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| A.I.S.E. TECHNICAL ADVOCACY POSITION ON THE PROPOSED RESTRICTION ON synthetic polymer MICROparticles | |
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|  | 21 October 2022 |

A.I.S.E. welcomes the work done in the context of the EU Plastics Strategy to address the issue of pollution of the marine environment posed by (micro)plastics. In this context, we believe that any action taken should fulfil three purposes:

1. ensure that any regulatory action taken is proportionate, effective and science-based,
2. promote action at EU-level to avoid a disparity of approach by Member States hindering the EU Single Market, and
3. align objectives and scope of action with other global jurisdictions.

A.I.S.E. has been a committed supporter of the scientific process initiated by the European Commission through the European Chemicals Agency (ECHA). This commitment has included the submission of several contributions to calls for evidence and public consultations.

A.I.S.E. re-emphasises that any restriction adopted under REACH should be risk-based and scientifically justified. The proposed restriction on intentionally-added microplastics is exceptional in the breadth of its scope and A.I.S.E. believes that it must not set a precedent for future restrictions. This being said, A.I.S.E. supports some aspects of the proposed restriction, as set out in the draft Commission Regulation and its Annex dated 11 October 2022[[1]](#footnote-1), whilst some elements remain subject to clarification. A.I.S.E.’s position on the restriction proposal can be summarised as follows.

**1. Scope and definition**

It is important that the definition used in the restriction addresses the actual concern for the environment. A.I.S.E. therefore welcomes the definition of “synthetic polymer microparticles” contained in the proposed entry, which – by specifying ‘**polymers that are solid and which … are contained in particles … or build a continuous surface coating on particles**’ – reflects the original intent of the restriction, namely “*not to regulate the use of polymers generally, but only where they meet the specific conditions that identify them as being microplastics”[[2]](#footnote-2).*

A.I.S.E. recognises that it will be difficult for economic operators to confirm, and for authorities to enforce, compliance with the restriction due to a lack of harmonised **methods for determination and analysis** of synthetic polymeric microparticles[[3]](#footnote-3). A.I.S.E. calls for priority to be given to research in order to establish such methods, and for the restriction to be reviewed and revised as appropriate in light of technical progress, e.g. five years after entry into force.

**2. Transition periods**

A.I.S.E. welcomes the proposed transition period of **six years** from entry into force of the restriction for **encapsulated fragrances**, but emphasises that this is a bare minimum. There is a lack of suitable alternatives not meeting the microplastic definition, and this period is needed to enable sufficient time for research, development and testing of potential alternatives in order to avoid negative impacts on the environment and on customer satisfaction (triggering changes in consumer behaviour such as more frequent washing, leading to increased water and energy consumption and increased unintentional releases of microplastics from textiles). A.I.S.E. considers a review of the restriction (e.g. five years after entry into force) to be important also in this context, to determine the progress of substitution and the availability of alternatives. Based on this review, transition periods in paragraph 6 could be modified as appropriate.

The proposed transition period of five years for other detergents and maintenance products will also be challenging. Substitution of microplastics within this timeframe will be feasible only where reformulation is simple and there are suitable alternatives (which for the most part is not currently the case). Five years is considered the minimum period for reformulation from scoping to product launch. A.I.S.E.’s socioeconomic analysis showed that **increasing this transition period to six years** (coupled with eight years for encapsulated fragrances) would only reduce the releases avoided over 20 years by 4%, but would cut costs by around a quarter[[4]](#footnote-4).

**3. Derogations from the restriction**

A.I.S.E. supports the exclusion of **natural**, **biodegradable** and **water-soluble** polymers from the designation of synthetic polymer microparticles in the restriction proposal[[5]](#footnote-5). These are important to exclude fully from the scope of the restriction many polymers that are not plastics and represent no concern for the environment.

The criteria to benefit from the biodegradability exclusion in paragraph (b) are nonetheless relatively challenging, and research should be conducted as a matter of priority to improve the scientific knowledge base and to enable further waiving of tests in a subsequent review of the restriction (after e.g. five years). A.I.S.E. and its members confirm their intention to support and contribute actively to such research.

