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Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid <i>Accompanying the document</i> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventing plastic pellet losses to reduce microplastics pollution

Delegations will find attached document SWD(2023) 330 final.

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EUROPEAN
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Brussels, 16.10.2023
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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on preventing plastic pellet losses to reduce microplastics pollution

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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis for this proposal is Article 192 of the TFEU. In accordance with Article 192(1) of the TFEU, the European Union shall contribute to the pursuit, inter alia, of the following objectives: preserving, protecting and improving the quality of the environment, promoting measures at international level to deal with regional or worldwide environmental problems, and combating climate change.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of the environment, the Union's competence is shared, in accordance with Article 4 of the TFEU.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2¹:
<p>The Commission's proposal for a Regulation on preventing pellet losses to reduce microplastic pollution is supported by an impact assessment prepared in accordance with the Commission's prevailing guidelines and reviewed by the independent Regulatory Scrutiny Board. The Impact Assessment addresses the issues of subsidiarity and proportionality, economic, social and environmental impacts and documents the extensive consultation activities undertaken.</p> <p>The consultation process included a variety of different consultation activities aimed at gathering the views of all stakeholders and ensuring that these were taken into consideration.</p> <ul style="list-style-type: none"> • An online Public Consultation was undertaken. The survey included general questions related to microplastics along with specific questions focused on pellets and other potentially important sources. • Extensive bilateral consultations were held with a range of relevant stakeholders including representatives from the pellets industry, NGOs and various Commission services and other representatives such as the EEA. • Seven stakeholder workshops were conducted with representatives from across all stakeholder groups including Member State authorities, NGOs, industry representatives and other relevant stakeholders. • A dedicated SME consultation was undertaken as SMEs account for an important share of the pellet supply chain. • Anecdotal evidence was gathered to assess the impact of pellet losses on local communities. <p>In line with the Commission's commitment to better regulation, this proposal has been prepared inclusively, based on full transparency and continuous engagement with stakeholders with due regard to avoiding unnecessary burdens. It is based on the best</p>

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

available evidence referenced in the Impact Assessment accompanying this proposal, and expert knowledge taking into account the external feedback. In particular, an assessment of subsidiarity is included both in the Impact Assessment and the Explanatory Memorandum.

The proposal respects fundamental rights, in particular those in the Charter of Fundamental Rights of the European Union. It also contributes to the right to a high level of environmental protection in line with the principle of sustainable development, as laid down in Article 37 of the Charter.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The explanatory memorandum accompanying the Commission's proposal presents a summary of the Commission's analysis included in its Impact Assessment and addresses the principle of subsidiarity, as follows:

“A common set of requirements for pellet handling within the Union is essential to ensuring a high level of environmental protection. Like all microplastics, pellets are readily transported from one geographical place to another and can be found in all environments including the most remote places. While pellet losses can be first concentrated in one geographical area (petrochemical or polymer industrial areas, logistic platforms like ports, etc.), they are extremely mobile and can then be dispersed by surface water and sea currents, as well as through the air. The transboundary nature of the problem is the most important reason to act at EU level. If Member States act individually, the level of environmental protection would remain suboptimal and there is a risk that competing different legislation would be used.”

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposed action cannot be achieved sufficiently by the Member States acting alone because pellet losses happen across the EU and pellet pollution is transboundary. So far, only fragmented approaches have been observed, such as national actions on one aspect only of pellet pollution (e.g. measuring), national actions not covering the entire pellet supply chain (e.g. producers and converters but not transporters) or national actions limited to one or a few Member States. These approaches would not bring gains as they are less effective in reducing transboundary pellet pollution and overall more costly in achieving wider policy goals on reducing releases of microplastics.

EU level action is the most cost-effective and efficient way of tackling this issue and achieving the objectives set out in the Zero Pollution Action Plan.

