

The Hague, March 17 2025

Feature	B-25-010
Subject	VNCI reaction TRIS notification 2024/0707/NL regarding “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”)

Introduction

On 19 December 2024, the Dutch Government notified to the European Commission the legislative proposal for an 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”). The Royal Association of the Dutch Chemical Industry (VNCI) would like to take the opportunity to respond to this legislative proposal on behalf of its members.

Legislative proposal for the introduction of a national plastic standard

The legislative proposal regulates that polymer processors based in the Netherlands must replace a minimum share of fossil-based polymers with circular polymers as of 1 January 2027. Although the law has a broad basis, namely polymers regardless of which products they are used in, the obligation will initially be imposed on polymers that are used in plastic parts and end products. The exact amount of the annual obligation will be determined at a later stage by order in council, but will reportedly initially be 15% and increase to 30% in 2030. According to the legislative proposal, the aim of the circular plastic standard is twofold, namely: promoting circularity and reducing CO2 emissions to contribute to the national climate goals set out in the Climate Act.

The regulator recognises that the extent to which circular polymers, such as recycled and bio-based polymers, can be processed varies per application. The proportion of circular polymers that individual polymer processors can apply therefore also differs. In order to achieve an average annual minimum share of circular plastic in the Netherlands, the legislative proposal therefore also regulates a trading system, with which the market as a whole must achieve an average minimum share of circular plastic. For the processing of circular polymers, polymer processors receive administrative, tradable circular polymer units (CPEs). Polymer processors can sell these CPEs to other polymer processors, so that, for example, polymer processors that process more than the legal minimum of circular polymers can sell CPEs to polymer processors that process less than the mandatory minimum share of circular polymers.

The draft bill provides the basis for establishing requirements for circular polymers for obtaining CPEs by means of an order in council. Sustainability requirements are set for the origin of circular polymers, as well as scheme management and chain management requirements. Compliance with the requirements must be demonstrated by a certificate from a certification scheme recognised by the Minister. Rules on the recognition of certification schemes will be included in the general administrative order.

Background VNCI

The Royal Association of the Dutch Chemical Industry (VNCI) is the umbrella organization for the Dutch chemical industry. The VNCI represents the interests of the Dutch chemical industry. The proposed circular plastic standard will have direct consequences for an important group of customers of products from the Dutch chemical industry, the polymer processors. The aim of the draft bill is to make the polymer chain circular, with an initial emphasis on polymers for plastic applications. The chemical industry is an inseparable part of this chain. The substitution of fossil polymers by circular polymers from (chemical) recyclate and biopolymers will have consequences for both (existing) polymer producers based in the Netherlands and suppliers of these alternative circular feedstocks.

Position VNCI

The VNCI is committed to accelerating the material transition in chemistry, which has a central role in our strategy. Innovative solutions in chemistry form the foundation for new applications that are necessary for the circular economy. This will require a shift away from primary fossil feedstock to alternative sources like waste (recyclates), biomass and CO₂. VNCI is in favour of policy measures that stimulate the use of sustainable carbon in products, stimulate market demand for end products and ensure sufficient availability of the necessary alternative raw materials for this. Standards can play an important role in this, provided that they are well designed and accompanied by supporting policies.

The VNCI has objections to the national circular plastic standard as it is currently proposed. The standard will cause a deterioration in the market position of specifically Dutch processors of polymers. They will have to make adjustments to their production processes and composition of their products, which will result in cost price increases that do not apply to producers in other (EU) countries. The proposed measures create trade barriers for parties in the plastics chain and are in conflict with or poorly compatible with EU policy and legislation. The legislative proposal does not sufficiently substantiate the effects that would justify a nationally designed standard, nor does it explain why Dutch legislation cannot wait for European legislation.

