

I. GENERAL PROVISIONS

MINISTRY FOR THE ECOLOGICAL TRANSITION AND THE DEMOGRAPHIC CHALLENGE

14735 *Order TED/646/2023 of 9 June 2023 establishing the criteria for determining when thermoplastic 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 waste and contaminated soils for a circular economy*

I

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (hereinafter the Waste Framework Directive) was introduced into Spanish law by Law 22/2011 of 28 July 2011 on waste and contaminated soils. Both regulations introduce a set of requirements that must be met so that a given type of waste, after recovery, can cease to be considered waste.

The four requirements for this change of legal status, which were included both in Article 6 of the Waste Framework Directive and in Law 22/2011 of 28 July 2011, were: the resulting substance or object must be used for specific purposes; a market or demand must exist for this substance or object; the resulting substance or object must meet the technical requirements for the specific purposes, the existing legislation and the standards applicable to the products; and finally, the use of the resulting substance or object cannot have an adverse impact on the environment or health.

Subsequently, Article 6 of the Waste Framework Directive, as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018, amended Directive 2008/98/EC on waste. The new wording of this article provides for some updates. Firstly, although it retains the four requirements listed above for a type of waste to cease to be considered as such, it introduces a detail on the first requirement, since, from now on, the resulting substance or object must in all cases be used for specific purposes. Secondly, it introduces the option for the “end-of-waste” status to be applied either at European Union level, at Member State level or on a case-by-case basis.

At the first level, the European Commission may assess the need to adopt these criteria for certain waste streams by means of implementing acts, covering the entire European Union. In the second case, where they have not been established at a community level, it is up to the Member States to establish such criteria for certain waste types. In both cases, the end-of-waste criteria regulated by the Directive shall include: waste authorised as input material for the recovery operation; permissible treatment procedures and techniques; quality criteria that must be met for end-of-waste materials resulting from the recovery operation in line with the applicable product standards, including limit values for pollutants where necessary; management systems to demonstrate compliance with the criteria defined, specifically for quality control and self-monitoring, and accreditation, where appropriate; and, finally, the submission of a statement of conformity.

In the third case, the ‘case-by-case basis’, in the absence of criteria at both the European Union and national levels, the Member States shall be entitled to decide on specific waste streams on a case-by-case basis. Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 states that for each case, where necessary, the same requirements shall be conveyed as set out for the two options described above. Moreover, the latter case shall also take into account the limit values for contaminants and any adverse impact on the environment or human health.

Law 7/2022 of 8 April 2022 on waste and contaminated soil for a circular economy, transposes Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018. Article 5 of the law establishes that the Minister for Ecological Transition and the Demographic Challenge may establish specific criteria which must be met by certain waste which have been subject to a recovery operation, including recycling, in order to cease to be considered as waste. To this end, the preliminary study which was carried out by the Waste Coordination Commission, established by the European Union, the applicable case-law, shall take into account, where applicable, the precautionary and prevention principles and any adverse impacts of the resulting material, and, where necessary, whether limit values for polluting substances should be included.

It should be noted that the same approach adopted by the new directive for developments at a European Union and national level is the one that has been applied in Spain in the implementation of Article 5 of Law 7/2022 of 8 April, through ministerial orders for end-of-waste status.

However, in Article 5 of the law, the term “in preparation” was added together with the substances and articles resulting from the recovery operation, in order to bring it into line with the terminology of product legislation and in particular Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 on the Registration, Evaluation, Authorisation and

Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

Article 5.3 of Law 7/2022 of 8 April 2022 regulates the conditions for cases in which no specific end-of-waste criteria have been established at European Union or national level. The competent regional authorities may include in the authorisations granted in accordance with Article 33 of the law that waste recovered in an installation in their territory ceases to be waste in order to be used in a specific activity or industrial process, provided that the conditions of this article are met.

Similarly, Law 7/2022 of 8 April 2022 includes the requirement that the new material which has ceased to be waste must firstly comply with the requirements of Article 5.1 relating to the end-of-waste status, and then with the regulations on products and chemical substances and mixtures and with the legislation relating to the marketing of certain products.

II

In relation to plastic waste, at a European Union level, the European Commission appointed the Joint Research Centre (hereinafter, JRC) to study the proposed end-of-waste criteria for certain plastic waste, thermoplastics, and to include all the basic information necessary to ensure compliance with the conditions of Article 6 of the Waste Framework Directive. This study, which was published in 2014, was prepared with contributions from Member States' experts and stakeholders. It focused specifically on mechanical treatments (not thermal, chemical, or combined processes) and proposed a number of criteria in its Annex VI for applying end-of-waste status to thermoplastics, excluding thermoset plastics. Despite the publication of this study, there has not yet been any legislative initiative by the European Commission to establish these criteria for the plastic waste stream at a European level.

Subsequently, in early 2018, the European Commission adopted the "European Strategy for Plastics in a Circular Economy" in the framework of the First Circular Economy Action Plan, which specifically addresses design, production and use aspects for plastics, as well as separate collection and the current possibilities to achieve the proper treatment of this type of waste. The strategy, in addition to providing a list of concrete measures, stresses the need to reduce the undesirable impacts on society and the environment derived from the use of plastics and plastic waste and incorporates the aim of reaching the use of 10 million tonnes of recycled plastic each year, from now until 2025, for the manufacture of new products, thus boosting the recycling of plastic waste in the European Union.

