



Subject: PLASTICS RECYCLERS EUROPE (PRE) COMMENTS ON TRIS NOTIFICATION 2024/0707/NL

Amendment of 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)

On 19 December 2024, the Dutch Government notified the European Commission of a legal amendment to the Environmental Management Act for a Circular Plastic Standard (TRIS Notification 2024/0707/NL). This draft bill aims to introduce an obligation for polymer processors established in the Netherlands to replace a minimum percentage of fossil-based polymers with recycled or bio-based alternatives starting from 1 January 2027. The draft legislation establishes the following mechanisms:

- A market-based trading system for circular polymer units (CPEs), enabling compliance through the purchase and sale of compliance credits.
- An information and reporting obligation requiring polymer processors to demonstrate compliance through certified schemes.
- Future definitions of key implementation details through orders in Council.

While the stated objectives of the measure are to enhance circularity and mitigate CO₂ emissions, Plastics Recyclers Europe (PRE) raises concerns regarding its alignment with EU Single Market principles and existing European Union legislation.

1. Infringement of the Treaty on the Functioning of the European Union (TFEU) and EU law

Article 34 TFEU – Quantitative Restrictions on Imports

Article 34 - TFEU

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 34 of the TFEU prohibits national measures that have an equivalent effect to quantitative restrictions on imports. According to PRE, the Dutch Circular Plastic Standard risks distorting intra-EU trade by:

- Imposing obligations exclusively on Dutch-based manufacturers while exempting imported finished and semi-finished products from equivalent requirements.
- Establishing a proprietary compliance market for circular polymer units that distorts the free movement of goods within the EU.
- Creating a competitive disadvantage among Dutch manufacturers and distorting competition within the EU. Dutch converters are legally restricted from using mechanically recycled plastics for specific applications (due to regulatory requirements) and face higher compliance costs because they must rely on alternative materials or purchase Circular Polymer Units (CPUs) to meet the requirements. In contrast, Dutch converters that already use high levels of recyclates above the minimum threshold can sell their surplus CPUs for profit.
- This effectively gives some Dutch converters a financial advantage, allowing them to reduce their overall production costs while non-Dutch converters have no access to this system. As a result, Dutch converters benefiting from CPU sales can lower their prices and gain a competitive edge over foreign competitors, both within the Netherlands and across the broader EU market.

Commented [ET1]: Idem as below

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Article 36 TFEU – Justification by Public Interest

Article 36 – TFEU

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article 36 TFEU permits restrictions on free movement only when justified by compelling public interests’ concerns, such as environmental protection, provided they comply with the principles of proportionality and non-discrimination. However, PRE believes that the Dutch Circular Plastic Standard does not fit the principle of proportionality based on the following deficiencies:

- The explanatory memorandum acknowledges **significant uncertainty regarding the measure’s actual environmental benefits**, as its CO₂ reduction estimates are based solely on the use of mechanically recycled polymers. However, in cases where suitable mechanical recyclates are unavailable or restricted for specific polymer types and applications, chemically recycled content will need to be used. While chemical recycling processes, such as pyrolysis or depolymerization, can provide a valuable recycling solution, they typically require higher energy inputs and may result in greater emissions compared to mechanical recycling. This variability in CO₂ savings adds complexity to the overall environmental impact assessment, highlighting the need for a more comprehensive evaluation of both mechanical and chemical recycling’s contributions to sustainability.
- The inclusion of biobased raw materials to meet minimum circular polymer content targets raises additional concerns. Their CO₂ advantage is not clearly established, and they do not directly contribute to the circularity objectives set out in the Packaging and Packaging Waste Regulation (PPWR). This further complicates the measure’s ability to deliver verifiable environmental benefits.
- The measure assumes net CO₂ reductions but lacks key policies, like a ban on plastic waste incineration, to ensure real environmental gains. While the PPWR will gradually introduce some restrictions, the absence of an immediate ban weakens the Dutch Circular Plastic Standard’s ability to translate recycled content targets into verifiable CO₂ reductions. **Without tackling waste management inefficiencies that enable incineration, the measure risks market distortions without proportional environmental benefits.** The impact assessment fails to justify why an EU-wide approach wouldn’t achieve equal or greater benefits with fewer trade distortions.

Article 6(3) of Directive (EU) 2015/1535 – TRIS Notification Obligations

Article 6 – Directive (EU) 2015/1535

(3) With the exclusion of draft rules relating to services, Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, 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.

Directive (EU) 2015/1535 mandates that Member States refrain from adopting national technical regulations that conflict with or pre-empt pending EU-level legislation. The Dutch Circular Plastic Standard introduces regulatory inconsistencies in relation to:

- **Recycled Content Targets (PPWR):** The PPWR establishes harmonized recycled content requirements at the product level under Article 7, ensuring a consistent approach across the EU. However, the Dutch measure introduces a polymer-level obligation from 2027, which deviates from this harmonized framework and risks creating regulatory fragmentation. To avoid market distortions and ensure legal certainty, the Dutch standard should be aligned with Article 7 of the

PPWR, ensuring consistency with the EU-wide approach rather than introducing national requirements that could disrupt the Single Market.

