

Brussels, 21 September 2020

To the kind attention of:  
Mr Mattia Pellegrini  
Head of Unit  
Waste Management and Secondary Materials (ENV.B.3)  
European Commission  
Avenue de Beaulieu 9  
1160 Brussels

## Subject: Declaring recycled content from post-consumer waste

Dear Mr. Pellegrini,

We are writing to you to ask the European Commission to officially clarify through a dedicated EC communication or implementing act that European rules on declaring recycled content in products concern only recycled materials from post-consumer waste. Action to make relevant stakeholders such as the Circular Plastics Alliance aware of this should be taken urgently.

The 2020 Circular Economy Action Plan states that the Commission will support the timely implementation of the new Single Use Plastic (SUP) directive by developing for the first time rules on measuring recycled content in products. These rules will also be the backbone of the upcoming mandatory requirements on recycled plastic content and plastic waste reduction measures for key products, such as packaging, construction products, vehicles and batteries.<sup>1</sup>

We support the development of such rules as an enabling tool to increase the potential applications for plastic recyclate, which is untapped especially as compared to paper, glass or metal. Recycled plastics indeed only represent about 6% of plastics demand in Europe, as shown in the 2018 European strategy for plastics in a circular economy.

But the method for accounting for recycled content should be clear and target recyclates from post-consumer waste only. This is in line with relevant EU environmental legislation, communication and case-law:

- The EU-wide pledging campaign to reach volumes of 10 million tonnes of recycled plastics in new products by 2025 was one of the cornerstone measures envisaged by the European Commission to ensure there is market demand for the projected volumes of plastics that will be recycled. This objective was set against the current situation: about 7 million tonnes of recycled plastics **from post-consumer waste** was incorporated in products in 2014.<sup>2</sup>
- The SUP directive (EU) 2019/904 aims to tackle environmental damage from “commonly used fast-moving consumer products that are discarded **after having been used once** for the purpose for which they were provided.”<sup>3</sup>

<sup>1</sup> Communication a new Circular Economy Action Plan COM(2020)98, Annex.

<sup>2</sup> Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A European Strategy for Plastics in a Circular Economy*, section 2.3.1, January 2018.

<sup>3</sup> SUP directive (EU) 2019/904, recital 5.

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Moreover, it sets a target of at least 30% of recycled plastics in beverage bottles from 2030, and at least 25% from 2025 in PET ones, for **bottles placed on the market**.

- The **Packaging Waste directive (EU) 2018/852 excludes production residues** from the definition of packaging waste.
- Regarding the Waste Framework directive (WFD) 2008/98/EC, the CJEU has established that **certain production leftovers, scraps or resulting substances should not be regarded as waste** when they are used in the production process mainly for the same purposes as the other substances.<sup>4</sup>
- The Niselli case<sup>5</sup> established that **pre-production plastic scraps cannot be considered waste when they are being included in other plastic items** because this is an efficiency measure for the production process, as it saves raw material and provides a financial and operational advantage to the producer and not a burden.
- According to the Commission guidance on waste and by-products,<sup>6</sup> **excess material from a primary production process, such as plastic scrap, also falls outside of the definition of waste when they are “to be reused directly** either back in the primary production process or in other integrated productions where reuse is also certain.”

However, we have understood that the Circular Plastics Alliance seeks to enlarge the calculation method to pre-consumer plastics waste at its next meeting on 22<sup>nd</sup> September 2020. This would contradict EU legal practice, as well as undermine the relevance and ambition of current European targets for recycled content in products.

We are therefore calling on the European Commission to officially clarify that European rules on measuring and declaring recycled content in products will consider recycle from post-consumer waste only. It will then be important for the Commission to inform relevant stakeholders, including the Circular Plastics Alliance and European standardisation bodies where quality standards for plastic waste, recycled plastics and guidelines for their integration in products are being developed.

We would be happy to meet with you or a member of your unit to discuss this at your earliest convenience and remain at your disposal for any questions you may have.

Yours Sincerely,

**Justin Wilkes**

*ECOS Executive Director* on behalf of the Rethink Plastic alliance

Signature



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<sup>4</sup> Case C-235/02 - Saetti and Frediani, para. 46-48.

<sup>5</sup> Case C-457/02, Niselli, para. 46.

<sup>6</sup> European Commission (2007) Communication From The Commission To The Council And The European Parliament on the Interpretative Communication on waste and by-products, p. 12.

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CC: DG ENVI, Emmanuelle Maire, Head of Unit B1; Werner Bosmans, Unit B1; Paulo Da Silva Lemos, Unit B1; Rana Pant, Unit B3. JRC, Hans Saveyn, Unit B5.

DG GROW DDG1, Fulvia Raffaelli, Head of Unit C1; Kirsi Ekroth-Manssila, Head of Unit D2; Michael John Bennett, Unit C1; Anna Ablazevica, Unit D2; Laure Baillargeon, Unit D2; Paolo Sandri, Unit D2.