As part of this Strategy, Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on reducing the impact of certain plastic products on the environment was adopted. This aims to move towards a more circular plastics sector and to combat marine pollution caused by plastics. In Spain, this directive has been transposed into law by Law 7/2022 of 8 April 2022. In particular, Title V introduces measures to reduce the consumption of certain plastic products and, in relation to waste containing this material, stresses its proper management.

III

The term "plastic" covers a huge variety of materials that share a repetition of structures called monomers, in the form of long chains. From this basic unit, the fundamental base of each plastic is both the polymer (monomer chain) and all the chemicals that are added to it to provide various characteristics. Depending on these properties, plastics can be used as insulation, thermal, structural, lightening and protective materials, among others. Due to their recognised functionality, versatility and price, plastics find a multitude of applications in various fields ranging from everyday and domestic use of containers and packaging, to use in construction, automotive, machinery, electronics, agriculture, fabrics, furniture, etc. In terms of volume, the demand for plastics for use in packaging is the highest than for other uses.

It is precisely because it presents such diverse properties and is used in so many different applications that the use of plastics is so widespread and therefore, the volume of plastic waste generation is very important and its trend in recent years, growing. In addition to their variety, plastics are characterised by a very diverse range in the service life of each product, which can range from minutes in certain consumer products to many years in products used in construction or machines, among others. This aspect also greatly influences the waste stream, as well as the presence of certain chemical substances or mixtures in some of them.

The issue of chemical substances or mixtures in plastic waste is undoubtedly extremely important for the protection of the environment and human health. For this reason, it has recently found a growing demand on the part of the public to solve both the problem associated with direct pollution and the implementation of the most appropriate treatments to manage this waste stream. In this regard, Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants requires that waste consisting of, containing or contaminated with any substance listed in Annex IV thereto in concentrations higher than those laid down in said Annex shall be disposed of or recovered by means of certain treatment operations ensuring the destruction or irreversible transformation of the content of the persistent organic pollutants, where recycling is not possible. In addition, the provisions concerning the

manufacture, placing on the market and use of these substances in articles manufactured from plastics which acquire the end-of-waste status shall apply.

Guidelines for the proper management of waste streams with persistent organic pollutants have been developed both from the Basel Convention and several Member States. In 2019, the European Commission published an ambitious study focusing on the revision of the limits set out in Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019. In this study, it is emphasised that, in general, disassembly and mechanical separation can be implemented as an efficient first step to reduce the amount of waste containing persistent organic pollutants that return to production cycles. These treatments are more in place for waste electrical and electronic equipment, while for other streams such as out-of-use vehicles and construction and demolition waste, there are more practical barriers. Ideally, the separation of waste with persistent organic pollutants from the remaining subsets should take place as soon as possible within the waste treatment chain.

Once it becomes waste, the success of recycling from this stream is very varied depending on the type of waste and its origin. Currently, according to the European Commission's own data, more than 27 million tonnes of plastic waste are collected every year in Europe. Of this annual amount less than one third is destined for recycling plants, while large volumes end up in landfill, incineration, or are exported. The European Commission has established that by 2030 each Member State must reach 55% recycling of plastic packaging waste.

IV

In Spain, a distinction should be made between the plastics or plastic products production industry, known as the processing industry, and the other actors involved in the cycle of these materials when they become waste: plastic waste managers.

Once plastic products are placed on the market, regardless of the enormity with which their service life varies, they will eventually become waste. They must then be treated in the facilities of plastic waste managers specifically authorised for such treatment, in accordance with Law 7/2022 of 8 April 2022. It is common in this stream for, prior to treatment for final recovery, plastic waste to pass through other managers who usually carry out at least one classification. Finally, properly treated waste can be used directly as a raw material incorporated by the processing industry in the manufacture of new plastic products, whether finished or semi-finished, thus constituting a circular economy model.

In this context, in order to be able to apply the legal concept of "end-of-waste status", it is necessary that the plastic waste passes through one or more treatment plants before reaching its final recovery plant. However, waste designated as post-industrial (or pre-consumer) is excluded from this concept and included in the concept of "by-product", as defined in Article 4 of Law 7/2022 of 8 April 2022. This type of waste includes everything generated as waste from the production of plastic products (remnants, scraps, non-compliant products, etc.), obtained in the factory itself and which is directly incorporated into the processing industry, and which, furthermore, is characterised by the fact that it does not reach any end consumer, as it is limited to the industrial environment.

At European level, the European Commission has adopted some regulations concerning the end-of-waste status, but none concerns plastic, so there is no single regulatory framework for all Member States. Only Portugal has published its end-of-waste criteria, in line with the findings of the JRC technical study.

Given the importance of this waste stream and the absence of regulation at the European Union level, it is considered essential to have specific national regulations that can be applied. There are several direct benefits of the regulation. These include the following: to act as a stimulus to increase the separate and efficient collection volumes of this type of waste; an increase in recycling rates; the implementation of better waste treatments and better quality control of the raw material recovered through appropriate treatment operations.

