

NOVEMBER 2019

NGOs POSITION FOR AN IMPACTFUL RESTRICTION OF MICROPLASTICS



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free
from
plastic



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The Commission has requested ECHA to prepare a proposal to restrict intentionally used microplastics as part of the actions for curbing plastic waste and littering of the European Strategy for Plastics in a Circular Economy.¹

Once released in the environment, microplastics are practically impossible to remove, and are expected to remain in the environment for hundreds, possibly thousands, of years, with severe and well documented effects on the environment.

The undersigning civil society organisations across multiple sectors reiterate our firm support to the restriction of all intentionally added microplastics irrespective of their use under REACH, as proposed by the European Chemical Agency (ECHA).

However, as explained below, we are deeply concerned with the potentially very broad proposed derogations regarding allegedly biodegradable microplastics and unduly long transitional periods, as they will considerably undermine the capacity of the restriction to achieve its objective.

1. A European Strategy for Plastics in a Circular Economy <https://ec.europa.eu/environment/circular-economy/pdf/plastics-strategy-brochure.pdf>

Microplastics in our environment: irreversible, omnipresent and extremely persistent pollution

Microplastic pollution in our environment is not new. Civil society has been raising this issue for more than 40 years and campaigns have already denounced, for example, the unnecessary and highly problematic use of microplastics in cosmetics.²

As set out very clearly and comprehensively in the scientific report³ prepared by the European Chemical Agency (ECHA); microplastics constitute a serious risk to the environment and a potential risk to human health, a source of exponential pollution that is currently, and undeniably, out of control.

Due to their small size (down to the nano range), microplastics are easily ingested by wildlife and transferred along food chains.⁴ Once entered into the environment, they may possibly fragment into smaller and smaller particles, down to nano-size particles, which increases the likelihood of their uptake into cells and tissues.⁵ Adverse effects have been observed in a wide number of species at different levels (cellular/tissue, individual, population), including physical/mechanical hazards e.g. obstructing or interfering with the normal functioning of feeding apparatus or gills, as well as (eco) toxicological hazards introduced by their ingredients (polymers, residual monomers, additives, etc.).⁶ Microplastics are also possible vectors for other environmental pollutants.⁷ Microplastics are found everywhere⁸ because they are transported by air and water between environmental compartments, including the marine environment.⁹

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2. See the 2013 'The Good Scrub Guide' by Fauna & Flora available at: <https://assets.fauna-flora.org/wp-content/uploads/2017/11/The-Good-Scrub-Guide.pdf>
 3. ECHA proposal for a restriction of intentionally added microplastics, Annex XV report, available at: <https://echa.europa.eu/documents/10162/12414bc7-6bb2-17e7-c9ec-652a20fa43fc>
 4. Annex XV report, sections 1.4.4.5 'Exposure and ingestion', 1.4.4.7 Trophic transfer
 5. Annex XV report, p. 10 and see also report published by the Commission (March 2019), available at: https://ec.europa.eu/info/sites/info/files/research_and_innovation/groups/sam/ec_rtd_sam-mnp-opinion_042019.pdf
 6. Annex XV report, section 1.4.7 for the 'conclusions on hazards'

Once released, microplastics are practically impossible to remove from the environment. And, due to their extremely high resistance to environmental degradation, they are expected to be present in the environment for hundreds, possibly thousands, of years,¹⁰ and contribute to a long-term build-up of plastic 'stock' in the EU environment.¹¹

ECHA has concluded that, given their persistent nature, the stocks of microplastics in the environment increase on an annual basis by an estimated 36000 tonnes (ranging between 10000 to 60000), for the twelve product groups where the available information allowed quantification of emissions to the environment.¹²In other words, this amount, per year, is likely to be underestimated.

