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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on preventing plastic pellet losses to reduce microplastic pollution - Guidance for further work

I. INTRODUCTION

1. On 16 October 2023, the Commission put forward a proposal for a Regulation on preventing plastic pellet losses to reduce microplastic pollution[1]. This proposal sets requirements for the handling of plastic pellets by economic operators and EU and non-EU carriers at all stages of the supply chain. Losses of plastic pellets, one of the main sources of unintentional microplastic pollution, often result from a lack of awareness or poor handling practices and can be abated by swift measures. However, once lost in the environment, plastic pellets are nearly impossible to retrieve as they disperse easily over large distances by wind and water.

[1] 14248/23 + ADD 1.

2. The Economic and Social Committee adopted its opinion on the proposal on 14 February 2024. The Committee of the Regions adopted its opinion on the proposal on 18 April 2024.

3. The European Parliament adopted its position at first reading on 23 April 2024[2] in the previous legislative term under the rapporteurship of João Albuquerque (S&D). In the new legislative term of the EP, César Luena (S&D) has been appointed Rapporteur.

II. WORK IN THE COUNCIL

4. Within the Council, the Working Party on the Environment (WPE) is responsible for examining the proposal at technical level. The Commission presented its legislative proposal and the accompanying impact assessment to the WPE on 14 February 2024.

5. Under the Belgian Presidency, the Environment Council held a policy debate on adequacy of the proposed measures, on responsibility of different actors and on the question of maritime transport[3].

6. Building upon the progress made during the Belgian Presidency, the Hungarian Presidency has pursued work at technical level and has put forward compromise texts on the whole of the proposal for discussion at three WPE meetings[4]. The Presidency aims to reach an agreement on a General Approach on the Plastic pellets proposal at the Environment Council on 17 December 2024.

7. Discussions at the WPE meetings have shown that certain issues, listed below and in the Annex to this note, require political guidance from Coreper.

III. MARITIME TRANSPORT

8. The Commission proposal does not address maritime transport of plastic pellets, given its initial focus on road, rail and inland waterway transport.

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2 10567/24.
3 7753/24.
4 12265/24; 12265/1/24 REV 1; 14529/1/24 REV 1.

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9. In consideration of the significant role of maritime transport in the distribution of plastic pellets and the potential negative impact on the environment in case of a loss of plastic pellets, and in light of the damage caused by the Galician pellet incident in December 2023, Member States have discussed at working party level the inclusion of maritime transport in the Regulation, which revealed a divergence of opinions among Member States if and how maritime transport should be included within this Regulation. Some Member States requested to regulate it at EU level, given the direct implications for marine and other ecosystems within the EU.

10. Based on that, the Presidency's initial approach was to include maritime transport in the Regulation. Its inclusion was supported by several Member States, whilst others remained sceptical. In the latest Presidency compromise text, with consideration of Member State comments, the proposed solution is to keep maritime transport within the Regulation, in line with the non-binding IMO circular[5]. The proposed solution has received positive feedback from a larger number of Member States. Nevertheless, some delegations continue to express their preference to keep maritime transport out of this Regulation. Some Member States argue that pellets transported in freight containers by sea should be governed solely under the IMO regime. Some other Member States however believe, that the IMO procedure is rather lengthy and the EU would need to demonstrate leadership on the issue, as it has done already on several occasions when it comes to EU environmental and climate legislation. The Presidency also notes that in the first reading position of the European Parliament[6] maritime transport is already included in the scope of the Regulation.

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[5] IMO circular MEPC.1/Circ 909 on recommendations for the carriage of plastic pellets by sea in freight containers adopted at the IMO's 81st session in March 2024.

[6] 10567/24.

IV. EU AND NON-EU CARRIERS

11. The Commission's proposal treats all carriers equally when their road vehicles, trains and inland waterway vessels operate in the Union (for example, Article 3(1), Article 4 (5), (6) and (8), as well as in Annex III). However, it exempts non-EU carriers from obligations related to actions carried out outside the Union such as the training of staff and keeping records of their relevant implementing actions and of the estimation of losses.

12. During previous discussions a number of Member States expressed that, in order to have a level playing field, non-EU carriers should fulfil the same requirements as EU carriers. However, in practical terms, those requirements cannot be legally enforced in third countries (e.g. inspections in offices in third countries). Therefore, in order to respond to the Member States request to equalise the burden on EU and non-EU carriers, the Presidency proposed to establish the obligation of appointing the authorised representative to act on behalf of non-EU carriers. Although most Member States showed openness to the proposal, the Commission raised, beyond the legal enforceability issue, questions concerning proportionality given the burden on non-EU carriers, and the possible reciprocity towards the EU Member States.

V. DIFFERENTIATED OBLIGATIONS FOR ECONOMIC OPERATORS (Articles 4 and 5)

13. Article 4 introduces obligations regarding the handling of plastic pellets. Certain obligations are the same for all economic operators (for example, the establishment of a risk assessment plan), while at the same time some requirements are differentiated based on the size of the operator, and not only on the volume of plastic pellets handled. To mitigate impacts on SMEs, the proposal thus contains additional lighter requirements for their installations. These requirements take the following form for micro-and small enterprises as per definition as well as installations handling plastic pellets in quantities below 1000 tonnes per year: no obligation of third-party certification but self-declaration of conformity, as well as a longer validity of the self-declaration (five years); no obligation to carry out internal assessments; no obligation to review compliance assessments at formal management meetings; and no obligation to establish an awareness and training programme.

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14. The discussions in the WPE showed that a group of Member States are of the view that the size of economic operator should not play a role with regards to the requirements under the Regulation but only the volume of pellets handled should be considered. At the same time, some other Member States argued that the administrative and financial burden on small and microenterprises should be minimised and therefore the distinction is necessary. As a compromise, the Presidency included small enterprises handling plastic pellets above 1000 tonnes per year under certain requirements of the Regulation introducing limited obligations, while keeping the exemption for microenterprises as per definition. At the same time, to preserve the balance, small enterprises below 1000 tonnes per year also remain exempted under some obligations in Annex I (describing the elements that should be reviewed at formal management meetings, establishing an awareness and training program, setting procedures for informing drivers, suppliers and subcontractors).

VI. CONCLUSION

15. In view of the above, the Permanent Representatives Committee is invited to provide political guidance on the way forward regarding the above mentioned issues and based on the guiding questions facilitate the work on technical level, with a view to allow the Council to reach an agreement on a general approach at its meeting on 17 December 2024.

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ANNEX

Questions for consideration:

1. *Do you agree with the current approach of the Presidency to incorporate maritime transport along IMO recommendations in the text? If not, what other solutions could you consider to effectively handle maritime transport, also in view of the incoming trilogues with the EP?*

2. *Which of the options do you think could be most efficient in addressing the issue of non-EU carriers?*

   Option A: Keep the obligation for non-EU carriers to appoint an authorised representative and elaborate the conditions for its operation and responsibilities in the EU.

   Option B: Delete the relevant obligations, either partially or totally for EU-carriers.

   Option C: Other solutions (and if so, what specifically?).

3. *Do you believe that the requirements of this Regulation should be based only on the volume of plastic pellets handled or should the size of economic operator also play a role? Do you think the current Presidency proposal is well-balanced in this matter? If not, what solutions would you see as appropriate?*

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