In addition, legal certainty is increased by differentiating between waste and plastic products, and consequently the regulations governing them. When the material from waste meets the corresponding requirements, it will cease to be waste. Therefore the regulations relating to waste, such as Law 7/2022 of 8 April 2022 or Royal Decree 553/2020 of 2 June 2020 regulating the shipment of waste within the territory of the State, will not apply to it, which implies a reduction of administrative formalities. This change is possible because the new materials are safe from an environmental and human health perspective, unlike waste.

V

This ministerial order consists of eight articles, an additional provision, a transitional provision and two final provisions. It includes four annexes. The purpose of this order is to establish end-of-waste criteria specifically for thermoplastic waste that is mechanically treated and will be valid for the entire territory of the State, as provided for in Article 5 of Law 7/2022 of 8 April. These criteria are established based on the technical document prepared by the JRC, mentioned above.

Consequently, only mechanically treated thermoplastic waste falls within the scope of this order and not other waste streams, such as chemical treatments, to which this waste stream may be subjected. Thermostatic plastic waste is also excluded, i.e. plastic waste which, once heated and then cooled, cannot be remelted or reshaped.

In Article 3 and those following, this order establishes the criteria relating to end-of-waste status and the procedure for verification of compliance through the management systems, 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 obligations which must be met by waste managers.

As a tool to ensure the complicated issue of persistent organic pollutants in certain plastic waste streams, it is proposed to differentiate two levels. On the one hand, for those channels where there is greater certainty as to the absence of persistent organic pollutants and dangerous substances, facilitate traceability by ensuring the origin of the waste received for end-of-waste status, and ensuring that these are being treated separately without mixing with waste from other sources throughout all the intermediate managers involved. And finally, when this waste of concrete, identifiable and traceable origin reaches the final recoverer, ensure such traceability simply by means of the declaration of conformity issued in each consignment of the material obtained in the latter's installation.

On the other hand, for waste from hazardous waste streams, electrical and electronic equipment waste, out-of-use vehicles and construction and demolition waste, where the presence of hazardous substances and persistent organic pollutants is known, and from other waste streams where these substances can be detected, the origin of the waste must also be unequivocally identified, and the waste must be managed separately from the waste referred to above by all managers involved in the chain until it reaches the final recoverer. This is without prejudice to the specific decontamination of these wastes, in compliance with the provisions of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019. An outline of the implications of this regulation for plastic waste and plastic subsets, and the operations to be used on a case-by-case basis, has been included in Annex IV as a guideline.

Each shipment of recycled plastic material, which meets the end-of-waste criteria of Article 3 and is therefore no longer considered waste, shall be accompanied by its corresponding declaration of conformity in accordance with Article 5 and according to the contents and indications in Annex III, depending on the subsequent destination of that material. Finally, thermoplastic waste treated in accordance with the provisions of this order is required, after final recovery, to be used directly in the processing industry. The fundamental question for the end-of-waste status of the resulting material does not lie in the physical format of the materials obtained, but in its ability to be able to be used directly and to be able to replace virgin plastic raw material in the manufacturing industry of the various plastic products.

Since the use as food contact material has already been limited and regulated by European legislation, treated thermoplastic waste intended for this particular purpose will be subject to the specific provisions of Commission Regulation (EC) 2022/1616 of 15 September 2022 on recycled plastic materials and articles intended to come into contact with food and repealing Regulation (EC) No 282/2008, in addition to any other provisions laid down by the other European standards in this regard. For this reason, two subsequent destinations must be distinguished within the scope of this ministerial order, although the two types of material are also candidates for the corresponding end-of-waste status. On the one hand, those intended to come into contact with food, which must comply with the requirements laid down by the European regulations in force, as well as, at a national level, with Royal Decree 846/2011 of 17 June laying down the conditions to be met by raw materials based on recycled polymeric materials for use in materials and articles intended to come into contact with food. And, on the other hand, for all other mechanically treated thermoplastic materials intended for the processing industry for the manufacture of any other type of plastic product, which must comply with the applicable legislation or with the technical specifications required by the user.

Consequently, other thermoplastic waste not included in Annex I, as well as mechanically treated plastic waste that does not meet the other criteria laid down, will continue to be considered waste within the meaning of Law 7/2022 of 8 April and must therefore be managed in accordance with the legal regime established by that law. Or if it is intended for energy recovery facilities, these facilities must meet the provisions of Chapter IV of Royal Decree 815/2013 of 18 October adopting the Industrial Pollution Regulation and implementing Law 16/2002 of 1 July on integrated pollution prevention and control, to ensure the level of environmental protection offered by these regulations.

Once this order enters into force, the option of using it by plastic waste managers is voluntary. However, if a final manager wants to market treated thermoplastic waste as a product, then they must comply with this standard. It is necessary that, in order to be able to ascertain whether a plastic waste manager adopts this standard, these managers proceed to communicate it to the relevant regional administration. They must therefore send a communication to the regional administration that granted the approval of the installation in accordance with Law 7/2022 of 8 April 2022, with the minimum content of Annex II.

