



*Brussels, 4 December 2020*

To: Mr. Giuseppe Casella  
Head of Unit B2, DG GROW  
European Commission  
Avenue d'Auderghem 45  
1049 Brussels, Belgium

Ref: Complaint/Spanish notification 2020/658/E Preliminary draft law on waste and contaminated soils

Dear Mr. Casella,

On October 20th, 2020 the European Commission received the Spanish notification 2020/658/E Preliminary draft law on contaminated waste and soil which implements the Single Use Plastics Directive

EuPC believes this notified legislation would be a violation of EU law, in particular in reference to the over-implementation of the Single Use Plastics Directive and the freedom of movement of goods.

The notified legislation, in reference to the reduction of the consumption of certain single use plastics product, Article 40(2) foresees the application of a fee for each plastic product supplied which appears as further discrimination over other product.

Moreover, Article 40(4) enlarges the scope of the law to additional products than those foreseen in the Directive: other, non-specified single use plastic products, plastic multi-pack ring carriers and plastic sticks used in the food sector, all made from non-compostable plastic are also asked to make progress in reducing consumption by replacing these plastic products with reusable alternatives and other materials. This is completely new and beyond the Directive. Member States cannot add additional products to the one foreseen in the Annex of the Directive (as per Article 2 - Scope).

Additionally, under Article 42, the notified legislation foresees an additional requirement under the design requirements for beverage bottles, namely the possibility to indicate the information about the percentage of recycled plastic a bottle contain. The Directive foresees that percentage of recyclates is calculated as an average for all bottles placed on the market on the territory of that Member States.

In prescribing the minimum recycled content obligation, the Legislator has made clear that it is an obligation of a country, thus allowing each market player to work and provide bottles, even if each of them, singularly, do not manage to reach the 25% (or 30%) of recycled content. If this would be the case, the exact information on recyclates risk to dilute the intention of the Directive and damage, in particular,





SMEs and small converters that often are not able to retrieve the quality and quantity they need to convert bottles with minimum 25% (or 30%) of recycled content.

Furthermore, the Spanish version of the notified text included articles than are related with plastics and additional requirements. In fact, Article 68 foresees, in relation to a new tax, a possible reduction of the taxable base through the use of recycled plastic from, only, recycled plastic from products used in the territory of application of the tax. Such requirement limits the possibility to use recyclates from other geographical regions than the territory of application of the tax, thus violating the free circulation of goods. Circular economy is a European concept and is meant to allow circularity throughout the whole Single market, without fragmenting it without a legitimate reason.

Also, Annex II of the mentioned law, wrongly includes, under Recovery operations R03, facilities that manufacture new products from plastic waste pellets. Such inclusion appears arbitrary and does not make sense, as the it would exclude mechanical recycling from recovery options. The inclusion of plastics converters that use recycled pellets would imply that converters companies that use recycled plastic pellets for their production would also have to have the status of waste managers with all that this entails. If categorized in these terms, the Spanish industry would lose competitiveness and completely distort market scenarios. For this reason, in Annex II, "plastic waste pellets" should be replaced by "plastic waste". In this latter two points, EuPC fully support the position of *EsPlásticos (Annex I)* and the suggested modifications to the draft Spanish legislation.

This draft legislation infringes the EU Internal Market rules and is not compliant with neither the Packaging and Packaging Waste Directive nor the Single Use Plastics Directive. Therefore, **EuPC kindly requests the Commission to adopt a Detailed Opinion** concluding that the notified Law may create barriers to the free movement of goods and violates EU secondary legislation, thus extending the standstill period to additional three months during which Spain can counter-reply and amend its draft text in line with EU law.

Additionally, since the Guidelines of Article 12 of the Directive have still not been adopted, EuPC kindly invites Spain to wait for their official adoption and to subsequently adjust its draft law before proceeding to its final publication.

EuPC remains at your disposal to answer any questions you might have.

I look forward to hearing from DG GROW on this matter.

Yours faithfully,

Alexandre Dangis, EuPC Managing Director