Explanation of VNCI position

1. Infringement of EU legislation

- According to the Explanatory memorandum, the proposed circular plastic standard has been designed in such a way that it complements European regulations that are being prepared, including the Regulations on Packaging and Packaging Waste (PPWR) and on Ecodesign for Sustainable Product (ESPR), which have meanwhile come into effect. This assumption is based on the reasoning that the legal basis of the plastic standard is at the polymer level (input), whereas the (pending) EU regulations set requirements per specific product (output). VNCI disputes this assumption.
- The characteristic activity of polymer processors is that they convert starting materials into partial and end products. This often concerns unique and very diverse product-market combinations. If requirements are imposed on the composition of these input materials, in the form of a minimum proportion of circular polymers, this will inevitably lead to changes in the products that are manufactured from them and the processes required for this. This makes the measure de facto comparable to a generic product standard for this target group.
- In addition, the Explanatory memorandum refers to an investigation into the addition of intermediates, including plastics, to the ESPR, launched by the European Commission. The follow up and outcome of this investigation will become clear this year. In order to check and avoid potential overlap with the ESPR, the Dutch legislator should at least await the outcome of this investigation before submitting any legislative proposal for a national standard.
- It is explicitly stated in the Explanatory memorandum that uncertainty and ambiguity regarding the (pending) EU-legislation makes it difficult to make statements about the consequences of any EU legislation for the legislative proposal for the circular plastic standard. For that reason, the Dutch legislator should not submit the legislative proposal in anticipation of EU-legislation as long as there is no clarity.
- Apart from that, the proposed national plastic standard is also not in line with the EU harmonized approach related to decarbonized and circular product as promoted by the European Commission in the frameworks of the Clean Industrial Deal and the Competitiveness Compass. The European Commission has stated clearly that restoring business competitiveness depends on fully exploiting the economies of scale offered

by the internal market by removing barriers and simplifying regulations, reducing burdens and promoting speed and flexibility. The Commission will adopt a Circular Economy Act in 2026, which will accelerate the circular transition, building on this single market that will enable the free movement of circular products, secondary raw materials and waste, foster a higher supply of high quality recyclates and stimulate demand for secondary materials and circular products while bringing down feedstock costs. The Commission acknowledges that businesses will only make the necessary investments if they are sure there is a market for their products. In fact, the proposed plastic standard measure creates additional barriers and administrative obligations on top of those arising from European product legislation.

A key question that has emerged in recent product legislation discussions - e.g. the PPWR and the ESPR - is how the EU should deliver on its commitment to ensure that all producers on the EU market meet the same obligations for the use of recycled and bio-based plastics. The European Commission has been very clear that it will use an EU-harmonized approach for recycled content targets in product regulations. The benefits of this EU-harmonized approach for both businesses and civilians have also been endorsed by the Dutch government.^{1 2}

2. Trade barriers - Infringement of TFEU provisions

According to the Explanatory memorandum, the national plastic standard is not a direct obstacle to the free movement of goods and services, as it does not impose restrictions on the import or export of polymers or plastic products. However, the obligations and rules relating to the trading system included in the draft bill are expected to lead to a disruption of trade between Member States and the functioning of the internal market. According to the VNCI, the draft bill and the associated trade barriers cannot be justified by appealing to the climate or the environment. The draft bill is not effective and the measures proposed therein are disproportionate, discriminatory and unnecessary.

- As stated in the Explanatory memorandum, the proposed standard will impose additional requirements on processors of processors of polymers, based in the Netherlands, which can make it more difficult for them to compete on the international market, as other processors are not bound to these additional requirements. Dutch polymer processors must make changes in product composition and vital business processes in order to continue producing, also for export markets where these requirements do not apply. These requirements will not apply to similar companies in other EU-countries or outside the EU. This means that polymer

¹ Fiche 3: Verordening inzake Verpakkingen en Verpakkingsafval

² Mededeling duurzame producten de norm maken en Kaderverordening Ecodesign voor duurzame producten

processing companies in the Netherlands cannot compete in an internal market on the same conditions. As also recognized by the Dutch legislator, the proposed measures can therefore be considered as potential barriers to the free movement of goods, as laid down in Articles 34-36 TFEU. VNCI disputes that the proposed measures are proportionate and non-discriminatory and that these barriers can be justified by environmental gains or other grounds or overriding requirements in the public interest.