The end-of-waste criteria will only be binding within the Member State which established them, as stated by the European Commission. When the material is imported into Spain, the Spanish authorities have no obligation to accept the classification of the material as non-waste based on end-of-waste criteria in the country of origin. In the case of export, unless the country of destination expressly agrees in advance that it accepts such classification as a product, the shipment shall be performed in accordance with Regulation (EC) 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipment of waste. In any case, if the country of origin or destination is a third country, i.e. a country that is not a member of the European Union, the shipment shall be performed in accordance with the aforementioned Regulation.

VI

This regulation meets the principles of sound regulation set out in Article 129 of Law 39/2015 of 1 October on Common Administrative Procedures in Public Administration. In accordance with the principles of necessity and effectiveness, this order is based on adequate protection of human health and the environment, facilitating the return to the production cycle of plastic products only those safe materials that meet the specifications required for subsequent use. Moreover, it is based on a clear identification of the objectives and given the highly technical nature of the requirements set, it is considered the appropriate instrument to achieve them.

This rule complies with the principle of proportionality, since it regulates the essential aspects for the purpose it pursues, namely to determine when certain plastic waste which has been mechanically and properly treated may no longer be considered as waste, in accordance with Law 7/2022 of 8 April 2022 together with the necessary obligations of the producer or importer.

In accordance with the principle of legal certainty, the rule is consistent with the rest of the national legal order, in particular with Law 7/2022 of 8 April 2022 which transposes Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste, which introduces certain specificities for the end-of-waste status. It also provides greater legal certainty as it establishes a stable, predictable, integrated and certain regulatory framework by clarifying the necessary criteria for waste to cease to be waste and to start being used as a product. As a result, it facilitates action and decision-making by the sectors concerned.

It also adheres to the principle of transparency, as all public information and hearing procedures have been scrupulously followed.

Finally, in application of the principle of efficiency, this standard ensures maximum efficiency in achieving its objectives at the lowest possible costs for its application and does not entail administrative burdens.

In drawing up this order, the Autonomous Communities and the representative entities of the sectors concerned have been consulted; it has also undergone the public information procedure and has been submitted to the Waste Coordination Commission and the Environmental Advisory Board, pursuant to the provisions of Law 27/2006 of 18 July governing the rights of access to information, public participation and access to justice in relation to the environment.

This Ministerial Order has undergone the procedure for the provision of information on technical regulations specified in Royal Decree 1337/1999 of 31 July 1999 governing the provision of information in the field of technical regulations and standards and of rules on Information Society Services, to meet the provisions of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services.

This order has been communicated by the Ministry of Industry, Trade and Tourism to the World Trade Organisation, specifically to the Committee on Technical Barriers to Trade.

The authority to implement this order is provided for in Article 5 of Law 7/2022 of 8 April, and its constitutional basis in Article 149(1)(23) of the Spanish Constitution, which gives the state exclusive competence in matters of basic legislation on environmental protection without prejudice to the powers of the autonomous communities to establish additional protection standards.

By virtue of this, with the prior approval from the Minister for Finance and the Civil Service, in agreement with the Council of State, I stipulate:

Article 1. Aim and scope of application.

1. The purpose of this order is to establish the criteria for determining when thermoplastic waste which is mechanically treated and subsequently destined for the manufacture of plastic products ceases to be waste under Law 7/2022 of 8 April 2022 on waste and contaminated soils for a circular economy.
2. Thermoplastic waste that does not comply with the provisions of this order will be considered waste and will be recovered or disposed of in accordance with Law 7/2022, of 8 April 2022, and any other rules that apply to it.
3. The criteria laid down in this Order shall apply throughout Spanish territory.

Article 2. Definitions.

For the purpose of this order, in addition to the definitions given in Law 7/2022 of 8 April, the following definitions are used:

- a) "Trader": any natural or legal person involved in the purchase of recycled plastic material which has ceased to be waste in accordance with this order, and in the subsequent sale to plastic product manufacturing plants, even if it does not possess it physically;
- b) "Non-plastic component": any material of a nature other than polymers and chemical additives which are part of some plastic waste or of the recycled plastic material;

- c) "Shipment": a batch of recycled plastic material that is destined by a producer to another holder and which may be contained in one or more transport units, such as containers;
- d) "Importer": any natural or legal person bringing recycled plastic material that has ceased to be waste according to this order into Spain, either from a Member State of the European Union or from a third country;
- e) "Visual inspection": inspection of all plastic waste or recycled plastic material using sight or other senses, or any non-specialised equipment;
- f) "Batch": a unit of recycled plastic material of the same quality, which has been generated in the same treatment plant and where the requirements set out in paragraph 3 of Annex I are verified;
- g) "Recycled plastic material": material obtained from thermoplastic waste undergoing mechanical treatment in authorised management facilities, considered as final treatment, which complies with the provisions of this standard and ceases to be considered as waste for the purposes of Law 7/2022 of 8 April 2022;
- h) "Qualified staff": a person who, through experience or training, can properly examine and assess the properties of both plastic waste and recycled plastic material;
- i) "Holder": the natural or legal person holding the recycled plastic material;
- j) "Producer": the authorised waste manager that performs the final treatment operations to obtain a material with certain characteristics and who transfers it for the first time as recycled plastic material that has ceased to be waste;
- k) "Plastic waste": product which is made of plastic or which contains plastic, which is discarded or is intended to be disposed of or is required to be disposed of. This term covers post-industrial and post-consumer waste, both untreated and treated waste;
- l) "Thermoplastic waste": plastic waste that can soften when heated and harden when cooled, these characteristics being reversible.

