EUROPEAN
COMMISSION

Brussels, XXX
[…](2025) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

laying down rules for the application of Directive 2008/98/EC of the European Parliament and of the Council as regards criteria to determine when plastic waste ceases to be waste

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This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) …/...

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laying down rules for the application of Directive 2008/98/EC of the European Parliament and of the Council as regards criteria to determine when plastic waste ceases to be waste

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[1], and in particular Article 6(2) thereof,

Whereas:

(1) Union-wide end-of-waste criteria for plastics are key to strengthen the single market for recycled plastics and for secondary raw materials ready to be used in the manufacturing of new goods, reduce administrative burdens for recyclers, notably small and medium-size enterprises, and costs related to the shipment of plastic waste, and ensure a stable supply of high-quality recyclates across the Union while promoting circular economy. The forthcoming Circular Economy Act will address end-of-waste criteria as a mean to foster a higher supply of high quality recyclates and stimulate demand for secondary materials and circular products while bringing down feedstock costs.

(2) The European Commission's Joint Research Centre (the 'JRC') carried out a scoping study to identify a list of priority waste streams for which to develop further Union-wide end-of-waste criteria[2]. That study highlighted five waste categories with the greatest potential, ranking plastic waste as the top priority stream. Following that study, JRC published a report on technical proposals for EU-wide end-of-waste criteria for plastic waste (the 'report')[3], and started working on technical proposals for EU-wide end-of-waste criteria for textiles and the mineral fractions of construction and demolition wastes.

(3) According to the above-mentioned report, the plastics with the highest potential suitable for Union-wide end-of-waste criteria are thermoplastic polymers, and blends of thermoplastic polymers, regardless of the polymer type and the source of the waste containing plastic. Thermoplastic polymers are polymers that can soften with the application of heat and solidify again upon cooling, allowing them to be remoulded.

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[1] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3, ELI: http://data.europa.eu/eli/dir/2008/98/oj.

[2] Orveillon, G., Pierri, E., Egle, L., Gerbendahl, A., Wessman, P., Garcia John, E. and Saveyn, H., Scoping possible further EU-wide end-of-waste and by-product criteria, EUR 31007 EN, Publications Office of the European Union, Luxembourg, 2022, ISBN 978-92-76-49046-3, doi:10.2760/067213, JRC128647.

[3] Pierri, E., Egle, L., Milios, L. and Saveyn, H., EU-wide end-of-waste criteria for plastic waste, Publications Office of the European Union, Luxembourg, 2024, doi:10.2760/9234350, JRC139303.

Examples of thermoplastic polymers are polyethylene (PE), polyethylene terephthalate (PET), polypropylene (PP), polystyrene (PS), and polyvinyl chloride (PVC). Thermoplastic polymers are the most common plastics and are also referred to as commodity plastics.

(4) The criteria laid down in this Regulation determine when plastic waste ceases to be waste and ensure that the output material resulting from recycling is a polymer or plastic that i) is ready for use in the production of new plastic products or articles containing plastic parts, ii) has a market or for which a demand exists, iii) complies with existing legislation and standards applicable to products and iv) does not lead to overall adverse environmental or human health impacts. The output plastic that complies with all the end-of-waste criteria is a plastic recyclate. If the output plastic resulting from a recycling is used for other purposes than for the production of new plastic products or articles containing plastic parts, such as used for energy recovery, as an input material for chemical or fuel production, or for backfilling operations, it should not be granted the end-of-waste status in accordance with the criteria specified in this Regulation, including if such material had previously obtained end-of-waste status under this Regulation. To facilitate the market of secondary raw materials, the end-of-waste criteria set in this Regulation apply to the recycled plastic and not to the final plastic product or article containing plastic parts.