- (a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Pellet losses and their associated impacts are transboundary, travelling across national borders, both between Member States and across the frontiers of the EU. Hence appropriate and effective pollution control can be achieved more quickly and efficiently at Union level compared to Member States acting alone in an uncoordinated manner.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty ² or significantly damage the interests of other Member States?
The absence of a common EU approach to tackle pellet losses to the environment risks impeding the Union's effort in pursuing the objectives and target set out in the Zero Pollution Action Plan, notably the 2030 target for a 30% reduction in microplastic releases. Not acting would also risk hindering the Treaty objectives of achieving a high level of environmental and human health protection.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
While Member States have the required competence to introduce appropriate measures, progress is very mixed in tackling pellet losses with only one Member State identified as having adopted legislation specifically to prevent pellet losses (France). This is because pellet losses are spread across the supply chain and therefore across borders making it a complicated issue to legislate at the national level in a cost-effective manner.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
Pellet pollution is widespread due to losses across the supply chain and to pellets' mobility once in the environment. Their environmental and health impacts are therefore generally the same across national, regional and local levels of the EU (as they are widespread in the environment). Pellets can be found in soil (including agricultural lands), lakes, rivers, estuaries, beaches, lagoons, seas and oceans. They can be found in areas close to petrochemical or polymer industries, but also far from them, including in important Natura 2000 areas. However, economic impacts are especially relevant for local communities who have to cover the costs of cleaning up pellets from their environment (which is very challenging and requires significant resources). In addition, certain economic sectors in these communities (e.g. fishing, agriculture, tourism) are also negatively impacted because the presence of pellets hinders their activities.
(e) Is the problem widespread across the EU or limited to a few Member States?
Pellets can be lost at all stages of the supply chain (including transport) making this problem widespread across the EU. In addition, pellet pollution is transboundary. Some national differences are observed, however, due to differences in levels of plastic manufacturing and processing as well as the presence of key transport routes (such as ports).
(f) Are Member States overstretched in achieving the objectives of the planned measure?
Much of the burden associated with the planned measure (and associated actions) would sit with industry who have, for some part, already started to take certain actions as part of a voluntary initiative. Member States will have to register economic operators' notification of compliance with the mandatory requirements laid out in the measure and handle enforcement. They are responsible, in case of non-compliance, for imposing corrective measures, and where necessary, penalties.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

² https://europa.eu/european-union/about-eu/eu-in-brief_en

Considering the harmful impacts of microplastics (including pellets), five EU Member States (i.e. Denmark, France, Germany, Luxembourg, the Netherlands) and Norway called on the Commission to introduce the necessary measures tackling unintentional microplastic releases, to reach the 30% reduction target in microplastic releases by 2030. According to these countries, tackling microplastics pollution is a cross-border challenge, and therefore national and voluntary measures alone are not sufficient. Measures at EU level are needed. France is the only Member State who has adopted legislation specifically to prevent pellet losses. Spain is promoting the industry Operation Clean Sweep® programme (OCS) including certification of companies against industry requirements. Regional and local authorities across the EU have shared concerns about pellet pollution at pellet related events (e.g. Catalonia, Hainaut/Belgium).

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

The objectives of the proposed action can be better achieved at Union level because EU-level action will ensure a higher level of environmental protection and a harmonised and well-functioning internal market. It could also help influence the pellet supply chain worldwide by leveraging the size of the EU market, thus contributing to more reductions in pellet losses.

(a) Are there clear benefits from EU level action?

There is a clear benefit in taking action at the EU level on pellet losses, as this can efficiently ensure a high level of environmental protection throughout the EU territory through reduced pellet losses to the environment, and a harmonised and well-functioning internal market across all Member States (same requirements for pellet pollution prevention and reduction, reduced costs of harmonised approaches).

Furthermore, the size of the internal market provides a critical mass enabling the EU to promote handling practices that release fewer pellets that could influence the pellet supply chain worldwide. It will also guide EU actions at the global level in the context of the negotiations on a Global Plastic Agreement and at the level of Regional Seas Conventions.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The objectives can be met more efficiently at EU level as fragmented approaches, such as national actions on one aspect only of pellet pollution (e.g. measuring), actions not covering the entire pellet supply chain (e.g. producers and converters but not transporters) or actions limited to one or a few Member States, would not bring efficiency gains as they are less effective in reducing transboundary pellet pollution and overall more costly in achieving wider policy goals on reducing releases of microplastics. Action at EU level will ensure a uniform approach and level playing field for different actors in the pellets supply chain thus avoiding any distortion of the internal market. Developing one methodology to measure pellet losses as part of the proposal can also bring economies of scale (one methodology instead of several ones, that otherwise could be developed).