Article 3. *End-of-waste criteria.*

- Recycled plastic material intended for the manufacture of plastic products shall cease to be waste at the time when it leaves the producer's premises to the holder's premises and complies with the following:
 - Thermoplastic waste intended for treatment shall exclusively be that which meets the criteria of paragraph 1 of Annex I;
 - Thermoplastic waste has undergone one or more recovery operations in accordance with the criteria set out in paragraph 2 of Annex I;
 - Recycled plastic materials meet the criteria set out in paragraph 3 of Annex I, and Article 4 where applicable;
 - The producer or importer has fulfilled the obligations laid down in Articles 5, 6 and 7.
- In the area of the import of recycled plastic material, the provisions of Article 28 of Regulation (EC) No 1013/2006 of the Parliament and of the Council of 14 June 2006 on shipments of waste shall apply, as appropriate.
- Natural or legal persons wishing to obtain recycled plastic material must comply with this standard, and must inform the Autonomous Community where the final treatment facility obtaining the recycled plastic material is located, that these criteria are met before the first shipment is made. Such communication shall be made by means of an application addressed to the competent regional authority which granted the approval to that installation, including at least the content set out in Annex II.

Article 4. *Recycled plastic material intended for the manufacture of food contact materials.*

Without prejudice to the fulfilment of the criteria of Article 3, when the recycled plastic material has been obtained in accordance with Commission Regulation (EU) 2022/1616 of 15 September 2022 on recycled plastic materials and articles intended to come into contact with food and repealing Regulation (EC) No 282/2008, it is considered to have reached the end of its waste status.

Article 5. *Declaration of conformity.*

- The producer or importer shall issue for each shipment of recycled plastic material which is no longer waste a declaration of conformity according to the model in Annex III.
- The producer, importer or trader shall transmit the declaration of conformity to the next holder of the shipment of recycled plastic material.
- The producer, importer and trader shall keep a copy of the declaration of conformity for at least three years after its issue date and shall make it available to the competent authorities on request.
- The declaration of conformity may be issued by any means, on paper or in electronic format, provided this can guarantee its authenticity, the integrity of its contents and its legibility starting from its issue date and throughout its retention period.

5. The declaration of conformity shall accompany every consignment. If the consignment is divided over multiple transport units, each of these shall have a copy of the declaration of conformity.

Article 6. Management system.

1. The producer shall implement a management system that can demonstrate compliance with the criteria referred to in Article 3.

2. This management system shall include a series of documented procedures for each of the following aspects:

- a) acceptance inspection on thermoplastics waste that undergoes recovery processing as specified in paragraph 1 of Annex I;
- b) monitoring of the process and treatment requirements described in paragraph 2 of Annex I;
- c) quality control of the material obtained, as set out in paragraph 3 of Annex I (including sampling and analysis);
- d) comments by the next holder on compliance with the requirements of the resulting material;
- e) recording the results of the checks performed as per sub-paragraphs a) to c);
- f) reviewing and updating the management system and
- g) staff training.

3. The management system shall also include the special control requirements for the criteria set out in Annex I.

4. The management system shall include the methodology of sampling design and sampling for material resulting from recovery, in accordance with technical standards UNE-CEN/TS 16011:2015 EX. Plastics. Recycled plastics. Sample preparation, and standard PD CEN/TS 16010:2020 Plastics. Recycled plastics. Sampling procedures for testing plastics waste and recyclates, in its most up-to-date and current version.

5. A conformity assessment body accredited to carry out such certification in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 shall certify that the management system implemented by the producer complies with the requirements of this Article.

6. The producer shall grant the competent authorities access to its management system and the corresponding records on request.

7. Where one of the treatments previously referred to in paragraph 2 of Annex I is carried out by a waste manager other than the producer, the producer shall ensure that the manager has a management system in place to ensure compliance with the requirements laid down in this Article.

8. The importer shall require its suppliers to implement a management system that meets the requirements of paragraphs 2, 3 and 4. That management system shall be certified by a conformity assessment body accredited to carry out such certification in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008.

Article 7. *Other obligations on the producer and importer.*

1. As a waste manager, the producer shall also include the information on the following in its chronological file provided for in Article 64 of Law 7/2022 of 8 April:

- a) Batch number,
- b) Batch shipment date,
- c) The identification of the client and
- d) The quantity sold.

In addition, in the annual report provided for in Article 65(1) of Law 7/2022 of 8 April 2022, the producer must include information concerning the quantity of recycled plastic material that is marketed as a product, and its destination.

2. For each lot, the producer shall retain information verifying compliance with the requirements set out in Annex I for at least three years.

3. For each batch imported, the importer shall retain information verifying compliance with the requirements set out in Annex I for at least three years.

Article 8. *Obligations of waste managers who intervene before the producer.*

In order to ensure maximum traceability, in the case of plastic waste originating from, among others, hazardous waste streams, electrical and electronic equipment waste, out-of-use vehicles or construction and demolition waste, the waste manager shall ensure that, in their installation, these wastes are treated separately and are not mixed with other plastic waste from other sources.