(5) While it is possible to produce certain products with a material that has reached the end-of-waste status according to this Regulation, it may be necessary to carry out other standard post-processing treatments to ensure that the recycled plastic meets customers requirements for specific applications. This should be the case to produce recycled plastic food contact materials in accordance with Regulation (EC) No 1935/2004[4] of the European Parliament and of the Council and Commission Regulation (EU) No 2022/1616[5]. According to these Regulations, plastic input must be decontaminated to ensure the material is suitable for food contact.

(6) Recycling for the purposes of this Regulation includes mechanical recycling and solvent-based recycling, that is also referred to as physical recycling or dissolution recycling, which retain the polymeric chains that constitute the plastic, except for small unintentional changes in the molecular weight distribution of the polymeric chains. Therefore, merely performing a preliminary sorting operation or visual checking of the input plastic should not be considered as recycling in scope of this Regulation. The recyclate resulting from recycling should have similar shape and properties to virgin plastic, such us flakes, powder, granules, and granulates.

(7) To ensure that the largest quantity of plastic waste is recycled, Member States may maintain or adopt national end-of-waste criteria, decide on a case-by-case basis, or take appropriate measures concerning plastic waste which are outside of the scope of this Regulation.

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[4] Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, ELI: http://data.europa.eu/eli/reg/2004/1935/oj).

[5] Commission Regulation (EU) 2022/1616 of 15 September 2022 on recycled plastic materials and articles intended to come into contact with foods, and repealing Regulation (EC) No 282/2008 (OJ L 243, 20.9.2022, ELI: http://data.europa.eu/eli/reg/2022/1616/oj).

(8) Regulation (EU) 2024/1157 of the European Parliament and of the Council[6] establishes rules for the export of plastic waste from the Union. That Regulation prohibits exports of plastic waste for disposal operations as well as exports of plastic waste classified under entries A3210 and Y48 of that Regulation to countries not in scope of Decision of the OECD Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations[7] ('non-OECD countries').

(9) Regulation (EU) 2024/1157 requires that any shipment of clean, non-hazardous plastic waste classified under entry B3011 of that Regulation outside the Union is (i) subject to the procedure of prior written notification and consent referred to in Title II, Chapter 1, of that same Regulation; and (ii) complies with binding rules concerning its content of contamination[8]. Moreover, from 21 November 2026, that Regulation also prohibits the export of plastic waste classified under entry B3011 to 'non-OECD countries'.

(10) In view of the above-mentioned rules on exports of plastic waste from the Union, this Regulation should establish end-of-waste criteria for plastic waste that do not undermine those export restrictions. To facilitate the distinction of the rules laid down in the Regulation (EU) 2024/1157 from the ones established by this Regulation, and their enforcement, it is important to ensure that the thresholds of the level of contamination for classifying waste under entry B3011, and of foreign materials, i.e. plastic polymers not in scope of this Regulation and non-plastic materials, for determining that plastic waste fulfils end-of-waste criteria, are not at the same level. Thus, a threshold of <1.9% for foreign materials in the plastic recyclate is established as one of the end-of-waste criteria for plastic waste. Furthermore, this regulation includes an additional criterion that specifies that, for exports of plastic recyclate outside the Union, the output plastic can include only one thermoplastic polymer. This is in line with the requirements set under entry B3011 of Regulation (EU) 2024/1157 which apply to OECD and non-OECD countries in the same way. The threshold and the additional criterion ensure that: i) the risks of circumventing the rules on shipment of plastic waste are reduced; ii) the threshold of foreign materials is technically and economically feasible and in line with current plastic recycling practices in Member States; iii) the requirements for recyclers are unequivocally defined; and iv) the risk of not being able to use the recycled plastics in the Union is reduced.

(11) To demonstrate compliance with the end-of-waste criteria, the producer of the plastic recyclate should implement a new quality management system or adjust an existing one, and the producer or importer should issue a statement of conformity for plastic waste which has ceased to be waste. The quality management system should include information on the treatment process, quantities of input plastic, of plastic recyclate, and of output plastic

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6 Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006 (OJ L, 2024/1157, 30.4.2024, ELI: http://data.europa.eu/eli/reg/2024/1157/oj).