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

Very limited policies and rules have been developed to date at a Member State level so an EU level homogenous approach would allow for a more comprehensive legislative approach

to the pellets supply chain. This would help ensure a level playing field and a more significant reduction in pellet losses to the environment.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
A loss of competence of Member States and local and regional authorities is limited as there are currently very limited actions being taken at national, regional or local levels. In addition, no significant administrative burden for national, regional or local levels is foreseen in the initiative. Overall, benefits of the initiative outweigh any possible loss of competence of Member States and local and regional authorities.
(e) Will there be improved legal clarity for those having to implement the legislation?
The proposal will improve legal clarity by addressing the full pellet supply chain and applying a uniform approach across the EU. Clear and precise EU-wide rules will enable concerned individuals and legal persons to ascertain the full extent of their rights and obligations.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
<p>The explanatory memorandum summarises the analysis of the supporting Impact Assessment, which assessed each policy option according to their environmental, economic and social impacts, as well as contains their proportionality. The text included in the explanatory memorandum is as follows:</p> <p>“The requirements in the proposal do not go beyond what is necessary to enable economic activities involved in the handling of plastic pellets in quantities higher than 5 tonnes per year, to safely and responsibly handle such pellets. They are based on existing best handling practices, notably the industry Operation Clean Sweep® programme (OCS). The proportionality of the requirements is ensured by introducing lighter requirements for SMEs, where necessary, as the result of thorough stakeholder consultation. National competent authorities in charge of verifying industry compliance will be supported by the work of certification bodies and environmental auditors that will be tasked respectively with certification and external auditing. This system will provide a high degree of legal certainty and facilitate enforcement activities.”</p>
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
The proposed action constitutes an appropriate way to achieve the intended objectives. The impact assessment showed that the preferred option does not go beyond what is necessary to achieve the objectives of the initiative. It aligns with what industry had indicated would be appropriate to effectively reduce pellet losses, and includes lighter requirements for SMEs, who had indicated the necessity of this. It is directly applicable as a Regulation and does not

<p>require Member States to implement their own legislation. It will help level the EU playing field and ensure a harmonised internal market.</p> <p>Overall, its expected benefits outweigh its associated costs for industry and national/regional/local authorities.</p>
<p>(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?</p>
<p>The initiative is limited to aspects related to the handling of plastic pellets. In doing so, it focuses on the handling operations where the pellet losses occur (the entire supply chain) with measures that can improve their handling (not just their measuring) and covers all actors involved in the handling of pellets (with the exclusion of those handling less than 5 tonnes per year). Very partial policies and rules have been developed to date at a Member State level. In addition, if Member States act individually, the level of environmental protection would remain suboptimal and there is a risk that competing different legislations would set competing different requirements.</p>
<p>(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?</p>
<p>The objectives of this proposal can be best pursued through a Regulation, which is the most appropriate instrument to implement the requirements necessary to reduce and prevent pellet losses to the environment in a uniform way across the EU. In addition, it follows industry's existing approach to ensure compliance is as straightforward as possible, without putting national, regional or local authorities under undue burden (no need for Member States to create their own legislation as Regulation applies directly and uniformly to all EU Member States).</p>
<p>(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)</p>
<p>The proposal will set specific minimum requirements that actors in the pellet supply chain will need to implement to reduce and prevent pellet losses to the environment (with lighter requirements for SMEs and the principle according to which the implementation of the applicable requirements may take account of the size and scale of operations). These minimum requirements will ensure a uniform approach is taken across the EU and the entire pellet supply chain to reduce and prevent pellet losses to the environment. Member States will be responsible for the enforcement of these obligations.</p>
<p>(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?</p>
<p>There will be one-off costs for the Union if the EU directly supports the development of the measurement standard for pellet release. For national authorities, there will be initial costs to set up at national level a public register of certified companies. There will be minor costs for competent authorities in Member States for processing the certification and enforcement of the obligations set out in the Regulation. There will be both one-off and recurrent costs for actors in the pellet supply chain for compliance including the need to adapt their operations</p>

and administrative procedures to the new requirements and then to ensure ongoing compliance.

These costs are considered proportionate to the anticipated benefits and commensurate with the objectives to be achieved.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Not applicable.