Cosmetics Europe Position Paper on the European Commission's Proposal for the Revision of the Urban Wastewater Treatment Directive (UWWTD)

Cosmetics Europe[1] is the European trade association for the cosmetics and personal care industry representing the cosmetics and personal care industry in Europe. Ranging from antiperspirants, fragrances, make-up and shampoos, to soaps, sunscreens and toothpastes, cosmetics and personal care products play an essential role in all stages of our life. European citizens use cosmetic products as part of their daily lives, serving their essential needs and expectations. These needs and expectations drive our industry as well as delivering innovative products that enhance consumers' well-being and quality of life and boost their self-esteem. Cosmetics Europe highlights that the cosmetics and personal care industry in Europe is continuously committed to improving the sustainability and circularity of its products, as illustrated by the **Commit for Our Planet initiative**[2]. Launched in December 2022, the initiative encourages all cosmetics and personal care companies to take part in a joint industry effort to reduce greenhouse gas emissions, improve packaging solutions and act for nature.

OUTLINE OF COSMETICS EUROPE'S POSITION

Cosmetics Europe welcomes the European Commission's Proposal for the Revision of the Urban Wastewater Treatment Directive and supports its objectives, in particular:

- To protect EU citizens and ecosystems from the remaining sources of insufficiently treated wastewater.
- To better align the EU current rules on urban wastewater treatment to the goals of the European Green Deal, including the transition towards climate neutrality and circular economy, zero-pollution ambition, and enhanced protection of biodiversity.

Nevertheless, Cosmetics Europe would like to draw the attention of the European Institutions on several aspects which are further developed hereafter.

Although Cosmetics Europe acknowledges the **importance of upgrading urban wastewater treatment plants across the EU with a quaternary treatment stage**, as a key development in reaching the zero-pollution ambition and protecting surface, and agrees in principle with the

[1] For more information on Cosmetics Europe, visit the website Cosmetics Europe - The Personal Care Association :: Home.
[2] For more details on Commit for Our Planet, visit the website www.commitforourplanet.cosmeticseurope.eu.

introduction of a financing scheme for that purpose, the current European Commission proposal for the revision of the Urban Wastewater Treatment Directive raises several issues:

- **On the scope and definition of micropollutant (art. 2)**

- Any measure must not go beyond the legitimate objective of the Directive and therefore only cover as micropollutants those substances that are currently not sufficiently removed in urban wastewater treatment plants and therefore trigger a need for upgrading the plants with a quaternary treatment stage. In this sense, the proposed definition of "micropollutant" is too broad, possibly leading to inclusion of tens of thousands of substances that do not pose a problem in current urban wastewater treatment systems (e.g., biodegradable substances).
- The proposed definition of micropollutant, based on broad criteria rather than a list of substances, is also ambiguous and will likely lead to a non-harmonised application of an "Extended Producer Responsibility" (EPR) scheme among Member States and distribution chains, thus threatening the integrity of the internal market. Clear definitions and an unambiguous identification of micropollutants (in an Annex to the Directive) need to be included in the Directive in form of a defined list of micropollutants.
- Since different products can contain very different levels of micropollutants, it is not appropriate to base measures, or derogations, on the quantity of products containing a micropollutant but rather on the quantity of the micropollutant itself.