7 OECD/LEGAL/0266.

8 According to Regulation (EU) 2024/1157, in order to classify a consignment of plastic waste or mixtures of plastic waste under entry B3011, the content of contamination, other types of wastes or non-halogenated polymers, cured resins or condensation products, or fluorinated polymers, other than the one non-halogenated polymer, cured resin or condensation product, or fluorinated polymer that makes up the bulk of the plastic waste, should not exceed a total maximum of 2 % of the weight of the consignment.

(12) Based on the monitoring of the implementation of this Regulation, and to consider technological developments for treating plastic waste, including chemical recycling as one of the recovery operations for which end-of-waste criteria could apply, the Commission should assess and, where appropriate, review this Regulation.

(13) The measures provided for in this Regulation are in line with the opinion of the committee established by Article 39 of Directive 2008/98/EC.

(14) To ensure that operators have sufficient time to adapt to the criteria determining when plastic waste ceases to be waste, it is necessary to defer the application of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to plastic waste, as defined in Article 2(2), used as input for mechanical or solvent-based recycling, as defined in Articles 2(3) and 2(4).

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Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'plastic' shall mean plastic as defined in Article 3, point 1, of Directive (EU) 2019/904 of the European Parliament and of the Council[9];

(2) 'plastic waste' shall mean waste containing discarded thermoplastic polymers and blends of thermoplastic polymers, regardless of the polymer type and source of the waste;

(3) 'mechanical recycling' shall mean recycling through technologies that recycle plastic waste through mechanical processes, including by sorting, grinding, washing, separating materials, drying, and re-crystallisation, that retain the polymeric chains that constitute the plastic, except for small unintentional changes in the molecular weight distribution of the polymeric chains;

(4) 'solvent-based recycling' shall mean recycling through technologies, including sorting and grinding, that uses heat and solvents to dissolve plastic waste into a solution of polymers and additives, and that subsequently separates additives and polymers from the solution, without chemical degradation reactions or alterations of the polymeric chains, except for small unintentional changes in the molecular weight distribution of the polymeric chains;

(5) 'input plastic' shall mean plastic waste that can be used as input for recycling;

(6) 'output plastic' shall mean plastic obtained in the form of polymers from mechanical or solvent-based recycling;

(7) 'plastic recyclate' shall mean the output plastic which has achieved end-of-waste status, and can be used as secondary raw material to produce new plastic products, or articles, as

[9] Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ L 155, 12.6.2019, p. 1, ELI: http://data.europa.eu/eli/dir/2019/904/oj).

defined in Article 3(3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council[10], containing plastic parts;

(8) 'operator' shall mean the natural or legal person that is in possession of the plastic waste or the plastic recyclate;

(9) 'producer' shall mean an operator that treats plastic waste so that it ceases to be waste in compliance with this Regulation;

(10) 'importer' shall mean any natural or legal person established within the Union who places plastic recyclate into the customs territory of the Union;

(11) 'qualified staff' shall mean staff who have experience and/or training qualifying them to carry out the control measures set out under the self-monitoring requirements as part of the quality management system as required in Article 5;

(12) 'consignment' shall mean one or more batches of output plastic delivered from an operator to another operator in one or more transport units;

(13) 'visual inspection' shall mean inspection of input plastic and output plastic, covering all representative parts of a consignment, using one or several human senses and any non-specialised equipment, involving manual manipulations and other sensorial checks, or the use of appropriate portable sensors;

(14) 'hazardous substance' shall mean a substance fulfilling the criteria relating to physical hazards, health hazards or environmental hazards, as laid down in Parts 2 to 5 of Annex I to Regulation (EC) No 1272/2008 of the European Parliament and of the Council[11];

(15) 'polymer' shall have the meaning defined in Article 3, point (5), of Regulation (EC) No 1907/2006 of the European Parliament and of the Council;

