

To:

Mr Eric Mamer
Director-General
Directorate-General for Environment
European Commission
B - 1049 Brussels

Cc: Ms Paulina Dejmek Hack, Head of Commissioner Roswall Cabinet

Subject: Clarification of Section 7 of the Commission Guidelines on Litter Clean-Up Costs under the SUP Directive

Brussels, 4 February 2026

Dear Mr Mamer,

Tobacco Europe¹ appreciates the Commission's efforts to provide further guidance on the implementation of the Single-Use Plastics Directive (EU) 2019/904 ("SUP Directive") and welcomes the publication of Commission guidelines *laying down criteria on the costs of cleaning up litter in accordance with Article 8(4) of the SUP Directive* (OJ C, C/2025/5646, 24.10.2025, ELI: <http://data.europa.eu/eli/C/2025/5646/oi>) ("Guidelines").

We fully support the objectives of the SUP Directive and the principles outlined in the Guidelines—**cost-efficiency, transparency, and proportionality**.

Purpose of this letter

We respectfully request clarification of Section 7 of the Guidelines, which addresses interactions between authorities and economic operators regarding tobacco filter litter. As currently drafted, this section states that Member States should ensure that the tobacco industry does not "*get unnecessary interactions with public authorities (e.g., partnerships, agreements, contributions)*". It should be clarified that **necessary interactions between public authorities and the tobacco industry**, such as on technical and operational matters, relating to Extended Producer Responsibility ("EPR") matters are permissible under the WHO Framework Convention on Tobacco Control ("FCTC") and the SUP Directive. These necessary interactions are essential for effective, accountable and legally compliant implementation of the SUP Directive, and **the absence of such interactions would risk undermining effective implementation of the SUP Directive**. We also believe the proposed clarification follows the correct interpretation of the relevant legal texts, as discussed in more detail in the Annex.

1. Shared Objectives and Practical Concerns

The SUP Directive explicitly includes cigarette filters within its scope, requiring producers to contribute to clean-up costs. Effective implementation of these obligations depends on structured engagement with producers to ensure accurate cost allocation and operational feasibility. Excluding industry from this dialogue would reduce transparency and deprive authorities of essential technical expertise.

¹ Tobacco Europe is the European umbrella organisation representing the three largest tobacco and nicotine products manufacturers, namely British American Tobacco, Imperial Brands and Japan Tobacco International

2. Clarifying the FCTC and that Necessary Interactions Remain Permissible

Section 7 refers to the FCTC, particularly Article 5.3. We fully respect the FCTC's purpose in safeguarding public health policies from undue influence. However, the *Guidelines for implementation of Article 5.3 WHO FCTC* ("Article 5(3) Guidelines") do not prevent any interactions but rather explicitly allow for interactions that are necessary for effective regulation (see Recommendation 2.1). In general, these Article 5(3) Guidelines show that Article 5(3) of the FCTC primarily aims at preventing partnerships or similar arrangements with the tobacco industry. This is also the understanding of the Court of Justice of the European Union ("CJEU") (for more details, see the Annex).

Similarly, Article 18 of the FCTC does not ban interaction with the tobacco industry in relation to environmental matters and COP decisions should not be read as creating new legal obligations. Under international law, treaty interpretation cannot expand obligations beyond the agreed text.

3. EU Principles on Transparency and Participation

The proposed clarification is in line with the general objectives of inclusive and transparent consultation with affected stakeholders (cf. Article 41 of the Charter of Fundamental Rights of the European Union and the Better Regulation Guidelines). EPR schemes, by design, involve producer participation to ensure accountability and proportionality. The application and interpretation of Section 7 should reflect these principles to avoid unintended regulatory asymmetry.

4. Evidence of Practical Impact

We are already seeing unintended consequences of misinterpretation. For example, in Belgium, the regional waste agency (OVAM) recently required the inclusion of a reference to Article 5(3) of the FCTC in its long-standing agreement with the tobacco industry on filter waste management. This requirement appears to have been triggered by Section 7 of the Guidelines, despite years of successful cooperation under the SUP Directive and full compliance with EU advertising and sponsorship bans. Such uncertainty risks disrupting established arrangements that have delivered tangible environmental benefits.

5. Our Request

To ensure clarity and legal certainty, we ask the Commission to

- **Remove Section 7** of the Guidelines, or
- **Clarify** that its recommendations do not preclude structured, transparent engagement with the tobacco sector on EPR implementation.

