
SUP DIRECTIVE - CLARITY ON SCOPE OF SANITARY TOWELS

March 23th, 2021

[Directive \(EU\) 2019/904](#) of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment, commonly known as the Single Use Plastic Directive (SUPD), places measures on *sanitary towels (pads), tampons and tampon applicators*.

The German Bundestag approved a draft regulation ([Einwegkunststoffkennzeichnungsverordnung, EWKKennzV](#)). This Verordnung is complemented with an explanatory memorandum. This memorandum broadens the scope of the German Verordnung to be broader than the scope of the SUPD by including incontinence products.

For any widening of the scope it should be (i) demonstrated that such measures are necessary and proportionate to protect the environment, are not discriminatory; and (ii) the measures should be notified to the European Commission. Given that these requirements are not met, **EDANA requests the memorandum to be corrected to only include those products intended by the EU legislator (i.e. wet wipes, feminine hygiene products that include sanitary towels, tampons and tampon applicators).**

The intent of the SUPD is to tackle the top 10 most commonly found single use plastic items, that make up 86% of all SUP in beach litter and is responsible for more than half of plastic marine litter. The [impact assessment](#) clearly demonstrates that disposal in toilet and insufficient waste water treatment and sewage management is the pathway that carries sanitary applications into the marine environment¹.

The recitals of the SUPD provide clarity on the scope of sanitary towels (pads)

The recitals of the SUPD state that the Directive's marking requirements should only apply to "sanitary towels (pads)" that are intended for women and are small enough to be disposed through the sewer system. Incontinence products meet neither of these criteria because they are intended for both men and women, and are not small enough to be disposed through the sewer system. Also, Recital 19 of the SUPD only refers to the applicability of products for women as it states that "the presence of hazardous chemical substances in sanitary towels, tampons and tampon applicators should be avoided in the interest of women's health" (emphasis added). Hence product for vaginal discharge or menstrual blood.

The legislative history of Recital 19 also strongly suggests that the concept of sanitary towels was intended to cover only products for women as the amendment proposed by the European Parliament that led to the adoption of Recital 19 also included the wording "[i]n the same way, the accessibility of multi-use and more economically sustainable solutions is vital in ensuring that women have full access to life in society" (emphasis added). This wording very clearly suggests that the co-legislator's intent was to only cover feminine care (i.e., menstruation) products.

¹ SWD(2018) 254 final: Table 5. Drivers and Pathways for SUP items, p. 25.

Furthermore, Recital 20 of the SUPD suggests that the Directive's marking requirements are intended to apply to listed single-use plastic products that may be disposed through the sewer system. It states that "[c]ertain single-use plastic products end up in the environment as a result of inappropriate disposal through the sewer system or other inappropriate release into the environment. Disposal through the sewer system can in addition cause substantial economic damage to sewer networks by clogging pumps and blocking pipes. [...] Therefore, single-use plastic products that are frequently disposed of through the sewer system or otherwise inappropriately disposed of should be subject to marking requirements." Incontinence products, which are too large to be inappropriately disposed of through toilets, are not among this group. Indeed, the European Commission's own Impact Assessment released alongside its proposal for the SUPD clearly identifies the products the Directive should address but makes no mention at all of incontinence products.

Clearly, recitals 19 and 20 of the SUPD suggest that the concept of "sanitary towels (pads)" should not include incontinence products. To note, like baby diapers, these products are intended to absorb larger quantities of urine, which in addition to their size, also renders them impossible to flush. The co-legislator excluded baby diapers from the scope of this directive on the same grounds.

The intention is to cover feminine care products

Typically, the term "sanitary towels (pads)" is intended to cover feminine care (*i.e.*, menstruation) products. This also seems to be confirmed by the fact that Point 1 of Part D of the Annex groups sanitary towels (pads) together with tampons and tampon applicators, which are clearly feminine care products.

Translations of the SUPD confirm the scope on feminine care products

In the Netherlands, The Official text of (RICHTLIJN (EU) 2019/904) as published in the OJ of 12/6/2019 L155 is explicit. This Dutch version refers solely to "sanitary towels (pads)" as "maandverbanden," which unequivocally refers to menstrual products only.

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