

PRESS RELEASE

EU ACCUSED OF MALADMINISTRATION ON PLASTICS - COURT ACTION LIKELY

A proposed ban on oxo-degradable plastics was attacked in the European Parliament on 27th March 2019 by British MEP, Stuart Agnew. He said: "Parliament has not been made aware that if we accept the reference to oxo-degradable plastics in Article 5 we would be evading the European Union's own rules for banning substances. These are set out in Articles 68-73 of the REACH Regulation, and we cannot just ignore them."

"The Commission has acted under Article 69 to request the European Chemicals Agency (ECHA) to study oxo-degradable plastics because the Commission thought that they created microplastics. ECHA have not completed their study but they did advise on 30th October – ten months into the study – that they were not convinced that microplastics are formed."

"If, and only if, ECHA were to recommend a restriction, it would have to be considered by two committees under Articles 70 and 71, and there would have to be a public consultation, before any restriction could be implemented. None of this has been done. The reference to oxo-degradable plastic must therefore be removed from Art 5 before the Directive is published in the Official Journal."

The Chairman of the OPA welcomed this speech, and said "The EU is rushing to ban a technology without waiting for the advice of the European Chemicals Agency (ECHA), so as to pass the directive into law before the EU Parliament dissolves for elections on 18th April. **This is serious maladministration and the industry will take the case to the European Court of Justice if necessary.**" We consulted a leading expert on EU law today.

ECHA has made no findings against oxo-biodegradable plastics, but the OPA is concerned in case people should think that this legislation applies to oxo-biodegradable plastics. Please see *further information for editors*.

The OPA represents more than a thousand companies worldwide who manufacture supply and use additives to make Oxo-biodegradable plastics (OBP), which convert if they escape into the open environment, into materials that can be biodegraded by bacteria. The additives are mandatory for a wide range of plastics in 10 countries, including Saudi Arabia, UAE and Pakistan.

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Further information for editors:

In December 2017 the Commission mandated their scientific experts (ECHA) under Art 69 of the REACH Regulation to study "oxo-degradable" plastic. The Commission did this in the mistaken belief that it creates microplastics, because they had failed to understand the evidence of many scientists, including Swedish Professor Ignacy Jakubowicz, one of the world's leading polymer scientists, that: "The degradation process is not only a fragmentation, but is an entire change of the material from a high molecular-weight polymer, to oxygen-containing molecules which can be bioassimilated."

On 30th October 2018 ECHA advised that they were not convinced that microplastics are formed by oxo-biodegradable plastics, and it is important to note that at about that time the Environment Committee of the Parliament decided to by-pass ECHA and insert a ban directly into the draft Directive.

This draft legislation is not therefore based on a proper investigation of the science. Worse still, no impact assessment has been done as required in such cases, and by seeking to legislate in this way the EU is evading its own legal procedures under the REACH Regulation (Arts. 68-73). These were enacted to ensure that the science is properly understood and that all stakeholders are properly consulted before any legislation is passed.

The draft Directive (Recital 15) is intended to ban plastic that “does not properly biodegrade and thus contributes to microplastic pollution in the environment, is not compostable, negatively affects the recycling of conventional plastic and fails to deliver a proven environmental benefit.”

It is therefore important to be clear that it is not intended to ban plastic that *does* properly biodegrade, that *does not* contribute to microplastic pollution, and *does not* negatively affect the recycling of conventional plastic, whether compostable or not. It could not therefore apply to oxo-biodegradable plastic, which is scientifically proven.

Oxo-biodegradable plastic has been studied by scientists for many years, and in 2018 a former deputy judge of the High Court in England, Peter Susman QC, was asked to review the scientific evidence. He concluded:

- *that OBP does facilitate the ultimate biodegradation of plastics in air or seawater by bacteria, fungi or algae, within a reasonable time, so as to cause the plastic to cease to exist as such, far sooner than ordinary plastics, without causing any toxicity;*
- *that “the benefit is obvious of reducing future contributions to the scourge of plastic pollution of land and sea”;*
- *and that OBP is compatible with composting and recycling.*

See <http://www.biodeg.org/2018/11/06/uk-judge-find-the-case-for-oxo-biodegradable-plastic-proven/>

FOR FURTHER INFORMATION please contact Paula in the OPA Secretariat on info@biodeg.org; and for OBP generally see www.biodeg.org

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