(16) 'conformity assessment body' shall have the meaning defined in Article 2, point (13) of Regulation (EC) No 765/2008 of the European Parliament and of the Council[12,13], accredited by a national accreditation body that was peer evaluated in accordance with Article 10 of that Regulation (EC);

(17) 'environmental verifier' shall have the meaning of a conformity assessment body or any natural or legal person, or any association or group of such persons, which has been accredited or licensed by a national accreditation or licensing body as defined in Article 2, point (30) or point (31) of Regulation (EC) No 1221/2009 of the European Parliament and of

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[10] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30.12.2006, p. 1, ELI: http://data.europa.eu/eli/reg/2006/1907/oj)

[11] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p 1, ELI: http://data.europa.eu/eli/reg/2008/1272/oj.

[12] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93 (Text with EEA relevance)Text with EEA relevance (OJ L 218, 13.8.2008, p. 30, ELI: http://data.europa.eu/eli/reg/2008/765/2021-07-16).

[13] Article 2, point (13) of Regulation (EC) No 765/2008 defines a conformity assessment body as a body that performs conformity assessment activities including calibration, testing, certification and inspection.

the Council[14], and which is subject to peer-evaluation in accordance with Article 31 of that Regulation;

(18) ‘foreign materials’ shall mean polymers other than thermoplastic polymers, thermoplastic polymers not intentionally targeted by the recycling, and non-plastic materials;

(19) ‘non-plastic materials’ shall include, but not limited to, metals, paper, glass, earth, sand, dust, wax, bitumen, ceramics and wood; while they shall not include materials that are either chemically bound to or physically incorporated into the polymer matrix as a result of being intentionally added to the polymer to adjust its properties;

(20) ‘healthcare waste’ shall mean wastes arising from medical, nursing, dental, veterinary, or similar practices, and wastes generated in hospitals or other facilities during the investigation or treatment of patients, or research projects, according to Regulation (EU) 2024/1157, Annex V, Part 1, entry A4020;

(21) ‘industry specifications, means specific requirements and guidelines set by the recycling industry on the quality of the output materials and the processing methods;

(22) ‘batch’ means a quantity of material of the same quality, and produced using uniform production parameters at a certain manufacturing stage, stored and contained to exclude mixing with other materials, or contamination, and designated as such by a single production number, as defined in Article 2(3), point (20) of Commission Regulation (EU) 2022/1616[15].

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Article 3

End-of-waste status

1. Plastic waste shall cease to be waste where all the following conditions are fulfilled:

(a) the plastic waste used as input plastic for recycling complies with the requirements set out in Section 1 of Annex I;

(b) the mechanical and the solvent-based recycling, that the plastic waste undergoes, comply with the treatment processes and techniques set out in Section 2 of Annex I;

(c) the output plastic resulting from the mechanical or the solvent-based recycling can directly be used in the production of new plastic products or articles containing plastic parts without further treatment operations and complies with the requirements on product quality set out in Section 3 of Annex I;

(d) the producer or the importer complies with the requirements set out in Article 4;

(e) the producer or the importer complies with the requirements set out in Article 5.

2. Notwithstanding paragraph 1 point (c), the output plastic, that has achieved end-of-waste status, may be further treated to meet product specifications to allow its use in the manufacture of specific products or articles.

3. The producer that intends to apply the end-of-waste criteria set out in this Regulation, or the importer that intends to make available plastic recyclate in the Union market in

[14] Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/1221/oj).

[15] Commission Regulation (EU) 2022/1616 of 15 September 2022 on recycled plastic materials and articles intended to come into contact with foods, and repealing Regulation (EC) No 282/2008 (Text with EEA relevance) (OJ L 243, 20.9.2022, p. 3)

accordance with the end-of-waste criteria set out in this Regulation, shall inform the relevant national authorities, including evidence of the quality management system to be implemented according to Article 5.

Article 4

Statement of conformity

1. The producer or the importer shall, for each consignment of plastic recyclate that complies with the end-of-waste criteria set out in this Regulation, issue a statement of conformity using the model set out in Annex II.