A.I.S.E. also welcomes the inclusion of **derogations from the ban on placing on the market**, such as those for microparticles intended for industrial use (and hence subject to emissions controls), those contained by technical means to prevent release during the intended end use and those that are permanently modified during intended end use such that they no longer fall within scope of the restriction. These derogations are important to avoid the needless prohibition of materials that provide valuable societal benefits but represent only a tiny proportion of any microplastic concern in the environment. Nonetheless these materials are not fully exempted from the restriction and will remain subject to obligations on instructions for use and disposal to prevent releases of microparticles, and on reporting of estimated emissions.

**4. Instructions for use and disposal**

A.I.S.E. is confident that the requirements in paragraph 7.a to provide instructions for use and disposal are already covered adequately by **existing obligations on labelling or use instructions** that apply to the sector, e.g. the CLP Regulation (EU) No 1272/2008, the Detergents Regulation (EC) No 648/2004 or Biocidal Products Regulation (EC) No 528/2012.

**5. Reporting obligations**

A.I.S.E. questions the utility of an annual reporting requirement (paragraph 8), since this will only track estimates of **adventitious releases of microplastics**. A.I.S.E.’s analysis has demonstrated that new reporting and disclosure obligations will create disproportionate **administrative burden** for companies and necessitate the implementation of **new IT tools, functionalities and supply chain communication** – without any obvious value for monitoring of the effectiveness of the restriction in reducing microplastic pollution.

In its opinion SEAC recommended that in order for reporting to be cost-effective, its organisational set-up should be efficient and some options were suggested to reduce costs and improve the proportionality of the restriction. If a reporting obligation is still considered relevant, A.I.S.E. supports limiting the reporting obligation to **only certain actors** (e.g. suppliers of synthetic polymer microparticles referred to in paragraph 5 placed on the market for the first time), but also calls for introduction of a **minimum tonnage threshold** for microplastic releases triggering the reporting obligation. This would reduce the burden for SMEs and provide an incentive for suppliers to reduce emissions of microplastics; furthermore it is not reasonable or practicable to apply a requirement with no cut-off threshold.

A.I.S.E. also calls for exclusion of any requirement to report **generic information on the identity of the polymers for each use**. Products placed on the market can contain numerous different types of polymers, and tracking estimated releases per use and per polymer type would be a disproportionate level of burden, the added value of which has not been justified since the restriction is of ‘synthetic polymeric microparticles’ collectively. To monitor the effectiveness of the restriction, a total estimate of microparticle releases per use – or per industrial user – would suffice.

Submitted information is to be made available to Member States by ECHA, but should not be disseminated publicly to avoid any potential ‘blacklisting’ effect. At most only aggregated volumes should be reported that do not identify individual economic operators.

If an annual reporting obligation is adopted, A.I.S.E. supports the proposal for a uniform deadline of 31st May for reporting of releases in the previous calendar year.

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A.I.S.E. invites the European Commission and the Member State Competent Authorities to take these comments into account in their consideration of the proposed restriction and to ensure legislative coherence and alignment of policy objectives with existing and future initiatives. We remain available for further discussion on any of the points mentioned.

1. [COMMISSION REGULATION (EU) …/… of XXX amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards synthetic polymer microparticles](https://ec.europa.eu/transparency/comitology-register/screen/documents/083921/2/consult?lang=en) [↑](#footnote-ref-1)
2. ECHA [Annex XV restriction report](https://echa.europa.eu/documents/10162/05bd96e3-b969-0a7c-c6d0-441182893720), 2019 [↑](#footnote-ref-2)
3. A [recent study](https://pubs.acs.org/doi/pdf/10.1021/acs.est.0c03742) highlighted the analytical challenges created by sample contamination in the laboratory, leading to false positive detection of microplastics. [↑](#footnote-ref-3)
4. *Socio-economic analysis of the impacts of the proposed REACH restriction on intentionally added microplastics on the detergents and maintenance products sector,* eftec for A.I.S.E., August 2020 (available in [comments on SEAC draft opinion](https://echa.europa.eu/documents/10162/71b5eb22-5dc1-77d9-8472-4305b21bfca3), #642) [↑](#footnote-ref-4)
5. Paragraph (d) – exclusion of polymers that do not contain carbon atoms in their chemical structure – is not thought to be relevant for A.I.S.E. members. [↑](#footnote-ref-5)