



Intentional or Not? Questions Loom Over EU's Proposed Micro-Plastic Particle Restrictions

IN SHORT

The Situation: The European Commission ("Commission") has requested that the European Chemicals Agency ("ECHA") investigate the need for an EU-wide restriction on 'intentionally added' micro-plastic particles.

The Development: Following stakeholder consultation, ECHA has released a Question & Answer document that addresses the definition of 'intentionally added'.

Looking Ahead: The guidance proposed by ECHA is likely not sufficient to distinguish between 'intentional use' and 'unintentional use'. In particular, naturally-occurring particles should be exempted.

In response to an Article 69(1) Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") [request](#) from the European Commission and as part of the general [EU Plastics Strategy](#), in January 2018, ECHA announced its [intention](#) to investigate the need for an EU-wide restriction on 'intentionally added' micro-plastic particles in products or applications that 'intentionally release' micro-plastic particles into the environment. In both cases, the question will be the legal interpretation of the term 'intentional'. National bans on micro-plastics used in cosmetic products already exist in several EU Member States (France, Italy, and the UK).

ECHA called for evidence from March to May 2018, followed by a stakeholders' workshop. The call was intended to gather all possible intentional uses of micro-plastic particles in products – e.g. cosmetics (rinse-off products), personal care products, detergents, cleaning products, paint, and products used in the oil and gas industry. With regard to consumer products, micro-plastics are most commonly used as an abrasive (microbeads), but can also have other functions, such as controlling the viscosity (thickness), appearance and stability of a product. Oxo-plastics or oxo-degradable plastics (used in applications such as agricultural films, rubbish and carrier bags, food packaging, and landfill covers) were also part of the investigation.

With regard to the legal term 'intentional', ECHA provided two pertinent questions and answers set out in a recent [Q&A document](#).

First, micro-plastic particles can be intentionally released even if they are not intentionally added. The reason being that products could be designed with the knowledge that micro-plastic particles are intentionally released during their lifecycles (Q&A C5). These types of products are within the scope of ECHA's investigation. At the same time, ECHA states elsewhere that many plastic products do not intentionally contain or intentionally release micro-plastic particles but may 'unintentionally release' micro-plastic particles into the environment during their life-cycles through abrasion (e.g. tire wear or washing of synthetic fibers) or weathering, and as such are also of concern.



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However, since those releases fall outside the request of the Commission, they would not fall within the scope of the potential REACH restriction.

Second, according to ECHA, intentional uses occur when a particle is deliberately added to a product to provide a function (e.g. to exfoliate, release, absorb, or stabilize) or when a micro-plastic is deliberately released as part of the product's function (Q&A C6).

In our view, the above guidelines are insufficient to determine the meaning of 'intentional' versus 'unintentional'. For instance, it is unclear whether the presence of unavoidable impurities of micro-plastic particles would amount to an 'unintentional' presence. E.g., in a recent Competent Authorities for REACH and CLP ("CARACAL") meeting of March 7-8, 2018, the Dutch authorities suggested that the scope of the REACH restriction of 'intentionally added' asbestos fibers may or may not cover asbestos fibers from cross-contamination. Accordingly, entry 6 for asbestos fibers in Annex XVII REACH should be amended to clarify that the restriction would not only cover natural impurities of asbestos, but also mixtures in which asbestos is present as a result of contamination. In other words, cross-contamination and natural presence would not be covered by the restriction, although the manufacturer may be aware of the presence of the restricted substance.

Since the probable REACH restriction on micro-plastics is part of the broader Commission Plastics Strategy, the European Parliament has also intervened in the process. In particular, on September 13 2018, the Parliament adopted a [resolution](#) in which it proposes that companies release fewer micro-plastics when producing products such as textiles, tires, paint and cigarette butts. Thus, the interpretational issues identified above should be discussed by the EU institutions at the horizontal level.

An Annex XV REACH report on proposed restrictions is scheduled for submission by ECHA on January 11, 2019. The next step in the restriction procedure would be for Risk Assessment ("RAC") and Socio-economic Analysis ("SEAC") committees to verify whether the proposal complies with the requirements of Annex XV REACH. In the affirmative, the dossier will be made publicly available for consultation within six months of its publication on the ECHA website. During the consultation period, affected companies would be able to submit to ECHA proposals for derogations from the restriction.

release' micro-plastic particles into the environment.



KEY TAKEAWAY

1. The potential REACH restriction on micro-plastic particles will be a challenge for EU industries, especially for the manufacturers of cosmetic and personal care products. It remains to be seen what restriction conditions ECHA will present in January 2019, and how the question of 'intentionally added' particles will be addressed.



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