

Joint Industry Position

Legislative Proposal on Preventing Plastic Pellet Losses to the Environment

The participating industry associations, representing polymer producers, converters, transporters, and recyclers, welcome legislation to address plastic pellet loss.

We support binding, mandatory, and harmonised measures to reduce plastic pellet losses to the environment, in line with the European Union's 2030 microplastic reduction targets. Forthcoming obligations to prevent, contain, and clean up pellet losses, underpinned by independent auditing and certification will ensure that losses are prevented at all stages of the plastics value chain. Doing so via a risk management approach is essential, ensuring that the specific circumstances of the duty holder can be accounted for, resulting in effective and efficient pellet loss prevention.

Ahead of trilogue negotiations, we wish to raise attention of policymakers on several topics for consideration during these negotiations. Further to these concerns, we summarise their impact if left unaddressed, along with a proposed solution in response.

Article 16 – Compensation:

Concern: As proposed by the European Commission, and endorsed by European Parliament, Article 16 on Compensation would shift burden of proof in compensatory claims from the plaintiff to the defendant. As proposed the defendant would need to prove a negative and demonstrate an absence of contribution to environmental damage which would be extremely challenging to demonstrate. The burden of proof in compensatory claims should remain with the claimant and be assessed on a case-by-case basis, in accordance with the existing national rules of evidence and civil procedure and considering the margin of discretion that the judiciary holds. Member States justice systems already provide the possibility for such claims to succeed.

Impact: The proposed legal text would promote a settlement pressure on the defendant and encourage potential plaintiffs to pursue unmerited or vexatious compensation claims.

Solution: Alignment of Article 16 of the Commission's legislative proposal with Article 79a of the revised Industrial Emissions Directive (i.e. deletion of Article 16, Paragraphs 2 and 4 of the Commission's legislative proposal) in the final legislative text, as per the Council's General Approach.

Annex I & III – Risk Assessment Plan for Installations:

Concern: Both the European Commission's initial proposal, and the European Parliament's first reading position, seek overly prescriptive pellet loss prevention and containment measures despite setting the wider obligation on duty holders to prevent, contain and clean up spilt pellets according to a risk management approach underpinned by independent auditing and certification.

Impact: Pellet handlers, and their activities, differ across a multitude of factors. In practice they are bespoke. Prescriptive measures that are under consideration for Annex I, deviate from the wider risk management approach of this legislation. They would limit the ability of pellet handlers to implement the most efficient and effective combination of measures to prevent pellet losses or to further improve upon them with time. Prescribed packaging characteristics and generic pallet loading limits sought by the Commission and Parliament are expected to be particularly costly to implement, with no certainty of improved pellet loss prevention outcomes. In some instances, these measures may represent a threat to the continued production and conversion of certain plastic polymers in Europe on either technical feasibility or economic grounds. To this end, we believe that the revisions sought by the Council in Annexes I and III are more proportionate and workable.

Solution: Adoption of the Council's proposal for Annex I (and Annex III) in the final legislative text.

Parliament Amendments – Legislative Duplication:

Concern: In its first reading position, the European Parliament proposed several legislative amendments which conflict with or seek to duplicate existing legislative provisions on labelling or pellet loss reporting or forthcoming ones on chemical composition disclosure for plastics.

Impact: Amendment 76 would duplicate polymer notification requirements that are expected to be brought forward by the Commission in its proposal to revise the REACH Regulation. Amendment 93 would create a parallel loss reporting system to the one already provided for plastic pellets in Commission Regulation (EU) 2023/2055 (REACH Restriction on intentionally added microplastics). These additional data requirements would be reported to individual Member States, ignoring, duplicating and creating inconsistencies with centralised and harmonised reporting obligations to the European Chemicals Agency.

Amendment 94 would unjustifiably re-create labelling requirements already governed by the Classification, Labelling and Packaging of chemical substances and mixtures (CLP) Regulation. This would see avoidable regulatory duplication and set a regressive policymaking precedent. Imitating a CLP-like label in a different piece of legislation without any scientific hazard assessment, as provided for in CLP Regulation, is meritless, unjustified, and creates huge uncertainty for industry.

Solution: Omit provisions related to pellet labelling, loss reporting or disclosure of the chemical composition of plastic pellets in the final text of the pellet loss regulation to prevent regulatory duplication or conflict.

Regulation of Maritime Transport of Plastic Pellets in EU Waters:

Concern: Regulation of the maritime transport of plastic pellets in European regulation must co-opt work already done by the International Maritime Organization. It is essential that containers carrying plastic pellets at sea do not become displaced, dislodged, or damaged during maritime transport. Any provisions in the plastic pellet loss regulation must be supported by a review clause to enable policymakers to adjust for changes in international regulations and standards.

Impact: Failure to align with current IMO guidance creates avoidable regulatory friction and disharmony for European economic operators. It is a burden on duty holders who seek to meet their obligations, whilst also creating grey areas that can be exploited by “bad actors”.

Solution: Containers carrying plastic pellets need to be stowed safely, securely, and sheltered. Include maritime shipping in scope of the pellet loss prevention regulation, aligned with IMO recommendations, as proposed in the Council’s General Approach.

Provisions for Small and Medium Sized Enterprises:

Concern: The specific needs of Micro, Small and Medium sized enterprises have not been adequately addressed in the Commission’s legislative proposal. Whilst measures proposed by both the European Parliament and the Council are welcome (e.g. amended SME certification requirements), further regulatory supports for SMEs are required.

Impact: Costs associated with implementing adequate risk management plans, including the purchase and installation of appropriate equipment to prevent, contain and clean up pellet losses are expected to mostly impose significant capital costs. Such capital demands are particularly acute for micro, small and medium sized enterprises owing to lower cashflow, and potential difficulties in accessing bridging finance. The capital nature of these costs, whilst foreseeable, may constitute a barrier for small and micro companies to comply with this regulation, reducing the overall effectiveness of legislative pellet loss prevention measures.

Additionally, we would like to highlight to policymakers that the pre-existing French GPI decree on pellet loss prevention foresees different audit cycles compared to those currently proposed in the European pellet loss prevention regulation.

Solution: Policymakers should adopt the supports for SMEs that the Parliament proposed in its first reading position (Amendments 60-66). Provide for Member States to provide financial support to SMEs to acquire equipment and allow accelerated amortisation of capital costs for pellet loss prevention by SMEs. Audit cycles in pre-existing national legislation on pellet loss prevention should be aligned to those foreseen under the European pellet loss prevention regulation to avoid unnecessary administrative burden, ideally this should be clarified at Member State level.

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