

Our position

Position on the Regulation on preventing plastic pellet losses to reduce microplastic pollution

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The European Commission's proposal for a Regulation on preventing plastic pellet losses to reduce microplastic pollution (Pellets Regulation) is an important step towards a level regulatory playing field for pellet management across EU value chains, based on existing best practices, such as Operation Clean Sweep® (OCS).¹

It is nevertheless important that dual regulation is avoided, and consistency is ensured between the proposed Regulation and other EU and international initiatives. These include ongoing work on plastic pellet management during maritime transport under the International Maritime Organization (IMO), the Regulation on the registration, evaluation, authorisation and restriction of chemicals (REACH) restriction on microplastics adopted in October 2023 and the recently agreed revision of the Industrial Emissions Directive.

Introduction

On 16 October 2023, the Commission issued its proposal for a Regulation on preventing pellet losses to reduce microplastic pollution. The aim is to prevent plastic pellet losses to the environment. To do so, the proposal includes best practices for pellet-handling operators and carriers, a mandatory certification system for operators as well as provisions to establish a harmonised methodology for operators to assess potential losses. In order to achieve its full potential and ensure a clear and successful implementation, the following recommendations should be carefully considered.

Maritime transport (including packaging and labelling)

The European Commission's original proposal for the Pellets Regulation excluded maritime transport from scope on grounds that this issue is currently being dealt with at international level under the IMO.² Indeed, the Explanatory Memorandum to the Commission's proposal details how the IMO 'is looking at the carriage of plastic pellets by sea in freight containers and is assessing both voluntary and mandatory measures, which would subject pellet-handling operators and maritime carriers to stricter requirements'. As a result, Article 2 of the Pellets Regulation defines carriers in scope of the Commission's proposal as those transporting pellets 'by using road vehicles, rail wagons or inland waterway vessels'.

Following an accidental spill of plastic pellets off the Spanish coast in December 2023, the European Parliament has stated the need to include maritime transport in scope of the Regulation. These concerns are recognised. However, at the same time, in order to avoid regulatory fragmentation and barriers to trade, measures adopted in the EU should be consistent with those recently endorsed as

¹ <https://www.opcleansweep.eu/>

² <https://www.imo.org/en/MediaCentre/HotTopics/Pages/FAQ-Plastic-pellets.aspx>

part of the IMO Marine Environment Protection Committee (MEPC) Circular on *Recommendations for the carriage of plastic pellets by sea in freight containers*. These include:

- Plastic pellets should be packed in good quality packaging which should be strong enough to withstand the shocks and loadings normally encountered during transport. Packaging should be constructed and closed to prevent any loss of contents that may be caused under normal conditions of transport by vibration or acceleration forces.
- Transport information should clearly identify those freight containers containing plastic pellets. The shipper should supplement the cargo information with a special stowage request requiring stowage as outlined in paragraph 3.
- Freight containers containing plastic pellets should be properly stowed and secured to minimise hazards to the marine environment without impairing the safety of the ship and persons on board. Specifically, they should be stowed under deck wherever reasonably practicable or inboard in sheltered areas of exposed decks.

It is however concerning that some of the proposals put forward in the European Parliament's position on the Pellets Regulation would significantly deviate from the IMO approach, in ways that would not benefit to human health and the environment. Furthermore, some provisions would be technically unfeasible:

- Of particular concern is the proposal (Annex IV b) that containers carrying plastic pellets would become subject to labelling requirements intended for hazardous substances in scope of the EU Regulation on Classification, Labelling and Packaging of Chemicals (CLP). This would be unjustified, given that plastic pellets are not hazardous substances and therefore not in scope of CLP or the United Nations Globally Harmonized System (UN GHS). It would constitute a misuse of CLP tools and processes outside the scope of that regulation, fundamentally contradicting the EU's legislative framework for chemicals. It would also contradict global rules on chemical classification, leading to an unlevel playing field and barriers to trade.
- The amendments referring to pellets needing to be transported in 'waterproof, sealed, tear- and impact-resistant packaging that can withstand degradation in rough aquatic environments' should be aligned with the text adopted under the IMO circular: *'Plastic pellets should be packed in good quality packaging which should be strong enough to withstand the shocks and loadings normally encountered during transport. Packaging should be constructed and closed so as to prevent any loss of contents which may be caused under normal conditions of transport, by vibration or acceleration forces'*. Packaging measures could be further revised once mandatory measures are agreed upon at IMO. In the meantime, industry is working on developing minimum packaging specifications for plastic pellets.
- Another amendment refers to containers needing to be stored 'in the hold and not on deck'. It would be important to align this wording with that agreed under the IMO circular: *'Freight containers containing plastic pellets should be properly stowed and secured so as to minimize the hazards to the marine environment without impairing the safety of the ship and persons on board. Specifically, they should be stowed under deck wherever reasonably practicable, or inboard in sheltered areas of exposed decks'*.

- A final point concerns the global trade of plastic pellets with significant import volumes into the EU from the US and the Middle East as well as exports. In 2021 alone, the Port of Antwerp imported 225,000 TEUs of plastic pellets, many from outside the EU, while exporting a total of 205,000 TEUs of pellets.³ EU provisions on labelling and packaging that are inconsistent with the IMO circular would create tremendous complications and likely generate confusion and miscommunication on the applicable provisions in the global (and multimodal) transport of containerised goods. This would jeopardise the global supply chain of plastic pellets and further reduce the competitiveness of EU industry. For example, should EU packaging requirements significantly diverge from IMO, this will require imported plastic pellets into the EU to be repackaged upon arrival to be compliant with EU legislation. This additional manipulation of plastic pellets would lead to an increased risk of plastic pellet spills/losses and the creation of additional packaging waste.

