Mr. Giuseppe Casella

Head of Unit B2, DG GROW

European Commission

Avenue d'Auderghem 45

1049 Brussels, Belgium

Brussels, 18 January 2021

**Reference: PlasticsEurope comments to Spanish notification 2020/658/E - Preliminary draft law on waste and contaminated soils**

Dear Mr. Casella,

On 20 October 2020, the Spanish Government notified to the European Commission (the Commission) a draft measure in accordance with the European Union (EU) Technical Regulations Information System (TRIS) consultation procedure[[1]](#footnote-1).

The measure notified by the Spanish authorities is a Preliminary Draft Law on contaminated waste and soil (*Anteproyecto de Ley de Residuos y Suelos Contaminados*) (the Draft Law). The Draft Law aims at transposing into Spanish Law certain provisions of Directive (EU) 2019/904 of June 5, 2019, on reducing the impact of certain plastic products on the environment (the SUP Directive) and Directive (EU) 2018/851 amending the Waste Framework Directive (2008/98/CE). The provisions proposed under the Draft Law seek to introduce into Spanish legislation the principles of circular economy and contribute to the fight against climate change and to the protection of the environment. Its stated objective is to minimise the negative effects of waste generation and management on both human health and the environment.

While PlasticsEurope firmly supports support a transition to a circular economy that can help preserving resources and reducing emissions, we believe that the EU Single Market remains critical to European industrial competitiveness and the industry’s ability to innovate at scale and provide solutions to deliver on the EU Green Deal and the new Circular Economy Action Plan (CEAP 2.0).

Some specific provisions of the Draft Law risk to hinder these goals by hindering the free movement of goods, in particular with the regards to the placing on the EU market of recycled materials and the over-implementation of the SUP Directive.

1. **Deduction from the taxable base of the proposed tax on non-reusable plastic packaging only available to producers using recycled plastic from Spain (Article 68 of the Draft Law)**

Title VIII of the Draft Law establishes an excise duty on non-reusable plastic packaging (the Tax). However, under Article 68, the Draft Law would allow taxpayers to deduct from the taxable base (i.e. the quantity, expressed in kilograms, of plastic contained in the packaging falling within the objective scope of the Tax) the amount of recycled plastic used in the manufacturing process, provided that such recycled plastic comes from the territory where the Tax applies, i.e., Spain. The application of the deduction is subject to a certification which should be received by the waste operator supplying the secondary plastic incorporated into the manufacturing process.

This measure constitutes a clear restriction of intra-EU trade: Spanish producers have easier and cheaper access to recycled plastic coming from Spain if compared with producers based in other Member States and are therefore more likely to pay a lower Tax. This would make the secondary raw materials recycled in other EU countries more expensive and less convenient. The referred clause goes against Single Market principles as it sets an advantage for Spanish recyclers vis-à-vis their European counterparts.

PlasticsEurope calls the Commission to identify the proposed Art. 68 of the Draft Law as running counter to the fundamental Single Market principles as set out in the Treaty on the Functioning of the EU[[2]](#footnote-2).

PlasticsEurope believes that all recycled material of EU origin should qualify for such a tax deduction regardless of which Member State it comes from, and provided that it complies with the definitions established on the UNE-EN ISO 14021 standard on environmental labels and declarations. Therefore, we request a modification of Article 68 by removing all references to the country of origin of the recycled plastic.

1. **SUP Directive: Over-implementation of reduction targets and design requirements**

Article 40(4) of the Draft Law, setting rules on the reduction of the consumption of certain single use plastics products would extend the scope of such provisions to products other than those listed under the SUP Directive, by including for example: plastic multi-pack ring carriers and plastic sticks used in the food sector, plastic trays, etc. when they are made from non-compostable plastic.

PlasticsEurope believes that this provisions would set stricter requirements that go beyond the scope of the SUP Directive. We believe that Member States should not unilaterally create additional restrictions on single use products currently not included under Annex A of the SUP Directive[[3]](#footnote-3). The need for the SUP Directive to avoid fragmentation of the EU Single Market was clearly identified by the Commission in its Impact Assessment accompanying the original legislative proposal. Such a harmonised approach to implementation of EU legislation is essential to foster investments in innovation and accelerate the transition towards a plastics circular economy

PlasticsEurope welcomes the opportunity to provide inputs to the European Commission. 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 Spain creates clear barriers to the free movement of goods that have not been justified, and require amendment before the law can enter into force. We remain at your disposal for any further information or clarifications related to the issues raised in this submission.

Yours sincerely,



David Carroll

External Affairs Director

PlasticsEurope

1. Pursuant to Directive 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (the TRIS Directive). [↑](#footnote-ref-1)
2. Article 68 of the Draft Law would infringe the provisions of Article 30 and Article 110 TFEU which prohibit customs duties and measures having equivalent effect. Also, it would represent a measure having equivalent effect to quantitative restrictions, and therefore breach Article 34 and Article 35 TFEU. [↑](#footnote-ref-2)
3. Annex A lists the following items: cups for beverages, including their covers and lids; and food containers, i.e. receptacles such as boxes, with or without a cover. [↑](#footnote-ref-3)