Sole additional provision. *Coding of the recovery operation in the authorisations of waste managers complying with this order.*

For all final managers who have notified the competent authority of the Autonomous Community of compliance with this order in accordance with Article 3.2, the approval of their installation shall include the final recovery operation on plastic waste codified as "R0307 Recycling of organic waste for the production of materials or substances".

Sole transitory provision. *Transitional regime.*

Managers and owners of treatment facilities that have an authorisation granted by the autonomous communities to obtain recycled plastic as a product must apply for their adaptation to the legal requirements of this ministerial order within three months of the entry into force of this regulation.

For the above cases, and after 18 months from the date of entry into force of this order, only recycled plastic material that complies with the provisions of this ministerial order may be marketed as a product. This period shall be reduced to three months in cases where the operators and the installations referred to in the previous sub-paragraph have not requested the adaptation of their authorisation.

First final provision. *Attribution of powers.*

This Order is issued under the provisions of Article 149(1)(23) of the Spanish Constitution, which grants the State sole jurisdiction over basic legislation on protection of the environment, without prejudice to the powers of the autonomous communities to adopt additional protection regulations.

Second final provision. *Entry into force.*

This order shall enter into force on the twentieth day following its publication in the "Official Gazette of the State".

Madrid, 9 June 2023.-The Third Vice-President of the Government of Spain and Minister for the Ecological Transition and the Demographic Challenge, Teresa Ribera Rodríguez.

ANNEX I

End-of-waste criteria

1. *Thermoplastic waste allowed for final recovery treatment*

Shall meet the following requirements:

Criteria	Control requirements
<p>1. Only waste with the following European Waste Catalogue (EWC) codes shall be permitted as inputs for this treatment:</p> <p>a) Within post-industrial waste:</p> <p>07 02 13 Plastic waste (from the manufacture, formulation, distribution and use of plastics, synthetic rubber and artificial fibres)</p> <p>12 01 05 Plastic chips and burrs (from moulding and physical and mechanical surface treatment of metals and plastics)</p> <p>b) Within post-consumption waste:</p> <p>02 01 04 Plastic waste except packaging (from agriculture, horticulture, aquaculture, forestry, hunting and fishing)</p> <p>15 01 02 Plastic packaging (including municipal selective collection packaging waste),</p> <p>15 01 10* Packages containing or contaminated by residues of dangerous substances (only when packaging is made of plastic)</p> <p>16 01 19 Plastic (from the treatment of self-propelled means of transport at end-of-life or maintenance and repair processes)</p> <p>17 02 03 Plastic (from construction and demolition waste)</p> <p>19 12 04 Plastic and rubber (for plastic from mechanical waste treatment plants) ⁽¹⁾</p> <p>20 01 39 Plastics (from separately collected subsets (except those specified in sub-chapter 15 01))</p> <p>As regards Chapters 18 01 and 18 02, clarify that plastic waste with codes EWC 18 01 03* and 18 02 02*, as well as codes EWC 18 01 02, 18 01 04 and 18 02 03, could also be considered as eligible waste after disinfection.</p>	<p>The acceptance of plastic waste (or derived plastic subsets) used at the entrance of the facility must be controlled by qualified personnel who are able to recognise, through visual inspection and the accompanying documentation, which waste does not meet these criteria.</p> <p>If necessary, laboratory tests shall be carried out in accordance with the applicable legislation for the determination of the hazardous characteristics of the waste.</p>
2. Waste from used personal hygiene products shall not be eligible.	
3. Waste classified as hazardous shall not be admissible unless it is demonstrated that after the necessary treatment operations have been carried out, such waste does not exhibit any hazardous characteristics as indicated in point 3 of the following paragraph.	
4. Thermoset plastic waste shall not be admissible.	

Criteria	Control requirements
<p>5. Plastic waste (or plastic derived subsets) containing persistent organic pollutants in concentrations above the statutory limit established in accordance with Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (hereinafter POPs) shall not be eligible.</p> <p>For the food contact purpose, absence of persistent organic pollutants and absence of any other pollutants that do not guarantee the food safety of that recycled plastic material is specifically required.</p>	<p>The procedure for applying the requirements on hazard characteristics and presence of POPs should be documented as part of the management system, and should be audited.</p>

⁽¹⁾ The Commission communication 2018/C 124/01 states that EWC 19 12 04 may come from waste electrical and electronic equipment treatment plants as well as from other installations performing mechanised treatment.

Plastic waste (or plastic derived subsets) containing persistent organic pollutants in concentrations above the statutory limit established in accordance with Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (POPs) shall not be eligible.

Subsets of plastic obtained from mechanised waste treatment plants intended to achieve the end-of-waste condition shall be assessed in order to determine their hazard characteristics. EWC 19 12 04 may only be assigned to plastic subsets where no hazardous characteristics have been verified. For plastic subsets obtained in installations which do not guarantee the non-hazardous nature of the waste, code EWC 19 12 11* shall apply Other waste (including mixtures of materials) resulting from the mechanical treatment of waste containing dangerous substances. This criterion of differentiation between the two EWC codes mentioned shall apply in all mechanised treatment plants, regardless of the origin of the waste they treat.

