

(b) By contrast "oxo-biodegradation is defined as "degradation resulting from oxidative and cell-mediated phenomena, either simultaneously or successively". This means that the plastic (which does contain a prodegradant catalyst) degrades rapidly by oxidation until its molecular weight is low enough to be accessible to bacteria and fungi, who then recycle it back into nature.

Recital 15 of the Directive provides that "The restrictions on placing on the market introduced in this Directive should also cover products made from "oxo-degradable" plastic, as that type of plastic does not properly biodegrade and thus contributes to microplastic pollution in the environment." It follows from this that a type of plastic, (such as d2w biodegradable plastic), which is proved to properly biodegrade and not create microplastics, is not "oxo-degradable" plastic for the purposes of the Directive, and the Guidelines are therefore in conflict with Recital 15. The quality of biodegradability is an essential characteristic.

Not only do the Guidelines make no sense, but they are not legally binding, and both Recital 15 and the Guidelines were written without the benefit of later scientific evidence.

One of the purposes of the SUP Directive is to reduce the amount of single-use plastic products, and especially those commonly found on beaches. That is why the Directive contains a list of such plastics, which are banned whether they are oxo-degradable or not. There was no reason to add any restriction which could apply to oxo-biodegradable plastic products, for if they are single-use products on the list they are banned anyway.

There is no evidence that oxo-biodegradable plastic products not mentioned on the list have ever been found on beaches.

THE PRECAUTIONARY PRINCIPLE

The so-called “precautionary principle” is much loved by the EU. It was described by Lord Sumption in the London Daily Telegraph as “essentially a principle for making decisions radically affecting people’s lives without adequate evidence.”

Lord Sumption is one of the United Kingdom’s most distinguished jurists. He was a judge of the Supreme Court, which hears cases of the greatest public or constitutional importance.

NOVAMONT

<https://en.agcm.it/en/media/press-releases/2025/6/A573-> I see that the Italian Competition & Markets Authority has decided that Novamont abused its dominant position in the national markets by engaging in exclusionary practices targeting competitors.

The Authority has therefore imposed a 30,359,000.00 euro fine on Novamont S.p.A., with an additional 1,701,052.08 euro fine imposed jointly and severally with its parent company ENI S.p.A.

In addition, for more than ten years Novamont and others have been campaigning and lobbying against oxo-biodegradable plastic, ostensibly out of concern for the environment, but in reality to damage their competitors. They seem to think that this kind of behaviour is an acceptable business practice.

This behaviour is damaging the environment, because not enough companies are using oxo-biodegradable technology, which is the only way to prevent plastic in the environment from accumulating there for decades.