

## **Position of Deutsche Bauchemie on the draft SEAC opinion on the proposal for a restriction of intentionally added microplastics**

The industry association Deutsche Bauchemie welcomes and supports ECHA's initiative to reduce the release of microplastics into the environment.

### ***The microplastic restriction must not impair the recovery of construction waste***

In the construction sector, the changeover from a linear to a circular economy is high up on the action plan. Both the industry and national and European institutions are working intensively on concepts to drive forward this development. The aim is not to have to dispose of enormous quantities of construction waste but to reuse as much as possible as recycles. In Germany alone, around 60 million tonnes of construction waste were generated in 2016, with ca. 80% being recycled. Against this backdrop, it is important to ensure that the restriction proposal for microplastics and the resulting theoretical possibility of microplastics being contained in construction waste do not impair the described positive trend.

### ***Cost and effort must remain proportionate***

The implementation of the restriction proposal would cause immense efforts in the construction chemicals industry and relevant supply chains of the construction sector – which would be unjustified and unreasonable, especially in view of the insufficient identification of hazards and risks.

The following aspects decisively contribute to the disproportionate expense and workload:

- Impacted companies would have to make great efforts to adapt their internal IT infrastructure.
  - New IT-based monitoring systems must be established to continuously record the types and quantities of materials that fall under the microplastics definition or contain microplastics.
  - Moreover, new IT interfaces must be created and implemented inside the companies to enable annual reporting in an IT format specified by ECHA.
- Further cost and work, which should not be underestimated, arise in the implementation of the additional labelling requirement with "instructions for use" in the respective national languages. The effort would be even greater if thus required instructions for use need to be affixed or incorporated in several places (e.g. safety data sheet and product label).
- In one and the same supply chain, the effort outlined above arises not only at one but several successive downstream/upstream companies. This unnecessarily increases the total effort involved and causes multiple reporting – which, in turn, leads to an overestimation of quantities of used microplastics and possible release into the environment. The attached case study highlights some points that show the recurring tasks which individual actors in a supply chain would have to perform over and again.

### ***Lack of concentration limits and unclear formulation of rules***

The existing restriction proposal contains rules that are not clearly formulated and leave room for interpretation. The proposed legal text is generally quite difficult to understand and includes complex links. For most companies, which are impacted by the restriction and obliged to apply it, the correct interpretation of the legal text is too much of a challenge. Without the necessary clarification and simplification of the legal text, the rules will be applied differently and sometimes incorrectly. Furthermore, paragraph 7 lacks concentration limits to make the rules workable.

- Paragraph 7 refers to „... supplier of a substance or mixture containing a microplastic ...“. By contrast, paragraph 8 refers to “... supplier placing a microplastic ...on the market for the first time for consumer or professional uses ...“.

In this context, the question arises whether the rules of paragraph 8 should be understood to mean that the reporting obligations under paragraph 8 d) to f) only apply to pure microplastics and not to mixtures containing microplastics which are placed on the market for the first time for consumer or professional uses. The question might come up how exactly the distinction between microplastics and a mixture containing microplastics is made. In order to clearly identify the obligations of the individual actors in the supply chain, it is essential to clarify the legal text.

- The labelling obligations under paragraph 7 do not include any concentration limits for microplastics contained in a mixture. In our understanding, the labelling obligations would also apply if a mixture contains only very low concentrations of a material that falls under the microplastics definition and thus this mixture contains less than 0.01% polymer in microplastic form. For the workable application of the provisions of paragraph 7, a concentration limit should be introduced here (e.g. “... *supplier of a substance or mixture containing a microplastic in concentrations higher than X% ...*”).

### ***Danger of unjustified “blacklisting effects”***

In principle, "blacklisting effects" could lead to EU citizens and companies deliberately refraining from using products that are associated with "microplastics", even if there is no risk of release during their use. In terms of sustainable development, this would be counterproductive, as there are often no technically or ecologically equivalent alternatives for these products – or avoiding them would involve a considerably higher resource consumption. Possibly, here is a real risk of shifting to unwanted products that have disadvantages in terms of occupational safety, economic efficiency, sustainability and recyclability. Inter alia a step back to solvent-containing products and products with shorter useful lives could be one possible consequence.

