

**To: Members of REACH Committee**

*Brussels, Monday 19 September*

Dear Sir, Madam,

We are writing regarding the REACH Committee meeting that will take place on 23 September. At this meeting, the proposal by the European Commission to restrict intentional uses of microplastics under the REACH Regulation will be presented and discussed.

**We welcome the effort by the Commission to put together a proposal that has the potential to significantly minimise emissions of microplastics and the related impacts on the environment**, with probable important health benefits.<sup>1</sup>

With this letter, we urge you, as Member State representatives, to defend the proposal; but also to make sure the measures adopted meet the ambitions set out in the Commission's 2018 pledge<sup>2</sup> and other recent EU commitments.<sup>3</sup>

Based on our recommendations developed in 2021,<sup>4</sup> we invite you to:

**1. Support and defend some of the core proposals made by the Commission.**

In particular:

- **Ban microplastics in sport pitches** within six years.

It is well established<sup>5</sup> that sport fields constitute the largest contributor to microplastic pollution in terms of quantities used and emissions into the environment. The Commission's proposal is therefore the most effective and only reasonable option to reduce emissions from that source. It is also consistent with the detailed recommendations from RAC and the evidence of a growing market for alternative materials.<sup>6</sup> The six-year transitional period, albeit necessary,

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<sup>1</sup> ECHA estimated that the proposed restriction would result in a cumulative emission reduction of approximately 400 thousand tonnes of microplastics over the 20 year period following its entry into force, that is a reduction of 85-95% of the quantified emissions of intentionally added microplastics that would otherwise have occurred in the absence of measures. See [Annex XV report](#), p. 11.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Strategy for Plastics in a Circular Economy (COM/2018/028 final).

<sup>3</sup> EU Green Deal (2019) and Chemicals Strategy for Sustainability (2021).

<sup>4</sup> Rethink Plastic Alliance, "[Phasing out the use of microplastics](#)", Version 2, March 2021.

<sup>5</sup> [Draft Commission proposal](#), Paragraph (30).

<sup>6</sup> FIDRA, "[Solutions to microplastics loss](#)".

means microplastics will continue to be released into the environment during that time frame. We therefore encourage you to defend the imposition of practical mitigation measures to minimise pollution from pitches already in use.

- **No lower size limit.**

Due to their size, nanoplastics may pose a higher risk to the environment than larger microplastics.<sup>7</sup> The Commission's proposal to ban *all* microplastics, including the smallest particles, is coherent and should be fully supported. We nonetheless invite Member States to clarify the proposal to apply a lower size limit when the concentration of microplastics "cannot be determined by existing analytical methods or accompanying documentation".<sup>8</sup> This would amount to a derogation. So as a matter of legal principle, it must be cast as narrowly as possible.<sup>9</sup>

## **2. Oppose derogations and transition periods when unjustified.**

- **No exemption for soluble, liquid and (bio)degradable polymers.**

The Commission considers that soluble and liquid polymers<sup>10</sup> should not be banned because they are assumed not to contribute to the risk. This conclusion fails to take into account the concerns raised by RAC in this respect<sup>11</sup> and other available scientific studies.<sup>12</sup>

Similarly, the Commission proposes to exempt biodegradable polymers despite the questions and concerns that exist about the rate of biodegradation in the environment, as well as their chemical and particle toxicity.<sup>13</sup> As this restriction is likely to influence other plastic-related legislation, we would encourage you to not support a derogation, especially given that important uncertainties remain as to the reliability of biodegradability criteria. In the current proposal, we are particularly concerned about the following provisions:

- The proposed "pass criteria" leaves significant discretion to the producer. Contrary to what the Commission suggests, passing group 1 to 3 tests in all environmental compartments is not sufficient - they should be complemented by group 4 & 5 test methods. For group 4 and group 5 test methods, the current proposal ignores RAC's opinion that the criteria should be met *in each of the three* environmental compartments (soil, marine sediment or seawater/sediment interface and fresh water).
- The specific requirements for agricultural and horticultural applications represent a new derogation, which was not assessed by the ECHA experts. Research shows that microplastics can be transported from agricultural soils to water bodies including water sediments, so biodegradation in the water sediment compartment should be assessed as well.
- Current standardised biodegradability tests should be revised so that they better reflect real-life environmental conditions.

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<sup>7</sup> [RAC opinion](#), 11 June 2020, p.15.

<sup>8</sup> [Annex](#) to draft Commission proposal, Paragraph 3.

<sup>9</sup> Judgment of the Court (Second Chamber), 7 March 2013, *C-358-11, Lapin*, para. 42.

<sup>10</sup> For instance, PVOH (polyvinyl alcohol) is often used in dishwasher tablets. There are various grades of PVOH, some of which biodegrade very slowly and can be found in the marine environment. [Source](#).

<sup>11</sup> [RAC Opinion](#), 11 June 2020, p. 9.

<sup>12</sup> See for example: Arp HPH, Knutsen H. Could We Spare a Moment of the Spotlight for Persistent, Water-Soluble Polymers? *Environ Sci Technol*. 2020 Jan 7;54(1):3-5. doi: 10.1021/acs.est.9b07089.

<sup>13</sup> See for example: [The-Forgotten-Synthetic-Polymers\\_22-8.pdf \(plasticsoupfoundation.org\)](#)

- Test methods to determine biodegradation in pure seawater are missing.<sup>14</sup>
- The word “degradability” is used in the proposal, instead of “biodegradability”.