The scientific data gathered by ECHA is thus unequivocal: the releases of (intentionally added) microplastics into the environment are causing unnecessary, unacceptable pollution and need to be stopped without further delay. It is now in the hands of the Commission to propose a restriction ambitious enough to truly close the microplastic tap. The governments of each Member State will then have both the opportunity and responsibility of the final say.

Wide NGO support for a restriction covering all uses of microplastics, irrespective of the sector or claims on biodegradability

The 32 undersigned organisations, including NGOs following the REACH processes, but also those working on marine pollution, product design, waste prevention, and organisations dedicated to specifically tackling plastic pollution, support the restriction of intentionally added microplastics, irrespective of the sector or specific use. It is worth noting that this restriction could result in a reduction of microplastics emissions of about 400000 tonnes over 20 years.

7. Annex XV report, section 1.4.7 footnote 33.

8. See yet another article in the press, from October 2019: <https://www.theguardian.com/environment/2019/oct/04/san-francisco-microplastics-study-bay>

9. Annex XV report, section 1.4.3, on 'environmental fate'.

10. Annex XV report, section 2.7.3. and 1.4.6.

11. Annex XV report sections 1.4.3, 1.4.4

12. Annex XV report, p. 123

ECHA has carried out very comprehensive literature research in order to gather the available evidence regarding the risks posed by intentionally added microplastics. We support in particular ECHA's approach to the assessment of the risks, which considers that microplastics should be treated as 'non-threshold' substances for the purposes of the risk assessment, similar to persistent, bioaccumulative and toxic (PBT) substances and very persistent and very bioaccumulative (vPvB) substances under the REACH regulation. This means that ECHA considers that on the basis of all relevant available evidence to date, no 'safe level' of microplastics in the environment can be estimated; any release into the environment results in a risk.¹³

Following this approach we stress that, for the restriction to be effective in controlling the risk (as required under Annex XV of the REACH Regulation), it must prevent any release of microplastics into the environment. This can only be achieved with a restriction covering all uses of microplastics.

We therefore welcome that the restriction proposal covers all uses of microplastics, irrespective of the sector.

Red flags in ECHA's proposal

The problematic derogation for allegedly 'biodegradable' microplastics

While we recognize the efforts of ECHA to develop criteria to define "(bio)degradable polymers", we are concerned, as explained in several contributions to the public consultations organised by ECHA,¹⁴ that the biodegradability criteria proposed by ECHA are inadequate to ensure that microplastics ending up in the environment do degrade in real conditions, in all environmental compartments and in an acceptable/reasonable range of time. Such a derogation will thus weaken the restriction by unduly allowing the continued release of microplastics that will contribute to the build-up of the 'environmental stock' and therefore do not deserve to be considered 'greener' than other microplastics. This derogation fundamentally undermines the objective of the restriction. Efforts should focus on stopping their release in the environment in the first place.

13. Annex XV report, p. 10 and see also p.70

14. See: <https://eeb.org/library/ngo-comments-on-reach-restriction-of-microplastic/>

The undersigned NGOs therefore consider that the most appropriate way forward for this restriction to truly prevent emissions of microplastics persisting in the environment is for there to be no derogation for the alleged (bio)degradable microplastics at this stage!¹⁵

Adopting the restriction with this derogation today would take away the recent incentive - created by the intention to restrict microplastics used in the EU - to improve the current biodegradability criteria and tests. It will set in stone inadequate criteria with serious repercussions beyond the scope of this restriction!¹⁶ It would divert efforts from stopping pollution at source and addressing health risks related to microplastic ingredients -be them biodegradable or not.

Unsubstantiated and long transitional periods

The transitional periods proposed,¹⁷ are disproportionate to the urgent need to stop the release and the accumulation of microplastics in the environment and are, in any event, not adequately justified.

This is the case, for instance, for rinse-off cosmetics, leave-on cosmetics, detergent and maintenance products, for which transitional periods of 4, 5 or 6 years are proposed, despite the availability of alternatives in the EU market, as evidenced by contributions to the public consultation organised by ECHA¹⁸ and even as recognized in the restriction proposal.¹⁹ These uses combined contribute to the emission of 19 000 tonnes per year of microplastics.

