

## Our position

# The Pellets Regulation: Additional recommendations for Member States

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Executive summary

In response to the latest Council Presidency compromise text of the Pellets Regulation of 17 October 2024, the American Chamber of Commerce to the EU (AmCham EU) has built upon its [May 2024 position paper](#) with several additional recommendations.

As Member States work towards an agreement, expected by the end of 2024, the final text should:

- Maintain close alignment with the International Maritime Organisation (IMO), especially on packaging and retain amendments to remove the reversal of burden of proof and collective redress in line with the Industrial Emissions Directive (IED).
- Remove specific labelling requirements for pellets and the distinction between ‘pellets loss’ and ‘pellets spill’.
- Clarify some aspects for legal certainty such as the inclusion of dust in the scope of the regulation and the addition of an authorised representative for non-EU carriers.

## Introduction

The European Commission’s proposal for a Regulation on preventing plastic pellet losses to reduce microplastic pollution (Pellets Regulation) is an important step towards a level regulatory playing field for pellet management across EU value chains based on existing best practices, such as Operation Clean Sweep® (OCS). It is nevertheless important to avoid dual regulation and ensure consistency between the proposed legislation and other EU and international initiatives. These include ongoing work on plastic pellet management during maritime transport under the IMO, the REACH restriction on microplastics adopted in October 2023 and the recently agreed revision of the IED.

The paper below addresses several key topics incorporated into the Presidency compromise text, including packaging requirements, transport requirements and labelling, representatives of non-EU carriers, burden of proof and collective redress measures, non-compliance, IMO alignment, spill and loss, and plastic pellet dust.

## Packaging requirements

To avoid regulatory fragmentation and barriers to trade, the Pellets Regulation’s packaging measures should be consistent with those recently endorsed as part of the IMO Marine Environment Protection Committee circular on recommendations for the carriage of plastic pellets by sea in freight containers. The latest Council text addresses many relevant, previous concerns, leading to a pragmatic approach that would ensure compliance. These improvements should be preserved in the final Regulation:

- The updated wording in **Annex I (7)** to ensure that packaging can withstand normal conditions of transport is a significant positive step. This change aligns with the language in the recently adopted IMO circular.
- The focus on favouring preventive measures in **Annex I (7a)**, removing references to accidental conditions, is also a welcome change.
- The updates in **Annex IIIa** requiring that packaging be strong enough to withstand the shocks and loading normally encountered during transport and constructed and closed so as to prevent any loss of contents under normal transport conditions are positive.

Policymakers should remove the reference to puncture-proof packaging from **Recital 15** to align with the requirements set forth in Annex I and IIIa. ‘Puncture-proof’ is not defined and would therefore create significant challenges for implementation.

## Transport requirements and labelling

The new requirement stated in **Annex III (1)** that the outside of road vehicles, inland waterway vessels or rail wagons must be free from plastic pellets when leaving the installation is positive. It would ensure a clean and safe transport environment, reducing the risk of contamination and spillages. However, the latest Council text for **Article 4 (9a)** still envisages labelling requirements for containers. This remains a key concern, as such measures are typically reserved for dangerous goods, which does not apply to plastic pellets. Instead, they should incorporate wording aligned with the IMO circular: ‘Transport information should clearly identify those freight containers containing plastic pellets.’

## Representatives of non-EU carriers

The European Commission’s initiative to include non-EU carriers into the scope of the Pellets Regulation is positive as it would impose the same requirements as those applicable to EU carriers. However, further clarification is needed with regards to the authorised representative system proposed by the Council in the new **Article 4b**.

For instance, the natural or legal person who can be designated representative for a non-EU carrier as well as its role, scope of action and mandate should be clearly identified to ensure legal certainty. In addition, the responsibilities of the representative seem to go very far as ‘the representative shall be mandated ... to be addressed ... for the purposes of ensuring compliance of the non-EU Carrier with [this Regulation / the obligations under Article xx]’ without specifying the risks for the representative in case of non-compliance.

Absence of clarity or legal uncertainty in this respect may effectively exclude non-EU carriers from the Single Market. Policymakers should provide more clarity on the application of the representative concept and the associated responsibilities.

## Reversal of the burden of proof and collective redress measures

The latest Presidency text completely removes **Article 16(4)**, which would have reversed the burden of proof in compensation claims. This aligns with the requirements recently published under the IED and should be retained in the final text of the Pellets Regulation. Similarly, the deletion of **Article 16(2)** on collective redress from the original Commission proposal is positive as it would ensure certainty for business operators.