- **On the Extended Producer Responsibility (art. 9)**

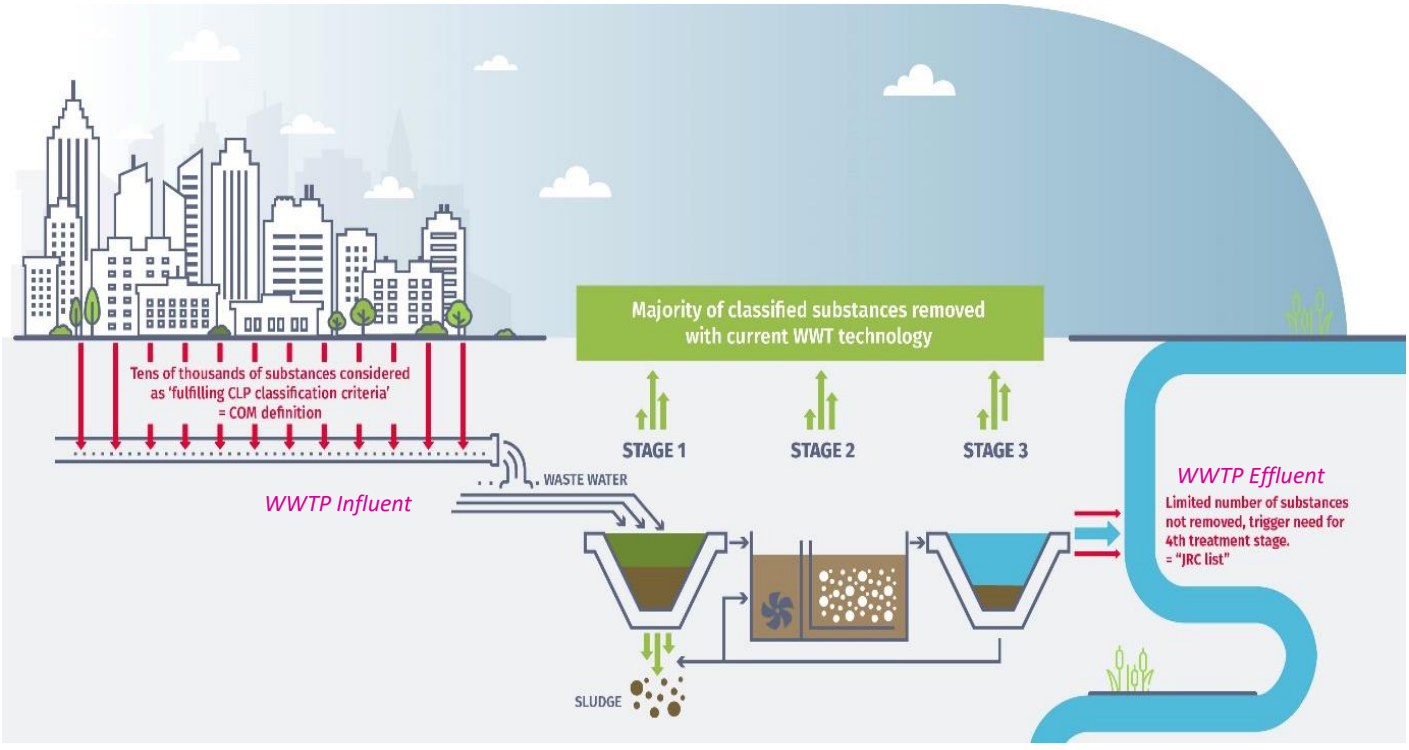
- An EPR scheme implementing a proportionate and fair "Polluter Pays Principle" can be a model to achieve financing of the upgrade of wastewater treatment plants by a fourth treatment stage. However, the European Commission bases its proposal on the questionable assumption that cosmetics is one of only two main contributors of micropollutants. It has to be noted that cosmetics or pharmaceuticals are very often not the only users of a substance, which can end up in urban wastewater from a variety of different sources. Thus, the proposal would require cosmetic sector to contribute significantly more than corresponding to its real contribution of micropollutants.
- Any producer and/or distributor should be obliged to financially contribute only in relation to the amount of micropollutants it releases into urban wastewater. In this regard, the Directive must allow a correct allocation of micropollutants to their respective sources. The total amount of money collected through an EPR scheme should reflect the costs caused by the total quantity of micropollutants that are released into urban wastewater, irrespective of the source. Each company whose products release micropollutants in the urban wastewater should pay a share of the total cost that is calculated from its proportional contribution to this overall micropollutant load. Such fair and proportionate cost allocation has been successfully implemented in other EPR schemes, such as for packaging.

- The proposed definitions of “placing on the market” and “producer” would lead to EPR contributions for the same batch of a product being collected multiple times every time it is moved to a different Member State prior to its end use.
- The EPR scheme set up under the European Commission proposal should follow the essential requirements and key principles already set for EPR schemes under Article 8a of the Waste Framework Directive, to ensure a fair and effective mechanism in place. Oversight of the proper allocation and control of EPR fees collected from industry operators is a fundamental aspect of any EPR scheme.

FUNCTIONING OF UWWTP – REMOVAL OF SUBSTANCES

A schematic of the **functioning of an urban wastewater treatment plant** is presented hereafter.

