

Reference: Plastics Europe comments on Dutch notification 2024/0707/NL

On 19 December 2024, the Dutch Government notified to the European Commission the following draft measures in accordance with the European Union (EU) Technical Regulations Information System (TRIS) consultation procedure ([Notification Detail | TRIS - European Commission](#)):

- Notification 2024/0707/NL which amends the Environmental Management Act in connection with the introduction of an annual obligation for circular polymers, circular polymer units, and a register of circular polymer units (legal amendment for a Circular Plastic Standard). The notified measure would introduce a national obligation for all processors of polymers in the Netherlands, who from 1 January 2027 are obliged to replace a minimum percentage of fossil-based polymers with recycled or bio-based polymers.
- In order to achieve an average annual minimum share of circular plastic in the Netherlands, the draft bill also regulates a trading system. For the processing of circular polymers, polymer processors receive administrative, tradable circular polymer units (CPEs) and can sell these CPEs to other polymer processors, so that, for example, polymer processors that process more than the legal minimum of circular polymers can sell CPEs to polymer processors that process less than the mandatory minimum share of circular polymers.
- The draft bill further seeks to lay the foundation for a national system of supervision and enforcement, introducing an information and reporting obligation for all polymer processors in the Netherlands, including a trading scheme. Rules on the recognition of certification schemes will be included in the general administrative order.
- Other substantial aspects related to the concrete implementation and enforcement of the standard (e.g. the exact scope of the obligation, the level of the threshold for determining the target group, the level of the mandatory minimum share of circular polymers to be processed) will be defined at a later date, by means order in Council. It is unclear if further TRIS notifications of such measures will follow.

Plastics Europe is committed to increasing circular plastics and welcomes mandatory minimum circular plastic content targets as a clear incentive for low carbon and circular business models and demand for recycled plastic. Along with our value chain stakeholders, we have been fully engaged in forthcoming EU legislation to promote ambitious targets for recycled content in packaging (Packaging & Packaging Waste Regulation) and automotive (End of Life Vehicles Directive). A key question that has arisen in all legislative discussions has been how the European Commission should implement its commitment to ensure that all producers on the EU market should comply with the same obligations for the use of recycled or biobased plastics. The European Commission has been very clear that for recycled content targets in product regulations it will take an EU-harmonised approach.

Plastics Europe therefore contests the lawfulness of the draft measures that follow from the Dutch national standard, on the grounds that they infringe TFEU provisions on Single Market and EU legislation.

Infringement of TFEU provisions and EU legislation

The Dutch government observes that the standard is not a direct obstacle to the free movement of goods and services, as it does not impose restrictions on the import or export of polymers or plastic products. This is incorrect. When a national standard is implemented, Dutch processors must make changes in product composition and vital business processes in order to continue producing, including for export markets where these requirements do not apply. These requirements do not apply to comparable companies in other EU countries or for companies from outside the EU.

The Dutch standard therefore conflicts with **Article 34 TFEU**, prohibiting measures that have this disturbing *effect in the trade between Member States*. The legislator claims to only look at the sustainability requirement of the polymer and not at the quantity. Given that the measure will directly impact 1500 converter companies in the Netherlands, it is however conceivable that quantitative restrictions on imports will follow.

We also dispute that the measures are proportionate and non-discriminatory (**Article 36 TFEU**). Setting a percentage threshold for all plastics processed in the Netherlands is discriminatory and rather arbitrary: aside from the challenges to monitor compliance, it would mean that plastics converters in the Netherlands are not allowed to compete in an international market on the same conditions.

The effects that would justify a nationally designed standard are not sufficiently substantiated, nor is explained why Dutch legislation cannot wait for European legislation. Given the international nature of the plastics market, European standardisation is more reasonable from the perspective of regulatory burden and less burdensome alternatives for Dutch businesses. It is also not clear how unnecessary regulatory burden of a national trading scheme will be prevented when additional, upcoming European legislation will be implemented.

Furthermore, there are significant uncertainties regarding expected environmental gains. Companies bringing the products to the NL market can easily switch to a processor abroad who can produce cheaper. Given that the cost-increasing effect on plastics-containing semi-finished and finished products cannot be passed on further down the chain, as comparable products imported from abroad do not have to meet the same requirements, make it questionable that the standard will have any effect on the demand for and use of circular polymers. Therefore we dispute the CO₂ gains that are claimed to be achieved through the standard because of reduced waste incineration in the Netherlands. Substantiation for this is lacking.

Processors are linked to one or more product-market combinations because of their activity and business model. Deployment of a mandatory share of circular raw materials from the standard is thus effectively equivalent to a product standard for them.

The decision to set a standard at polymer level to be applied by converters, instead of a standard at product level, will inevitably have impacts on the packaging value chain and the chain of custody based on which manufacturers and importers of packaging will prove compliance with the PPWR requirements, thus creating a legal construe.

We therefore contest the assumption that the standard will avoid overlap. In its intention to anticipate EU product regulation, such as the PPWR and ELV, implementation of the draft bill is accompanied by a deviating system and methodology, that will hinder the harmonised implementation of EU legislation. In our opinion this is breaching Article 6(3) of the TRIS Directive.

Conclusion

Plastics Europe supports the need for a climate neutral and circular economy. We also understand that it will be challenging to achieve the goals being set in legislation, as well as those we are setting ourselves. We are convinced that an essential tool to drive the transformation that is needed to achieve the EU's vision of a circular economy will be the power of the EU's internal market. It is vital that an EU harmonised approach is taken to the types of measures set out in this notification, so that all relevant stakeholders and Member States are driving towards the same sets of criteria and goals. We therefore call on the Commission to protect the EU Single Market and ensure that the conditions for harmonised measures are respected to unleash the change and to achieve their intended objectives. We believe that the issues raised above warrant the adoption by the Commission of a detailed opinion, concluding that the draft law as notified by the Netherlands would constitute technical regulations contrary to the requirements set down in the PPWR and ESPR, and creating a barrier to the free movement of goods.

We wish also to highlight that the Commission may require Member States to postpone the adoption of a draft technical regulation for 12 months from the date of receipt of the notification if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.

We remain at your disposal for any further information or clarifications related to the issues raised in this submission.