Need for a risk management approach

The European Parliament position supports a more prescriptive legislative approach to pellet loss prevention by making the descriptions of equipment and procedures in paragraphs 7 and 8 in Annex I of the proposed Pellets regulation mandatory rather than subject to a risk assessment by the economic operator of the installation. However, policymakers should endorse the management approach originally proposed by the Commission and trust in the proposed oversight framework of independent auditing and certification, combined with supervision by Member State authorities. Parliamentary amendments should not make all identified risk assessment measures applicable to all companies irrespective of circumstances. The plastic pellets value chain in the EU encompasses more than 50 000 installations covering a wide variety of plastic pellet handling activities.

Burden of proof

The provisions in Article 16(4) of the Commission's proposal, which would generically shift the burden of proof in private damage claims are concerning. This burden of proof should not be shifted nor in any way adapted in the final Regulation. The same issue was recently discussed in the context of the revision of the Industrial Emissions Directive as well as the Ambient Air Quality Directive, where identical provisions shifting the burden of proof were ultimately deleted from the final text.

This is a critical point for companies investing in the EU. As a matter of policy, it should not be possible to engage the legal system and draw a party into litigation unless there is clearly a case to answer. If the burden of proof is reversed, operators would be forced to prove a negative and demonstrate beyond reasonable doubt that other causes for any health damage in question are present. This would be very difficult – if not impossible – to prove.

³ [IMO Correspondence Group](#)

Overlaps and inconsistencies with REACH restriction on microplastics and other legislation

In October 2023 - the same month the proposal for the Pellets Regulation was presented - the REACH restriction on microplastics also entered into force.⁴ While the restriction is primarily targeted at intentional use of microplastics in mixtures, it also introduces obligations for operators handling plastic pellets.

To ensure smooth implementation and enforcement, it is essential to minimise overlaps and inconsistencies between these two initiatives. This is particularly true as regards reporting and record retention obligations for operators handling plastic pellets. Specifically, paragraph 11 of the REACH restrictions requires that as of 2026 'manufacturers and industrial downstream users of synthetic polymer microparticles in the form of pellets, flakes, and powders used as feedstock in plastic manufacturing at industrial sites' report the following information to the European Chemicals Agency:

- A description of the uses of synthetic polymer microparticles in the previous calendar year;
- For each use of synthetic polymer microparticles, generic information on the identity of the polymers used;
- For each use of synthetic polymer microparticles, an estimate of the quantity of synthetic polymer microparticles released to the environment in the previous calendar year, which shall include also the quantity of synthetic polymer microparticles released to the environment during transportation;
- For each use of synthetic polymer microparticles, a reference to the applicable derogations for industrial uses under the restriction.

At the same time, Article 4(7) of the proposed Pellets Regulation would require operators to 'keep records of annually estimated quantities of losses and of the total volume of plastic pellets handled'. These records would have to be retained for five years and made available to competent authorities and certifiers. According to Article 13, these records would need to be established based on a 'standardised methodology' or should no standardisation organisation accept the request, on an implementing act by the Commission.

More should be done to explicitly ensure that information collected for the purpose of complying with the Pellets Regulation is recognised to demonstrate compliance with the REACH restriction, and vice versa. If this is not the case, diverging requirements will lead to double reporting, inconsistent data, and unnecessary administrative burdens for businesses.

Moreover, the European Parliament has proposed extending the reporting requirement under the Pellets Regulation to cover the 'chemical nature of each polymer contained in plastic pellets on site,

⁴ <https://eur-lex.europa.eu/eli/reg/2023/2055/oj>

including information on physio-chemical properties and hazard properties'. Including this text would be counterproductive, as aside from being inconsistent with the REACH restriction, it would also be unfeasible due to polymers not currently being in scope of key legislation governing such data (eg REACH).

Furthermore, it is necessary to avoid duplication with other pieces of legislation, in particular with the European Sustainable Reporting Standards (ESRS) under the Corporate Sustainability Reporting Directive (CSRD). To streamline reporting obligations and enhance clarity, the European Financial Reporting Advisory Group has established dedicated teams tasked with crafting sector-specific ESRS by June 2026. Notably, the forthcoming ESRS will encompass chemicals and polymers, therefore, it is imperative to mitigate duplication in reporting requirements across various EU regulations, such as the Pellets Regulation and the CSRD, to prevent undue administrative burdens on companies and minimise the risk of inconsistencies.

Conclusion

The European Commission's Pellets Regulation proposal marks a significant step towards mitigating microplastic pollution and establishing standardised practices across EU value chains, drawing from commendable initiatives like OCS. It is essential that the Regulation ensures effectiveness and coherence and align with concurrent EU and international efforts, such as IMO's work on maritime transport and the REACH restriction on microplastics. In addition, policymakers must avoid fragmentation and trade barriers while supporting the scientific integrity and practicality of regulatory measures. Addressing concerns regarding burden of proof in private damage claims and harmonising reporting requirements between the Pellets Regulation and REACH restriction are vital for streamlined implementation and minimised administrative burdens on businesses. Ultimately, a concerted effort between EU and international organisations is necessary to navigate regulatory complexities and achieve meaningful progress in combating plastic pellet pollution at both regional and global levels.