2. The producer or the importer shall transmit the statement of conformity to the next operator of the consignment.

3. The producer or the importer shall retain a copy of the statement of conformity for at least five years after its date of issue and shall make it electronically available to the relevant national authorities upon request.

4. The statement of conformity shall be in electronic form.

Article 5

Quality management system

1. The producer shall implement a quality management system that allows it to demonstrate compliance with the end-of-waste criteria set out in this Regulation.

2. The quality management system shall include a set of documented procedures concerning each of the following aspects:

(a) monitoring of plastic waste used as input plastic for recycling, including quality control measures and risk management measures;

(b) monitoring of the treatment processes and techniques;

(c) monitoring of the quality of the output plastic resulting from recycling, including instructions for sampling and analysis and their frequency;

(d) record keeping of the results of monitoring conducted under points (a), (b) and (c);

(e) record keeping of feedback from customers concerning the quality of the output plastic;

(f) record keeping of the actions taken to improve the performance of recycling to address observed non-compliance with the end-of-waste criteria set out in this Regulation;

(g) review and improvement of the quality management system;

(h) training of staff.

3. The quality management system shall cover all the specific self-monitoring requirements set out for each end-of-waste criterion specified in Annex I and the statement of conformity as set out in Article 4.

4. The quality management system shall be assessed by one of the following bodies:

(a) a conformity assessment body; or

(b) an environmental verifier.

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5. The bodies referred to in paragraph 4 shall verify that the quality management system fulfils the requirements on procedures referred to in paragraph 2. The verification shall be carried out every three years.

6. Environmental verifiers, referred to in paragraph 4, point (b), shall be permitted to perform the verification referred to in paragraph 5 only if such bodies have obtained an accreditation or licensing with a scope covering at least one of the following NACE Codes specified in Regulation (EC) No 1893/2006 of the European Parliament and of the Council[16] :

- NACE code 20 (Manufacture of chemicals and chemical products);

- NACE code 22 (Manufacture of rubber and plastic products);

- NACE code 38 (Waste collection, treatment and disposal activities; material recovery).

7. The producer shall give enforcement authorities, as defined in Article 2, point (26), of Regulation (EC) No 1221/2009, access to the quality management system upon request and make the records referred to paragraph 2, points (d), (e), and (f), of this article electronically available to the relevant national authorities upon request, for at least five years after the date of recording.

8. To be allowed to place plastic recyclate on the Union market, the importer of such plastic recyclate from recycling facilities located in a third country shall require third countries suppliers to implement a quality management system which complies with the requirements set out in paragraphs 1, 2 and 3 of this Article. Such quality management system shall be verified by one of the bodies referred to in paragraph 4, that is accredited or licensed in a Member State to perform verification and validation activities for an organisation located in a third country, in accordance with the specifications laid down in Regulation (EC) No 765/2008 or in Regulation (EC) No 1221/2009 in conjunction with Commission Decision 2011/832/EU[17].

9. If the importer of plastic recyclate from recycling facilities located in a third country fails to meet the requirements laid down in paragraph 8, the output plastic to be imported shall be considered waste and, therefore, shall comply with Regulation (EU) 2024/1157.

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Article 6

Review

Based on the monitoring of the implementation of this Regulation, and to consider technological developments for treating plastic waste, the Commission shall assess and, where appropriate, review this Regulation at the latest by 1 January 2029.

Article 7

Entry into force and application

[16] Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1, ELI: http://data.europa.eu/eli/reg/2006/1893/oj).

[17] Commission Decision 2011/832/EU of 7 December 2011 concerning a guide on EU corporate registration, third country and global registration under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 330, 14.12.2011, p. 25, ELI: http://data.europa.eu/eli/dec/2011/832/oj).

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*first day of the month of entry into force plus* 6 *months*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
[…]

[Choose between the two options, depending on the person who signs.]

On behalf of the President
[…]
[Position]

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