Urban wastewater contains thousands of substances that end up in wastewater canals as a result human biology (excretions) and activities (consumer use of products from wide range of sectors). A wastewater purification process generally consists of several successive steps, including mechanical, biological, and physical treatment stages. Whilst most substances can be removed with this technology, some may require a fourth treatment stage to achieve full removal (so-called micropollutants).



It should be underlined that out of the tens of thousands of substances that can be considered as micropollutants under the European Commission proposal, the majority is biodegradable and removed through the three-stage technology. Only a limited number of substances is not removed, therefore triggering the need for an upgrading of urban wastewater treatment plants with quaternary treatment. Those are the sole substances relevant to be considered as micropollutants.

SPECIFIC REMARKS AND RECOMMENDATIONS

- **Fair contribution to Extended Producer Responsibility (EPR) schemes and implementation of a true "Polluter Pays Principle".**

Cosmetics Europe supports financing the necessary upgrades of urban wastewater treatment plants based on the philosophy of "Polluter Pays": the **costs should be fair and proportionate**, i.e., reflect the amount of micropollutant that a company releases in relation to the total micropollutant load in urban wastewater. Any financing scheme should also stimulate a positive change to invest back all financial contributions into finding solutions. Nevertheless, as it stands the current legislative proposal attributes the entire financial burden of an EPR scheme exclusively to the cosmetic and pharmaceutical sectors.

It has to be noted that cosmetics or pharmaceuticals are very often not the only users of a substance, which can end up in urban wastewater from a variety of different sources. In the accompanying feasibility study of the legislative proposal, substances were identified as exclusively cosmetic ingredients simply based on their listing in the COSING database (Official EU Cosmetic Ingredient list). However, most substances may be – and are – used by other sectors beyond cosmetics. Volumes from other uses, which may be significant and exceed the cosmetics use volumes, were allocated to the cosmetic sector, thereby identifying cosmetics as the second biggest contributor of micropollutants. Based on this questionable assumption, the cosmetic sector would be required to pay more than what corresponds to its contribution to micropollutants in the urban wastewater.

Furthermore, given that different products can contain very different amounts of the same micropollutant, **any cost allocation must be based on the substance dry weight of the micropollutant** rather than the volume of product containing it. For example:

- Release of 100 tons of Product A, containing 0.1% of a micropollutant, would lead to a release of 0.1 ton of micropollutant.
- Release of only 1 ton of Product B, containing 20% of a micropollutant, would lead to a twice as high release of micropollutant (0.2 tons), even if the quantity of Product B is much less than for product A.

- **Definition of micropollutant.**

✓ **Scope and relevance of substances included in the proposed definition.**

The European Commission defines **micropollutant** as any "***substance**, including its breakdown products, that is usually present in the environment and urban wastewaters in concentrations below milligrams per liter and **which can be considered hazardous to human health or the environment** based on any of the criteria set out in Part 3 and Part 4 of Annex I to Regulation EC*" (CLP regulation). According to this proposed definition, any substance classified or self-classified under the chemicals legislation (CLP) and found in raw, untreated urban wastewater would automatically be considered as a micropollutant.

Cosmetics Europe considers that the proposed definition is too broad as it focuses on the substances going into urban wastewater treatment plants rather than on substances that are still present in

wastewater treatment plants effluents after three treatment stages. Irrespective of their chemical classification, **many substances are easily removed from the urban wastewater** through three treatment stages and are therefore not relevant substances for quaternary treatment. Indeed, the purpose of hazard classification of chemical substances is to allow their safe transport, handling and use in their pure form to protect the health of the user and the environment. This classification, especially concerning for human health hazards, is a poor predictor of how a substance will behave in urban wastewater treatment plants. As an example, pure **acetic acid** is classified with the chemical hazard of "*Causes severe skin burns and eye damage*". At the same time diluted acetic acid – found in food (vinegar) or cosmetics – is readily biodegradable and easily removed in a three-stage wastewater treatment plant. Substances which are efficiently removed in three-stage wastewater treatment plants, and therefore are not found in the effluents, must not be considered as micropollutants.

Cosmetics Europe considers that **the definition of micropollutant should only include substances that trigger the need for an upgrading of existing urban wastewater treatment plants with a fourth treatment stage**.