- **Certification and Chain of Custody Standards (PPWR):** The Dutch measure introduces certification frameworks that overlap with Article 7(8) of the PPWR, which establishes an EU-wide methodology for calculating and verifying recycled content. This creates unnecessary regulatory redundancies and potential legal inconsistencies, as the PPWR already provides a unified approach for verification and calculation.
- **The End-of-Life Vehicles Regulation (ELVR):** The ELVR already includes recycled content targets for plastics used in vehicles, supported by relevant technical secondary legislation. The Dutch measure risks conflicting with these existing EU regulations, creating inconsistencies in how recycled content targets are applied.

2. Practical and economic concerns

The feasibility of implementing the Dutch Circular Plastic Standard is severely hindered by regulatory and safety requirements that restrict the use of recycled polymers in certain applications. Additionally, the economic implications of the CPUs trading system introduce market distortions that create competitive imbalances within the EU Single Market. These challenges are particularly in the following areas:

- **Certification and compliance restrictions:** Certification is essential to ensure safety, hygiene, and performance across industrial sectors. However, overly stringent or fragmented requirements can create unnecessary barriers to incorporating recycled materials. To facilitate recyclate uptake while maintaining high standards, certification frameworks must be harmonized at the EU level and aligned with established industry practices. Recognized certification schemes, such as those used for recycled content verification, provide a structured approach that ensures both regulatory compliance and market feasibility.
- **Economic distortions in the Dutch and broader EU markets:** Dutch converters that already use high levels of recycled raw materials gain a significant economic advantage through the ability to sell excess CPUs. This system artificially lowers their production costs, while Dutch converters that are legally restricted from using recycled plastics face higher compliance costs. Non-Dutch converters, who do not have access to CPU trading, are placed at a severe competitive disadvantage in both the Dutch and broader EU markets.
- **Market implication and cost pressures:** The proposed market for trading circular polymer units presupposes an abundant supply of cost-competitive recyclates, an assumption that does not align with current market dynamics. The limited number of applications where recycled materials can be used – due to regulatory restrictions – will likely drive up the price of compliance credits, imposing unsustainable financial burdens on manufacturers.

The Dutch Circular Plastic Standard faces feasibility issues due to these regulatory constraints which create barriers to the use of recycled materials or limit their applicability. Without acknowledging these limitations, the measures risks distorting competition within the Single Market, disadvantaging companies in the Netherlands compared to operators in other Member States.

3. Legal and policy recommendations

In view of the legal uncertainties, economic inefficiencies, and trade distortions generated by the Dutch Circular Plastic Standard, Plastics Recyclers Europe urges the European Commission to adopt the following corrective measures:

- **Issue a detailed opinion**, affirming that the Dutch Circular Plastic Standard constitutes an unjustified impediment to the free movement of goods and contravenes the fundamental principles underpinning the EU Single Market framework.



- **Ensure full alignment with the PPWR's recycled content targets and other EU upcoming legislations**, preventing premature national obligations that risk fragmenting the EU's harmonized regulatory framework and distort competition within the Single Market.

Investigate the impact of Circular Polymer Units trading on market distortions under Article 34 TFEU, particularly how the ability to sell excess CPUs allows Dutch converters to unfairly compete in both domestic and broader EU markets.

- **Conduct a rigorous proportionality assessment under Article 36 TFEU**, evaluating whether the purported environmental benefits of the measure justify the substantial financial and administrative burdens it imposes on economic operators.

4. **Conclusion**

Plastics Recyclers Europe supports the goal of enhancing plastics circularity and reducing environmental impact. However, the Dutch Circular Plastic Standard, as notified under TRIS 2024/0707/NL, presents serious trade distortions, unfair economic advantages for certain Dutch converters, and competitive disadvantages for both Dutch and non-Dutch manufacturers. Given these implications, it is imperative that the European Commission intervenes to prevent market distortions and ensure that national initiatives remain fully aligned with the EU's harmonized regulatory framework under the PPWR and ELVR.

Commented [ET2]: And other EU leg - also upcoming

ABOUT PLASTICS RECYCLERS EUROPE

Plastics Recyclers Europe is an organization representing the voice of the European plastics recyclers who reprocess plastic waste into high quality material destined for production of new articles. Recyclers are important facilitators of the circularity of plastics and the transition towards the circular economy.

Plastics recycling in Europe is a rapidly growing sector representing over €10.4 billion in turnover, 12.5 million tonnes of installed recycling capacity, around 850 recycling facilities, and over 30,000 employees.

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