***Positive effects of modern products might be lost***

In addition to the arising cost and effort, the positive effects and advantages achieved by modern products containing "microplastics" or manufactured based on microplastics might be lost.

**Two examples:**

- For a long while, polymer dispersions have been used as binders and have meanwhile largely replaced solvent-based products in the market. Polymer dispersions permanently lose their "microplastic properties" during end-use because of irreversible film formation and can continue to be used under an exemption. All the same, there are still reporting and labelling requirements which involve great effort, and there is the risk of the products being unfairly avoided due to their closeness to "microplastics" and the negative image of a REACH restriction. A loss of business and a shift towards products with adverse properties could be the consequence, with SMEs being particularly hard hit.
- The use of polymeric additives in concrete is essential for modern concrete technology. Concrete construction, as we know it today, would no longer be conceivable without these polymeric additives. Polymeric additives for concrete, too, can continue to be used because they are permanently and firmly bound into the concrete matrix during end-use and, therefore, the object of an exemption. As in the previous example, despite the exemption, there are complex reporting and labeling requirements and the risk that the products are avoided due to their proximity to "microplastics".

**Deutsche Bauchemie e.V.**

Frankfurt am Main

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**Attachment**

Example *"Application of MP restriction in the supply chain of construction chemicals"*

*As an industry association, Deutsche Bauchemie represents the entire construction chemicals industry in Germany. In 2019, the more than 130 member companies with around 32.000 employees generated sales of 8.5 billion euros. This corresponds to half of the European market volume and about a quarter of the world market. Under the umbrella of the German Chemical Industry Association (VCI), Deutsche Bauchemie has been representing the interests of its member companies for over 70 years, to the public, political actors, authorities, other industry sectors, science and the press.*

**Proposal for a restriction of intentionally added microplastics - example "Construction Chemical Product"**



Supply chain					
	Actor I	Actor II	Actor III	Actor IV	Actor V
<b>Actor in the supply chain</b>	manufacturer of polymer dispersion (polymer)	Formulator (DU) of a polymer dispersion powder	Formulator (DU) of a polymer-modified cementitious tile adhesive containing a polymer dispersion powder	Distributor	end-user (DU) of the polymer-modified cementitious tile adhesive on a construction site
<b>Status</b>	manufacturer of a polymer (M)	formulator of a mixture (DU)	formulator of a mixture (DU)	Supplier (distributor)	professional worker (DU)
<b>life cycle stage</b>	industrial	industrial	industrial	Supplier (distributor)	professional
<b>In the scope of the MP restriction?</b>	YES	YES	YES	NO	Not directly
<b>Exemptions</b>	4 (a) industrial use	4 (a) industrial use	5 (c): permanently incorporated in matrix	out of scope	out of scope
<b>Tasks</b>	7 (1): labelling with instructions for use	7 (1): labelling with instructions for use	7 (1): labelling with instructions for use	no tasks	Consideration of the supplier's instructions for use
	7 (4): labelling quantity (conc.) of MP	7 (4): labelling quantity (conc.) of MP	8 (1) (a): reporting to ECHA, description of use of MP, reference to polymer dispersion powder		
	7 (4): sufficient info on polymer to comply with (8)	7 (4): sufficient info on polymer to comply with (8)	8 (1) (b): reporting to ECHA, generic information on identity of polymer, reference to polymer dispersion powder		
		8 (a): reporting to ECHA, description of use of MP	8 (1) (c): reporting to ECHA, estimate of quantity of MP released to environment, reference to of polymer dispersion powder		
		8 (b): reporting to ECHA, generic information on identity of polymer	8 (2) (d): reporting to ECHA, description of <u>intended</u> use of MP, reference to polymer-modified cementitious tile adhesive		
		8 (c): reporting to ECHA, estimate of quantity of MP released to environment	8 (2) (e): reporting to ECHA, generic information on identity of polymer, reference to polymer-modified cementitious tile adhesive		
			8 (2) (f): reporting to ECHA, estimate of quantity of MP released to environment, reference to polymer-modified cementitious tile adhesive		
<b>Content of MP and of polymer in the product placed on the market</b>					
<b>polymer content</b>	50%	95%	2.85 %	2.85 %	2.85 %
<b>MP content</b>	50%	100%	3%	3%	3%