



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

### Message 303

Communication from the Commission - TRIS/(2022) 02760

Directive (EU) 2015/1535

Notification: 2022/0357/E

Observations from the Commission (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

Observaciones - připomínky - Bemärkninger - Bemerkungen - Märkused - Παρατηρήσεις - Comments - Observations - Osservazioni - Piezīmes - Komentarai - Megjegyzések - Kummenti - Opmerkingen - Uwagi - Observacoes - Comentáre - Ripombe - Huomautuksia - Synpunkter - Коментари - Comentarii.

Sin plazo de statu quo - Doba pozastavení prací se neaplikuje - Ingen status quo frist - Keine Stillhaltefrist - Ooteaeg ei ole kohaldatav - Δεν υπάρχει statu quo - Standstill period does not apply - Pas de délai de statu quo - Termine di status quo non previsto - Bezdarbības periods netiek piemērots - Atidējimo periodas netaikomas - A halasztási időszak nem alkalmazandó - Il-perijodu ta' waqfien ma japplikax - Geen status quo-periode - Okres odroczenia nie ma zastosowania - Prazo do statu quo não previsto - Períoda pozastavenia neplatí - Obdobje mirovanja ne velja - Ei status quon määraaika - Ingen tidfrist för status quo - Не се прилага период на прекъсване - Perioada de stagnare nu se aplică.

(MSG: 202202760.EN)

1. MSG 303 IND 2022 0357 E EN 22-08-2022 10-08-2022 COM 5.2 22-08-2022

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2022/0357/E - S20E

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the Spanish authorities notified to the Commission on 20 May 2022 the 'Draft Ministerial Order establishing the criteria for determining when plastic waste undergoing mechanical treatment and destined for the manufacture of plastic products ceases to be waste pursuant to Law 7/2022 of 8 April on contaminated waste and soils for a circular economy' under the reference 2022/357/E.

According to the notification message, the notified draft lays down the requirements to be met by thermoplastic waste eligible for mechanical treatment, the requirements to be met by such recovery treatments, the quality criteria to be met by the resulting material after the recovery operation in line with the applicable product standards, as well as the procedure for verifying compliance with end-of-waste criteria through management systems.

Examination of the notified draft has prompted the Commission to issue the following comments.

The following is provided for by Article 4 of the notified draft:

'According to the regulatory provisions in force at a European level, where the aim of recycled plastic material is the manufacture of materials or articles in contact with food, waste will reach the end-of-waste status at the premises of plastic waste managers that comply with Commission Regulation (EC) No 282/2008 of 27 March 2008 on recycled plastic materials and articles intended to come into contact with food and amending Regulation (EC) 2023/2006, and all other European provisions that are applicable.'



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According to Article 8(2) of the notified draft:

'Where the subsequent aim of recycled plastic material obtained at the producer's premises is the manufacture of food contact materials or articles, in accordance with the provisions of Commission Regulation (EC) 282/2008 of 27 March, waste managers who have intervened before the producer shall comply with the requirements for collection and pre-treatment laid down in this Regulation, including the introduction of a third-party certified management system.'

Section 1 of Annex III to the notified draft, as referred to in Article 5(1) of the notified draft, reproduces the contents of Part B of Annex I to Commission Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods which lays down requirements on additional information in the declaration of compliance for recycled plastic, as referred to in Article 12(2) of that Regulation.

In addition, point 3 of Section 2 of Annex I to the notified draft, as referred to in Article 3(1)(b) of the notified draft, refers to Annex I to Regulation (EC) No 282/2008 in the context of restrictions applicable to recycling technologies.

The Commission recalls that according to Article 288 of the Treaty on the Functioning of the European Union (TFEU), EU regulations, such as Commission Regulation (EC) no 282/2008, shall be binding in its entirety and directly applicable in all Member States. According to settled case-law, this in principle precludes the adoption or maintenance of parallel national provisions, which seems to be the case of the notified draft. In particular, Member States may not take any action which would conceal from individuals the Community nature of a rule of law and the effects flowing therefrom, which would be the case if a Member State would reproduce provisions stemming from a Union Regulation in national law.

The Commission draws the attention of the Spanish authorities to the fact that, in accordance with the second paragraph of Article 16 of Regulation (EC) no 282/2008, the essential material provisions of that Regulation, i.e. those of its Articles 3, 9, 10 and 12, shall apply from the date of the adoption of the Decisions granting or refusing authorisation for the initial authorisation phase of recycling processes as referred to in Article 13(6) of that Regulation. As those Decisions have not been adopted, national provisions in force concerning recycled plastic materials and articles and recycled plastic continue to apply in the Member States in accordance with the second subparagraph of Article 16 of that Regulation.

Furthermore, a new Commission Regulation on recycled plastic materials and articles intended to come into contact with foods, which is to repeal Regulation (EC) No 282/2008 and substantially adapt the legislative framework provided for by that Regulation, has received a favourable opinion of the Standing Committee on Plants, Animals, Food and Feed and is currently under scrutiny by the European Parliament and the Council in accordance with Article 5(1) and Article 23(3) of Regulation (EC) No 1935/2004 of the European Parliament and of the Council and, therefore, with Article 5a of Council Decision 1999/468/EC. Although the matter regulated by the notified draft, i.e. determining the end-of-waste status for certain plastic waste, does not seem to be covered by the new Regulation on recycled plastic materials and articles intended to come into contact with food, which regulates a different matter, there are certain overlaps with the new legislation. In particular, the Commission notes that some elements of the new Regulation, such as quality assurance systems certified by an independent third party, are already included in the notified draft in the context of the references to Regulation (EC) No 282/2008. The Spanish authorities are invited to make sure that all necessary adaptations are made in the notified draft to ensure the full and correct application of the new Regulation as from the date on which it becomes applicable, including the different provisions to be applied to recycling technologies and recycling processes under the new Regulation.

The Commission invites the Spanish authorities to take the above comments into account.

The Commission furthermore reminds the Spanish authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Kerstin Jorna  
Director-General  
European Commission



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Contact point Directive (EU) 2015/1535

Fax: +32 229 98043

email: [grow-dir2015-1535-central@ec.europa.eu](mailto:grow-dir2015-1535-central@ec.europa.eu)