- As stated in the Explanatory memorandum, the average cost price increase for Dutch processors will be 2-13 %, which will lead to a significant price increase of the semi-finished products and end products they produce. As processing companies in other countries will not have similar obligations, this will definitely lead to a significant decrease in demand for subproducts and end products from the Netherlands. The statement of the Dutch legislator that it can be expected that it will become harder for customers in the Netherlands to switch to parts and products from other EU countries due to upcoming European sustainability requirements and that the demand for products with a higher proportion of circular polymers is expected to rise in the Netherlands, is unfounded and is a typical example of 'wishful thinking'.
- According to the Explanatory Memorandum, the obligation will be imposed on the 'polymer processor', because imposing it earlier in the chain, on the polymer producers, could lead to higher production losses due to a greater shift of production abroad. Another possibility would be to impose the obligation at a later stage in the chain, on traders and brand owners. Although the leakage effects would be much lower, the Dutch Government has not chosen for this option, because it would result in disproportionate implementation burden as a standard must then be established for each product(group) and enforced on a potentially large number of companies. It is however not clear how high these expected costs are and how they relate to the structural cost increase for market parties, including the lost income due to leakage effects. The argument that the plastic standard is the least restrictive measure to achieve the environmental goals is therefore not sufficiently substantiated. The accompanying impact assessment seems insufficient as limited to no information is provided regarding e.g. the consideration of different policy options and related outcomes, how the extra cost related to the use of circular polymers will be passed on to consumers, the impacts on competitiveness, and whether similar or greater environmental gains could be achieved by an EU standard.

- The trading system can and will be discriminatory for different polymer processing companies. Dutch based processing companies using more circular polymers than required may exchange the “surplus” for CPE’s and reduce their costs. Processing companies based outside the Netherlands will not have this advantage. At the other hand, processing companies in the Netherlands that are making products for which there are (still) not sufficient circular polymers available or the use of circular polymers is not (yet) possible due to technical, legal or other constraints, are forced to buy CPE’s, which will have a cost-increasing effect. Their competitive position compared to polymer processing companies abroad will deteriorate.
- According to the Explanatory memorandum, the circular plastic standard could give processors an advantage in view of the upcoming European regulations, because they are already starting the transition towards circularity. This so-called 'first movers' advantage is however not substantiated. For applications that are subject to standards under legislation, but for which no European product policy has (yet) been established, it is unclear what future requirements will apply with regard to minimum shares of recycle and/or biopolymers. This makes it uncertain what the requirements will be, but also when they will apply. The examples of discussions on product standards in the PPWR and the End of Life Vehicles Regulation show that these stakeholder and decision-making processes are associated with unpredictable and often long lead times. Also, the date by which the first goals of this legislation must be achieved is often many years after the legislation has been adopted. A longer period of uncertainty will therefore rather be more of a disadvantage for Dutch processors.
- On the other hand, there are significant uncertainties regarding the expected environmental gains of the national plastic standard. According to the Explanatory memorandum, the expected environmental benefit in the form of CO2 savings will be achieved in the production and incineration phase of plastic. This CO2 reduction will take place in the Netherlands, because fewer emissions occur in the plastic production process and because less waste will be incinerated. The legislative proposal does however not provide sufficient insight into how the measure ensures lower emissions during production, other than through a reduction in production capacity in the Netherlands.

The proposal does not sufficiently substantiate how the measure will actually lead to a reduction in the incineration of plastic waste in the Netherlands. The idea that creating demand at polymer processors automatically also leads to a larger supply of

recyclate from domestic waste is highly uncertain due to the lack of concrete adjacent measures that stimulate an increase in this supply. Moreover, the demand can also be met by importing cheap imported recyclate from other (non-EU) countries.

But even more important is the possibility that, due to the leakage effects, the demand for plastic products will be met to a significant extent by importing semi-finished products and end products for which the requirements of the standard do not apply. The plausibility of the actual expected environmental effects is therefore insufficiently substantiated. Apart from that, the costs of these measures are not in proportion to the CO₂ savings that could be achieved and there has been insufficient research into whether comparable or even larger CO₂ savings can be achieved with other less drastic measures. According to the information provided in the impact assessment and the memorandum the expected abatement costs range between 113 and 717 €/ton CO₂ based on just the combined costs for raw material cost increase, structural annual costs for regulatory pressure costs and governmental implementation costs. In addition to that, companies will also face additional costs for investments, process and product adjustments and certifications, which are not fully covered by the stimulus subsidies from the climate fund. This abatement cost range is therefore most likely an underestimation.

Conclusion

The VNCI is of the opinion that, based on the arguments in this response, the proposed measure goes against the principles of the European single market and TRIS directive. On the basis of the EU principles of subsidiarity and sincere cooperation, we conclude that the Dutch Government should abstain from adopting a national standard and trading system for circular polymers.

For that reason we request the European Commission:

1. to issue a detailed opinion (Art. 6 EU Directive 2015/1535) on the notified text and the obstacles it creates to the free movement of goods in Europe and
2. to determine that the Netherlands should refrain from adopting measures that will contravene TFUE Single Market provisions and EU legislation.

Yours sincerely,

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