Tobacco Europe remains committed to supporting the SUP Directive's objectives and to working constructively with authorities to achieve cost-effective and environmentally sound outcomes.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "David Waller".

Secretary General
Tobacco Europe

Annex

Legal considerations

The recommendation to Member States in the final paragraph of Section 7 of the Guidelines should expressly confirm that necessary interactions between public authorities and the tobacco industry on technical and operational EPR matters are allowed and essential for effective regulation. This clarification remains fully compatible with the prohibition of promotional partnerships and the fact that it is prohibited for the Member States to transpose the EPR obligations of the SUP Directive via agreements between authorities and the tobacco industry.

1. EU Directive 2003/33/EC - Promotion of Tobacco Products and Sponsorship Arrangements Has Been Prohibited for Over 20 years at EU Level

Promotion of tobacco products and sponsorship arrangements has been prohibited for over 20 years at EU level by Directive 2003/33/EC on advertising and sponsorship of tobacco products. In a similar context, Article 17(3) of the SUP Directive excludes the tobacco sector from the possibility to transpose the EPR obligation via agreements between authorities and the sector concerned. However, these Directives do not prohibit the necessary interactions with the tobacco sector in order to ensure that EPR schemes are effectively implemented.

2. FCTC's Scope - Public Health and “Tobacco Control”

Section 7 links the recommendation made to the FCTC. From our point of view, it is unlikely that the FCTC can be applied within the framework of the SUP Directive. The FCTC primarily addresses public health policies with respect to tobacco control and only marginally environmental protection. Article 1(d) of the FCTC defines “tobacco control” as “*a range of supply, demand and harm-reduction strategies that aim to improve the health of a population by eliminating or reducing consumption of tobacco products and exposure to tobacco smoke.*”

3. Article 5(3) of the FCTC – Necessary Interactions Permissible

Section 7 refers to Article 5(3) of the FCTC, which provides that:

“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

However, the Article 5(3) Guidelines also refer to “any necessary interaction with the tobacco industry” and specify this in Recommendation 2.1, which says that

“Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products”.

As explained by the CJEU:

“Article 5(3) of the FCTC provides that in setting and implementing their public-health policies with respect to tobacco control, the parties to that convention are to act to protect these policies from interests of the tobacco industry in accordance with national law.

It is clear from the very wording of that provision that it does not prohibit all participation of the tobacco industry in the establishment and implementation of rules on tobacco control, but is intended solely to prevent the tobacco-control policies of the parties to the convention from being influenced by that

industry's -interests." (judgement of 22 February 2022, Case C-160/20, *Stichting Rookpreventie Jeugd*, paragraphs 58–59)

As the Court explains, Article 5(3) of the FCTC does not restrict all discussions with the tobacco sector even in relation to tobacco control; the Article 5(3) Guidelines rather explicitly allow for this. Interactions regarding EPR matters therefore remain permissible all the more.

4. Article 18 of the FCTC – A Narrow Provision on Cultivation and Manufacturing

Section 7 of the Guidelines includes a reference to Article 18 of the FCTC, which provides that the Parties "*agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories.*"

This shows the FCTC only covers environmental protection in relation to tobacco cultivation and manufacture. To our legal understanding, litter management is not in scope.

COP Decision FCTC/COP10(14) of 10 February 2024 is referenced in Section 7 of the Guidelines. However, it cannot establish legal obligations that go beyond the wording of the FCTC.

COP decisions are political and interpretative instruments designed to facilitate the implementation of existing treaty obligations; they do not create new legal obligations, nor can they enlarge the scope of the FCTC beyond what the Parties expressly agreed in its text.

5. Importance of Industry Participation in Regulatory Decision Making under EU Law and Administrative Principles

The importance of including the industry in this regulatory dialogue on EPR is reflected in EU law and policy:

- **Article 41 of the Charter of Fundamental Rights of the European Union:** guarantees the right to good administration, which includes the right of every person to be heard and to participate in procedures that affect them.
- **Better Regulation Guidelines:** require transparent consultation with all affected stakeholders, ensuring proportionality, effectiveness, and legal certainty.
- **Article 11 Treaty on the Functioning of the European Union:** requires integration and coherence between environmental protection and other Union policies, including industrial and health policy.

The application and interpretation of Section 7 of the Guidelines should reflect these principles and should not, even if only seemingly, prevent necessary interactions as outlined above.