The 5-year derogation for fertilizers and plant protection products does not consider the huge amounts of microplastics released into the environment through these uses (23 500 tonnes/year), representing approximately 60% of the emissions of intentionally added microplastics.²⁰

15. Nothing prevents the Commission, once adequate criteria to ensure true degradation microplastics in real life conditions would be developed in cooperation with all relevant stakeholders, to review this restriction.

16. Any decision on biodegradability criteria in the context of this restriction will have implications on the definition, by the Commission, of the biodegradability criteria under Regulation (EU) 2019/1009 of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (see Recital 60 and Article 42); Fertiliser use accounts for the most important quantities of releases of microplastics intentionally added, in the environment.

17. See Annex XV report p. 133

In addition, this delay in stopping releases for these uses ignores the need to reduce and eliminate the use of mineral fertilizers and pesticides altogether in order to ensure a sustainable farming system.²¹

Furthermore, we invite the Commission and Member States to rely on the work of the group of renowned scientists who urged decision makers to apply the notion of 'non-essential' use within the meaning of the Montreal Protocol, in guiding their decisions to regulate PFAS substances.²² PFAS and microplastics raise similar very high concerns due, notably, to their capacity to persist in the environment. Applying this method to microplastics is thus particularly relevant. 'Non-essential' within the meaning of the Montreal Protocol means that their use is not 'necessary for health, safety', are 'not critical for the functioning of society', and their use 'is driven primarily by market opportunities', or alternatives exist. It is obvious that cosmetic and detergent uses of microplastics are not necessary for health or safety and are not critical for the functioning of society. ECHA has proposed, however, to grant the longest transitional periods to those uses, 'leave on' cosmetics having been granted the longest transitional period. The technical functions of microplastics in these sectors are in the so-called category of 'nice to have',²³ and thus not 'essential'. We therefore invite the Commission and Member States to bear in mind this lack of essential nature when deciding on transitional periods.

Thanks to the work of ECHA at the initiative of the Commission, it is no longer possible for companies producing and using these microplastics to ignore the need to stop their irresponsible release into the environment. Based on the average time usually taken for a restriction to be formally adopted once ECHA has issued its scientific opinion, this restriction

18. <https://echa.europa.eu/restrictions-under-consideration/-/substance-rev/22921/term>

19. See Annex XV report p. 97-113

20. See Annex XV report p. 128

21. IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse gas fluxes in Terrestrial Ecosystems. 07 August 2019. Chapter 2: Land-Climate Interactions https://www.ipcc.ch/site/assets/uploads/2019/08/2c.-Chapter-2_FINAL.pdf

22. Cousins et al. (2019), Environmental Science, 'The concept of essential use for determining when uses of PFASs can be phased out' available at: <https://pubs.rsc.org/en/content/articlepdf/2019/em/c9em00163h>

23. Using the vocabulary in Cousins et al. (2019).

Considering the limited evidence in the dossier that would justify such long transitional periods²⁴ and the fact that the transitional periods will have the direct consequence of allowing, knowingly, even more microplastics to be released into the environment, we invite the Commission and Member States to prevent further delay in closing the tap.

Therefore, our organisations consider that the restriction should not allow such long and unsubstantiated transitional periods, especially for uses of microplastics that are 'not essential' within the meaning of the Montreal Protocol.



24. See ClientEarth's contribution to the public consultation in May 2019 (<https://www.documents.clientearth.org/library/download-info/clientearths-contribution-to-the-public-consultation-on-echas-proposal-to-restrict-intentionally-added-microplastic/>) and September 2019 (<https://www.documents.clientearth.org/library/download-info/additional-comments-to-rac-on-the-biodegradability-exemption-proposed-in-the-restriction-on-intentionally-added-microplastic/>).

