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Joint Industry Statement on SUPD Guidelines on Litter Clean-Up Costs

The undersigned industry associations express concern that the **recently published guidelines on the criteria for calculating litter clean-up costs under the Single-Use Plastics Directive (SUPD) are in contradiction with the legal text of the Directive**. This is the case for all the references suggesting that litter clean-up costs under the SUPD should include cleaning and unblocking wastewater collection and treatment infrastructure. Being a document interpreting the applicable legal framework, Commission guidelines cannot go beyond what EU legislators have decided by means of the legislative process.

For this reason, **we recommend the EU Commission to re-align the Guidelines with the SUPD legal text by removing the reference to cleaning and unblocking of wastewater collection and treatment infrastructure from the definition of clean-up litter costs**.

Being listed at Section 2 of Part E of the Annex, wet wipes are covered by EPR provisions set by Article 8 (3). As such, EPR should cover the following costs:

- (a) the costs of the awareness raising measures referred to in Article 10 regarding those products;
- (b) the costs of cleaning up litter resulting from those products and the subsequent transport and treatment of that litter; and
- (c) the costs of data gathering and reporting in accordance with point (c) of Article 8a(1) of Directive 2008/98/EC.

Differently from products listed at Section 1 of Part E of the Annex – covered by Article 8 (2) – EPR provisions for wet wipes do not cover the “cost of waste collection for those products discarded in public collection system”.

Based on the SUPD, cleaning and unblocking of wastewater infrastructures fall outside the scope of Art. 8 (3):

- According to the Urban Wastewater Treatment Directive (UWWTD), wastewater collection infrastructures (sewers) are a “collecting system”, i.e. “a system of conduits which collects and conducts urban wastewater”. Given that the UWWTD presupposes that such systems are public or publicly available, **wastewater collection and treatment infrastructures qualify as public collection system that are clearly outside of the scope of Article 8 (3)**. Had the legislator wanted to include costs of waste collection for products listed at Section 2 of Part E of the Annex, Article 8 (3) would have been written in the same way as Article 8 (2). In the words of the “Study to support the development of implementing acts and guidance under the Directive on the reduction of the impact of certain plastic products on the environment - WP 6 final report on developing guidelines on litter clean-up costs” – also mentioned by the Commission Guidelines – “it may be assumed at this stage that SUP litter clean-up should not include the costs of unblocking/ cleaning of sewage systems from SUPs that have been flushed down the toilet”¹.
- The SUPD defines disposal of SUP in the sewer network as “**inappropriate disposal of waste**” and not as “**litter**”. The whole text of the Directive maintains a distinction between “inappropriate disposal of waste” and “litter”: for instance, Article 7 (b) on marking requirements refers to “*the negative impact of littering or other inappropriate means of waste disposal of the product on the environment*”. Crucially, Article 10 (c) on awareness raising measures refers to “*inappropriate means of waste disposal of those single-use*”

¹ Study to support the development of implementing acts and guidance under the Directive on the reduction of the impact of certain plastic products on the environment - WP 6 final report on developing guidelines on litter clean-up costs”, p. 27

plastic products on the sewer network”, clearly defining inappropriate flushing of SUP products as inappropriate waste disposal. By drafting Article 10 (c) specifically for sewers, the legislator has clearly defined disposal through the sewer network as inappropriate disposal and not as litter. Had the legislator wanted to categorize disposal through the sewer network as litter, it would have added the word “littering” to Article 10 (c), as done for Article 10 (b)². Similarly, Recital 20 provided that *“single-use plastic products that are frequently disposed of through the sewer system or otherwise inappropriately disposed of should be subject to marking requirements.”* There are no references in Recital 20, as well as in the rest of the SUPD, to any obligation on economic operators to cover for costs of cleaning of sewers. Had the legislators wished to include such an obligation, they would have included such a reference in Recital 20 focusing on sewers. For these reasons, **disposal of wet wipes through the sewer network is to be considered as “an inappropriate form of waste disposal” and not as form of litter and shall not be covered by litter clean-up costs.**

- By reading the legal text of the SUPD, in combination with its Impact Assessment, it is clear that the clean-up litter EPR does not apply to items that are flushed but do not end up as marine litter. The SUPD impact assessment foresees *“EPR to contribute to the cost of cleaning up litter for SUP that are either frequently littered (cigarette butts, drinks bottles, crisp packets and sweet wrappers, straws, stirrers, drinks cups and lids, food containers, balloons) or flushed when they should not be and then end up in the sea (...)”*.³ This makes it clear that the necessary condition for an EPR to be set is that the inappropriately flushed item gets out of the wastewater collection system. In other words, inappropriately flushed wet wipes that are kept in urban wastewater treatment plants are not litter and shall not be subject to EPR.
- Member States that have applied EPR clean-up litter so far did not include cleaning and unblocking wastewater collection and treatment infrastructure, meaning they have interpreted the SUPD legal text in line with the above.

To sum up, the current Guidelines contradicts the legal text and scope of the SUP Directive, introduces uncertainty for national authorities and economic operators, and imposes burden on industries that were never subject to any impact assessment, given that provisions go beyond the text of the SUPD.

That is why **we recommend to urgently revise the Guidelines by removing any reference to cleaning and removing SUP products from municipal wastewater collection and treatment infrastructure.** Maintaining a legally consistent interpretation is essential to support harmonised implementation, provide clarity to all stakeholders and ensure an effective, proportionate EPR framework.

For more information, please contact:

Brieuc Lits

Public Affairs Director

EDANA, the Voice of Nonwovens

brieuc.lits@edana.org

²Article 10 (b) of the SUPD refers to ‘the impact of littering and other inappropriate waste disposal of those single-use plastic products and of fishing gear containing plastic on the environment, in particular on the marine environment.’

³ Single Use Plastics Directive, Impact Assessment report, part 1, p. 47