Growing scientific evidence<sup>15</sup> shows negative impacts from polymers that would be considered biodegradable according to the proposed criteria. If the restriction does not include tight biodegradability criteria, this “solution” will be the problem of the future. The precautionary principle must apply given the potential consequences.

- **Lengthy transition periods.**

NGOs have expressed doubt as to the need for the long transition periods proposed by ECHA in its Annex XV dossier.<sup>16</sup> ECHA committees similarly emphasised uncertainties in this regard.<sup>17</sup> Long periods yet remain in the current proposal, without substantiated reasoning. Plant protection and other agricultural products as well cosmetics benefit from the longest transition periods (up to 12 years for makeup items), while uses assumed by the Commission as essential, such as medical devices, receive up to six years. Any transitional period should always be properly justified. Bearing in mind the existence of alternatives for most of the uses and the regulatory context, which industry has been aware of for years, the lack of justification for the time periods proposed is all the more unacceptable.<sup>18</sup> Significant uncertainties in this area must trigger a precautionary approach, not a lower standard of protection.<sup>19</sup>

### **3. Strengthen reporting requirements.**

There is no justification for setting a two-year transition for pellet handlers to start reporting on pellet losses. OCS, whereby manufacturers commit to identify leaks and report on losses, has been implemented in Europe since 2015. We especially question the fact that only estimates of pellet losses are required in the proposed reporting, knowing that a single tonne lost means the release of 50 million pellets into the environment. Using estimates would defeat the purpose of imposing a reporting on pellet handlers which include a lot of SMEs handling small quantities.

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<sup>14</sup> For example:

-ASTM D6691-17. Standard Test Method for Determining Aerobic Biodegradation of Plastic Materials in the Marine Environment by a Defined Microbial Consortium or Natural Sea Water Inoculum  
-ISO 23977-1:2020. Plastics — Determination of the aerobic biodegradation of plastic materials exposed to seawater — Part 1: Method by analysis of evolved carbon dioxide

ISO 23977-2:2020. Plastics — Determination of the aerobic biodegradation of plastic materials exposed to seawater — Part 2: Method by measuring the oxygen demand in closed respirometer

<sup>15</sup> Wang, ., Yu, J., Lu, Y. et al. Biodegradable microplastics (BMPs): a new cause for concern?.

Environ Sci Pollut Res 28, 66511–66518 (2021). <https://doi.org/10.1007/s11356-021-16435-4>

<sup>16</sup> Rethink Plastic Alliance, “[Phasing out the use of microplastics](#)”, Version 2, March 2021, pp. 31 to 39.

<sup>17</sup> [RAC and SEAC combined Opinion](#), 10 December 2020, see for example at pp. 106-107.

<sup>18</sup> The Court has already sanctioned the Commission in the past for granting unjustified derogations to the restriction of hazardous chemicals. Judgment of the Court of First Instance (Second Chamber, extended composition) of 11 July 2007, *T-229/04, Sweden v Commission*.

<sup>19</sup> See for example, in the context of REACH authorisation, Judgment of the Court (First Chamber) of 25 February 2021, *C-389/19, P Commission v. Sweden*.

In the light of the environmental protection objective pursued<sup>20</sup>, the level of ambition should be as high as possible and derogations included only if proven to be absolutely necessary.

We count on you as representatives of EU Member States to support effective measures and fit for purpose implementation timeframes to protect our environment from a preventable source of pollution.

Yours faithfully,

**Delphine Lévi Alvarès**

*European Coordinator of the BreakFreeFromPlastic Movement and Rethink Plastic Alliance*

On behalf of the following organisations:

Applied Ecology Research Group, Anglia Ruskin University (UK)

Center for International Environmental Law (CIEL)

ChemSec

ChemTrust

ClientEarth

Common Seas

Ecologistas en Acción (Spain)

Ekologi brez meja

Environmental Investigation Agency

Environmental Coalition on Standards (ECOS)

European Environmental Bureau (EEB)

Fidra

Friends of the Baltic

Green Transition Denmark

Health and Environment Alliance (HEAL)

Health and Environment Justice Support (HEJSupport)

Humusz Szövetség

Naturvernforbundet - Friends of the Earth Norway

OceanCare

Plastic Change

Plastic Soup Foundation

Polish Zero Waste Association

Recycling Netwerk Benelux

Rethink Plastic alliance

Rezero - Fundació Privada Catalana per a la Prevenció de Residus i Consum Responsable

Seas At Risk

Sciaena

Surfrider Foundation Europe

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<sup>20</sup> According to settled case law, protection of public health or environment should take precedence over economic considerations. Judgment of the Court of 17 July 1997, C-183/95, *Affish BV v Rijksdienst voor de keuring van Vee en Vlees*, paras 42-43.

The Gallifrey Foundation  
 The Scarab Trust  
 The Greens Movement of Georgia/FoE - Georgia  
 Women Engage for a Common Future - International (WECF)  
 Zero Waste Germany e.V.  
 Zero Waste Kiel e.V.  
 ZERO - Association for the Sustainability of the Earth System  
 National Society of Conservationists - Friends of the Earth Hungary  
 Naturskyddsforeningen - Swedish Society for Nature Conservation