In contrast, the last sentence in **Recital 41** raises some concerns as it seems to state that when individuals want to defend their rights against damages to health caused by infringements of this regulation, pellet losses can be taken into account rather than human health. The link between pellet

losses and impacts on human health or the environment has not been made evident by scientific research. Policymakers should remove this recital and wait for the outcome of ongoing scientific research.

## Non-compliance

The updated wording under **Article 10(2)** is positive, as Member State's competent authorities would obtain a margin of discretion with regards to corrective actions to take in cases of non-compliance. They could decide whether the operation of the installation should be suspended in case of an infringement that poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment.

## Future review and IMO alignment

As stated above, the Pellets Regulation must be aligned with developments at IMO. It is therefore positive that the latest Presidency text retains language on IMO alignment in **Article 18(b)**. However, the proposal to consider other sources of unintentional releases of microplastics, such as 'from paint and textile', in the future review appears misplaced in this context. This paragraph focuses on IMO alignment, and the IMO does not cover such applications.

The formal recognition of the IMO Circular 909 in **Recitals 7 and 14** is a further positive step towards consistency with IMO. This recognition supports the overall goal of harmonising EU regulation with international standards and practices.

While the **new Article 4a** and **Annex IIIa** aim to provide more clarity on the requirements related the imports and exports of plastic pellets in containers by sea, the roles and responsibilities between the different parties involved (eg 'carrier' and 'master or operator') are not entirely clear and subject to interpretation. The declaration should be provided by the shipper (or person in whose name or on whose behalf a contract of carriage of goods has been concluded with the carrier), whereas the location of the containers on board and the associated documentation are the responsibility of the master or operator. Also, the content and format of the 'declaration' are unclear. This declaration should be covered by including a specific statement as part of the booking request, i.e. without the need for a specific separate document, which would lead to additional administrative burden with little added value.

## Proposed inclusion of dust

While the intention may not be to fully include plastic pellet dust in scope of this regulation by adding a separate definition on plastic pellet dust in **Article 2(aa)** next to the definition on plastic pellets, the Presidency text still includes a requirement in **Annex I (7a)(a)** for the operator to consider including in its risk management plan 'plastic pellet dust extraction equipment with appropriate plastic pellet dust filters'. However, dust should be kept out of scope of the Pellets Regulation, as it is already handled in permits by the polymerization plants and installations where plastic pellets are produced, in compliance with industrial safety measures, the IED and the Best Available Techniques Reference Documents.

The requirements around plastic pellet dust management are unclear, for example, in terms of what is acceptable and what dust emission performance level should be achieved. Furthermore, they would likely be subject to varying interpretations by the certifier and/or competent authority, with the risk of distorting the EU's level playing field. Such measures – with potentially significant costs – should

also be subject to an impact assessment before inclusion in the final text. For installations that are permitted under the IED, these requirements would likely also lead to double regulation. For that reason, policymakers should remove the management of plastic pellet dust from the requirements under **Annex I**.

However, if policymakers do include plastic pellet dust in the regulation, they should incorporate a size limit to allow operators to focus on 'visible' dust greater than 45 microns.

## Definition of spill and loss

Problematically, the updated definitions in **Article 2** imply that a pellet spill outside the fence is considered by default lost in the environment. This concern stems from the fact that 'spill' is now defined as occurring only within site boundaries, while 'loss' occurs outside these boundaries. This distinction should be removed because it suggests that releases outside a site (e.g.; pellet spill from a truck incident) cannot be addressed, potentially leading to environmental harm.

Furthermore, in the context of the requirement for operators and EU carriers to keep records of annually estimated quantities of losses under **Article 4(7(c))**, policymakers should differentiate between unrecovered losses and recovered losses. In line with the objective for reducing the amount of microplastics released into the environment by 30% and in line with the loss reporting under the REACH restriction on synthetic polymer microplastic particles, reporting should account for unrecovered losses.

## Conclusion

The latest Presidency compromise text has improved the proposed Pellets Regulation. Member States should retain these positive changes and continue refining the text to ensure clarity, practicality and alignment with other relevant rules and legislation (IMO, OCS, IED and REACH). Doing so would allow the EU to achieve a balanced regulation for plastic pellets, ensuring an ambitious regulatory playing field across the EU without imposing unnecessary burdens on key value chains.