- ✓ **Ambiguity of the proposed definition.**

As mentioned above, the proposed definition of micropollutant refers to "substances ***which can be considered as hazardous*** *... based on any of the criteria set out in Part 3 and Part 4 of Annex I of the CLP..."* rather than "*substances* ***listed in Annex VI of the CLP Regulation as hazardous*** *... based on any of the criteria set out in Part 3 and Part 4 of Annex I... of the CLP Regulation".*

A clearly defined list of substances fulfilling these classification criteria does not exist. The CLP regulation allows for companies to self-classify the majority of their substances, whereas a smaller number of substances is formally classified at EU level, based on a proposal by a national authority. For substances that are not classified with a harmonized EU classification, different suppliers of the same substances may place them on the market with different hazard classifications, depending on the data companies have in hand. This can lead to sometimes peculiar results e.g., according to these self-classifications, some chemical suppliers self-classify **water** as a classified hazardous substance[3] with skin corrosive properties.

The proposed definition of micropollutant in the legislative proposal would potentially cover over 190,000 substances, many of which are not at all relevant from an urban wastewater treatment perspective with often diverging or contradicting (self-)classifications. Consequently, EPR schemes in different Member States may be based on a different scope, leading to a non-harmonised application of the EPR scheme within the internal market.

Cosmetics Europe considers that **substances covered by an EPR scheme must be unambiguously identified in an Annex to the Urban Wastewater Treatment Directive** to ensure legal certainty and harmonised application within the EU. For the sake of consistency and harmonization between Member States, an agreed list of micropollutants to be used for the basis of the EPR scheme needs to be provided.

[3] ECHA Inventory of Classifications: https://echa.europa.eu/information-on-chemicals/cl-inventory-database/-/discli/notification-details/69840/1207485.

- **Alternative proposal for scope and definition of micropollutants.**

A JRC study[4] from November 2022, referenced by the European Commission in its own Impact Assessment, presents a methodology for assessing the behaviour of substances that are found in urban wastewater treatment plants. It also allows to estimate the degree to which substances are either removed at each treatment stage and/or still contribute to the remaining toxic load of the effluent. The methodology allows to establish a list of clearly identifiable micropollutants, that are relevant for the upgrading of urban wastewater treatment plants. It also provides an assessment of the "hazardousness" of each substance, a parameter that the European Commission proposes to use as a modulator when calculating EPR fees.

Cosmetics Europe considers that **the JRC methodology provides a more solid and relevant basis to set up and implement an EPR scheme**. A list of relevant and ranked micropollutants identified by the JRC methodology should be established through secondary legislation and included as an Annex to the Urban Wastewater Treatment Directive[5]. It would provide legal certainty and ensure a harmonised approach in the implementation and application of the EPR across the internal market and across product distribution chains. Such list could be regularly updated through delegated or implementing acts to adjust the EPR to consider scientific and technological progress and possible changes in the use of substances.

Moreover, such a list is "sector-agnostic" and contains substances from all possible sources, including – but not limited to – ingredients in cosmetics and pharmaceuticals. It would allow implementation of EPR following a true "Polluter Pays" approach that includes any company that places products on the market which release micropollutants into urban wastewater. It would also ensure, however, that any company only pays a share of the total cost that reflects its proportional contribution to the overall micropollutant load.

- **Multiple collection of EPR fees for the same batch of a substance.**

The proposed definitions of "producer" and "placing on the market" would include in the EPR reporting requirements also producers whose products do not end up in the urban wastewater. Furthermore, the proposed definition of "placing on the market" is inconsistent with the European Commission Blue Guide on the implementation of EU products rules and therefore with existing EU legislations in which placing on the market is defined as the first making available of a product on the Union market.

This leads to a scenario allowing for repeated EPR charges to be collected every time a product is moved to a different Member State prior to its end use. Such an approach is incompatible with the freedom of movement for goods and would lead to disruptions in the EU internal market.

[4] The JRC study "*European scale assessment of the potential of ozonation and activated carbon treatment to reduce micropollutant emissions with wastewater*" can be found at this link.

[5] In its study, JRC already evaluated a total of 1,337 substances and ranked them for their contribution to the pollution of WWTPs effluents. The substances were selected based on available literature as well as expert judgement. However, a wider selection of substances, based on stakeholder consultation, may be necessary to avoid a selection bias.