2. *Treatment of thermoplastic waste*

Thermoplastic waste, both at the premises of the waste managers that intervenes before the producer and in the producers' own premises, must comply with the following:

1. Be stored separately from any other type of waste. Nor should they be mixed with another type of waste.
2. Undergo all mechanical treatments necessary to ensure that they are suitable for direct use in the manufacture of new plastic products (finished or semi-finished), including at least sorting and crushing. In addition, other mechanical treatments may be carried out that will be essential depending on the type of plastic waste and the subsequent application to which it is intended, such as: mechanical reduction of size by laminating or micronising, washing, centrifuging, drying, filtering, agglomerating, extruded and blasting.
3. In the case of waste listed in criterion 3 of paragraph 1 of Annex I, decontamination treatments as necessary (established, where appropriate, by their specific regulations) must be applied in order to eliminate the hazard characteristics they may present.

3. Requirements for recycled plastic material obtained

Criteria	Control requirements
<p>1. When applicable, the standards available for the characterisation of recycled plastic material, established by the relevant UNE-EN technical standards, must be used in their most up-to-date and current version:</p> <ul style="list-style-type: none"> - For polystyrene: UNE-EN 15342 Plastics. Recycled plastics. Characterisation of polystyrene (PS) recycling - For polyethylene: UNE-EN 15344 Plastics. Recycled plastics. Characterisation of polyethylene (PE) recycling - For polypropylene: UNE-EN 15345 Plastics. Recycled plastics. Characterisation of polypropylene (PP) recycling - For poly(vinyl chloride): UNE-EN 15346 Plastics. Recycled plastics. Characterisation of poly(vinyl chloride) (PVC) recycling - For poly(ethylene terephthalate): UNE-EN 15348 Plastics. Recycled plastics. Characterisation of poly(ethylene terephthalate) (PET) recycling <p>Where there is no technical standard for characterisation, the material obtained shall comply with the customer's technical specifications for direct use in the processing industry, either for the manufacture of food contact materials and articles or for the manufacture of any other plastic product.</p>	<p>Verification of compliance with the respective legislation, standard or specification of each batch of the consignment shall be carried out by qualified personnel.</p> <p>The quality of the product shall be verified by:</p> <ul style="list-style-type: none"> - Visual inspection. - Physical-chemical characterisation: carrying out the laboratory tests referred to in the applicable legislation for each type of recycled plastic, or in the technical specifications and specific industrial standards for the purpose for which the recovered plastic is intended. Further laboratory tests may also be necessary in accordance with the customer's additional specifications. <p>At appropriate intervals and subject to review in the event of significant changes in the operational process, representative samples of each type of recycled plastic material shall be analysed.</p> <p>The appropriate frequency for sampling shall be established, taking into account the following factors:</p> <ul style="list-style-type: none"> - Expected variability (e.g. based on historical results). - The inherent risk of changing the quality of plastic waste at the entrance of the installation where the mechanical treatment operation is carried out, in particular the high average content of plastics containing dangerous substances. - The inherent accuracy in the sampling method. - The proximity of the results to the concentration limits, from which the material is considered dangerous or its placing on the market is restricted. - The proximity of the results of the non-plastic component content in relation to the maximum limit of 2% of the total recycled plastic material, in dry weight. <p>Representative samples shall be obtained in accordance with the sampling procedures described in the manual of procedures, which shall be as detailed as possible (sample methodology used, periodicity, size, type and number of samples, statistical approach, etc.).</p>
<p>2. The content of non-plastic components shall be less than or equal to 2% by dry weight.</p> <p>For the food contact purpose, the absence of non-plastic components, the absence of foreign bodies and the absence of plastic textile fibres are specifically required. Furthermore, depending on the application for which it is intended and in accordance with the customer's technical specifications, it shall not contain plastic components/polymers other than the one being manufactured, in accordance with the quantities/limits laid down in those specifications.</p>	<p>Qualified personnel should be trained on the possible types of contamination in the plastic waste stream, as well as on the components or characteristics that allow these pollutants to be visually recognised.</p> <p>The procedure for verifying compliance with the technical specifications applying to the material must be documented as part of the management system and should be available for audits.</p>

Criteria	Control requirements
<p>3. The resulting material shall not be classified as hazardous in accordance with Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No. 1907/2006 (CLP Regulation).</p> <p>The restrictions on placing on the market of substances of very high concern, substances meeting the criteria of Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 (REACH Regulation), shall apply to it, unless they are subject to authorisation or exemption under the provisions of the Regulation.</p> <p>It shall comply with the other implementing provisions laid down by Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008.</p> <p>It shall comply with the prohibitions or limitations on the use or placing on the market of persistent organic pollutants laid down in Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019. According to the existing regulations, the food contact purpose requires the absence of persistent organic pollutants in the resulting material.</p>	<p>They shall be subject to a qualitative and quantitative characterisation which will verify compliance with these requirements and with the provisions of the CLP, REACH and POPs Regulations.</p> <p>In addition to quantitative characterisation, all lots of a consignment shall be inspected visually by qualified personnel.</p> <p>Qualified personnel should be trained on the possible types of contamination in the plastic waste stream, as well as on the components or characteristics that allow these pollutants to be visually recognised.</p> <p>The procedure for recognising hazard characteristics must be documented as part of the management system and should be available for audits.</p>
<p>4. The resulting material must not contain oils, solvents, paints or traces of aqueous or fatty foods.</p> <p>In addition, for the food contact purpose, the resulting material must not contain any substance that endangers the food safety of the product to be contained.</p>	<p>If the visual inspection finds signs of absorption of liquids other than water, which may cause problems such as mould growth or odours, and these signs are significant, this lot shall be considered waste.</p> <p>Qualified staff should be trained on these potential contaminants, as well as on the components or characteristics of the materials that allow the pollutants to be recognised.</p> <p>The present pollutants recognition activity must be documented as part of the management system and should be available for audits.</p>

ANNEX II

Minimum content of the communication addressed to the relevant regional authority regarding compliance with this order

The waste management company authorised with NIMA on the date, whose facilities are located in by means of this letter addressed to (Office.../Department...) of the Autonomous Community,

REPORTS the following:

- The company complies with all the provisions laid down in the Ministerial Order establishing the criteria for determining when thermoplastic waste undergoing mechanical treatment and destined for the manufacture of plastic products ceases to be waste under Law 7/2022 of 8 April 2022 on waste and contaminated soils for a circular economy.
- The company has a management system in place and in accordance with Article 6 of the order.

- The company has made the necessary adaptations, improvements or actions to ensure compliance with the order, and submits together with this request the necessary documentation to prove this. (if applicable due to modifications made to facilities)

And for all this Asks (Office...../Department).

1) To be informed by this company, as a responsible declaration, to comply with the provisions of the ministerial order so that the material obtained at its premises is no longer considered waste for all legal purposes; and

2) To review and update the current authorisation of waste manager, in accordance with Law 7/2022 of 8 April on waste and contaminated soils for a circular economy, and specifically in accordance with Annex II thereto, which sets out the codes for waste recovery operations.

Place, date, signature.

ANNEX III

Declaration of conformity with the criteria for determining when treated thermoplastic waste ceases to be waste

Declaration of conformity for recycled plastic material intended to manufacture other products

1	Producer/Material Importer Name: Address: Contact person: Telephone: E-mail: Registration number in the Waste Production and Management Register:
2	Type of recycled plastic material (indicate): - HDPE (high density polyethylene) - LDPE (low density polyethylene) - PET [poly (ethylene terephthalate)] - PP (polypropylene) - PS (Polystyrene) - PVC [poly (vinyl chloride)] - EPS (expanded polystyrene) - Others (specify): Content of non-plastic components (%):
3	Lot number and quantity (tonnes):
4	This shipment fulfils the criteria referred to in Article 3 of the Ministerial Order establishing the criteria for determining when thermoplastic waste undergoing mechanical treatment and destined for the manufacture of plastic products ceases to be waste under Law 7/2022 of 8 April 2022 on waste and contaminated soils for a circular economy.
5	In respect of this shipment, traceability from the source is guaranteed from the point of generation of the waste, and this can be demonstrated and documented, in accordance with Article 8 of the Ministerial Order establishing the criteria for determining when thermoplastic waste undergoing mechanical treatment and destined for the manufacture of plastic products ceases to be waste pursuant to Law 7/2022 of 8 April 2022 on waste and contaminated soils for a circular economy.

ANNEX IV

	Guidance outline on the application of the POP Regulation⁽¹⁾ to plastic waste
6	The producer of the material implements a management system in accordance with Article 6 of the Ministerial Order establishing the criteria for determining when thermoplastic waste undergoing mechanical treatment and destined for the manufacture of plastic products ceases to be waste pursuant to Law 7/2022 of 8 April 2022 on waste and contaminated soils for a circular economy.
7	The material of this consignment is intended by direct sale or through commercial agent/distributor to be used exclusively in the plastics processing sector.
8	(choose one of the options): - The shipment complies with product-specific legislation. - The shipment complies with the following technical standard: (specify number) - The shipment complies with the technical specifications required by the target industry.
9	The material in this shipment is not classified as hazardous, as set out in the criteria of Regulation (EC) No 1272/2008 ⁽¹⁾ (CLP Regulation), and complies with the provisions relating to the placing on the market of substances of very high concern, as well as with the restrictions for the intended uses of Annex XVII to Regulation (EC) No 1907/2006 ⁽²⁾ (REACH Regulation) and with the prohibitions or restrictions on the use and placing on the market of persistent organic pollutants imposed by Article 3 of Regulation (EU) 2019/1021 ⁽³⁾ (POP Regulation).
10	Declaration by the producer/importer of mechanically treated thermoplastic waste that ceases to be waste under Law 7/2022 of 8 April 2022 on waste and contaminated soils for a circular economy. I certify that the above information is both complete and accurate to the best of my knowledge and understanding.
	Name, date, signature.
	Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No. 1907/2006.
	⁽²⁾ Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Substance and Chemical Mixtures Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94, Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.
	⁽³⁾ Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants.

Electronic
Verification
Code
(EVC):
BOE-A-
2023-
14735
Verifiable
at
<https://www.boe.es>

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