ECOS feedback to the implementing decision of the Single-Use Plastic Directive (SUPD) defining the methodology for recycled content

30 May 2023

ECOS welcomes the opportunity to provide feedback to the European Commission on the implementing decision laying down common rules for calculating, verifying and reporting on recycled plastic content in single-use plastic beverage bottles. While acknowledging that the scope of this implementing decision is limited to beverage bottles in the context of the implementation of the SUPD, we are aware that methodologies to set calculation and verification rules for recycled content in other products will be coming up soon and that **this decision will set a precedent for any upcoming legal acts on recycled content**. It is crucial that the rules in the present act establish **a methodology in line with the EU circular economy and the climate agenda, in support of a reduction of virgin plastic production, while respecting the level playing field between recycling technologies.**

Contents

ECOS - Environmental Coalition on Standards
c/o WeWork rue du Commerce 31 · 1000 Brussels · Belgium
T +32 2 899 7680 · info@ecostandard.org · www.ecostandard.org

A coherent definition of 'recycled plastic'

ECOS welcomes that only 'post-consumer plastic waste' is included in the methodology to calculate, verify and report recycled plastic content in beverage bottles for the SUPD targets. This is in line with the spirit of EU environmental legislation, communication and case-law, as explained in detail this letter from the Rethink Plastic Alliance. If pre-consumer plastic waste were included, this would have given perverse incentives to wasteful and inefficient production processes, since waste plastics can then be considered as recycled even if they have never reached consumers. European recycled content targets should only incentivise the collection and management of waste from products that have already been placed on the EU market.

A clear definition of 'beverage bottle'

ECOS also supports that a 'beverage bottle' is considered as a single unit, hereby including its cap, lid, label and sleeve. This is in line with the SUPD article 6 requiring caps and lids to remain attached to their container, as well as with the common practice of littering bottles together with their label and sleeve.

Caveats in the methodology to determine the weight of recycled plastic in beverage bottles

ECOS calls for a more precise and consistent wording of the methodology to calculate the proportion of recycled plastic content in beverage bottles with existing EU legislation. First, further consistency in the recycling calculation point should be ensured with the European Waste Framework Directive 98/2008/EC and Annex I of Commission Implementing Decision (EU) 2019/1004. Hence, **all recycling losses should be discounted** so that:

- "Plastic [...] does not undergo further processing before entering pelletisation, extrusion, or moulding operations", and
- "Plastic flakes [...] do not undergo further processing before their use in a final product."

This is even more valid for processes with low recycling yield, especially if pyrolysis and gasification are included in the scope of this legislation in the future. The inherent losses from purification processes will need to be fully discounted from their recycling process yields.

Secondly, further consistency in the calculation basis should be guaranteed between, on the one hand, articles 3(1) and 4(1), on the other hand, and Annex I of the proposed implementing decision and the SUPD. In practice, **the plastic parts of beverage bottles must be calculated as the sum of the weight of the plastic parts of the beverage bottles actually placed on the market, not just the ones collected from economic operators.** This would result in considering the plastic beverage bottles that are also littered, in line with the SUPD objectives.

Call for a more reliable verification and auditing scheme

ECOS welcomes member states have an obligation to collect and check the data reported by economic operators in a coherent way with Regulation (EU) 2022/1616. Yet, **the reporting obligations of the recycled content by economic operators set in article 5(3) should be mandatorily verified by an independent third-party certification**. Such strong traceability is especially needed since recycled plastic can hardly be differentiated form virgin plastic, resulting in complex conformity assessment procedures for market surveillance authorities. Economic operators, including importers of plastic beverage bottles, will be able to consistently implement such third-party certification together with their quality assurance obligations under article 6(3) of Regulation (EU) 2022/1616, while minimising administrative burden on both economic operators and member states. Only then can trust and reliability be guaranteed for subsequent recycled content claims economic operators will make.

Opening for more flexible chain of custody models and allocation rules in the future: a slippery slope

ECOS is highly concerned that the door is left open in the proposed implementing decision recital 10 for introducing fully flexible chain of custody methods in an amendment to this decision. If other models are quoted, the Commission should also **stress the hierarchy in the levels of transparency and strength for environmental reports – and subsequent claims**. Such hierarchy also calls for prioritising segregation over controlled blending, and controlled blending over mass balance.

We call on the European Commission to clearly state that **only proportional allocation should be used to claim recycled content,** whether controlled blending or mass balance is applied, if they are considered in a future amendment of this decision. A proportional allocation of the recycled content to each process output at batch level is critical to ensure the end-product includes a reliable proportion of the recycled content. Free allocation – **fuels exempt allocation and free allocation are synonym in the European context**, since it would be in breach of EU law to claim recycled content for a conversion from materials to fuels anyways – on the contrary, allows plastic beverage bottles with very little or even none recycled content to still be labelled as made from recycled content (in much higher proportions than in reality). Proportional allocation is the only allocation procedure which ensures a level-playing field between different recycling technologies, and will prevent low-yield recycling technologies to benefit from undue economic and marketing advantages on the market by arbitrarily allocating the recycled content to the most expensive outputs. **Thanks to proportional allocation, the dilution factor of recycled content into virgin content will be comparable between recycling technologies and reflect their actual recycling yield of beverage bottles, thus their actual value retention in a circular economy.**

In addition, allowing free allocation would be against the need for transparency and substantiated green claims reflected in the EU empowering consumer and green claim directive proposals. **Such a method can only bring consumers' distrust in the credibility of economic operators' claims and reports, and consequently in member states' and EU's recycled content targets**. Worst still, it would de facto result in the EU's recycled content targets merely supporting virgin plastics production growth, in contradiction with the EU's Circular Economic Action Plan goals.

We finally call upon the European Commission to introduce the necessary recycling technology definitions in an amendment to the Waste Framework Directive as some of them are still controversial (see this joint NGO paper for further details).

Suggestions for amending the implementing decision proposal

Commission Implementing Decision	Suggestion for amendment
Recital 10 (10) In order to take into account also recycled plastic in beverage bottles that has not been obtained by mechanical recycling of PET waste, the Commission plans to draft an amendment of this Decision to include a methodology to calculate, verify and report recycled plastic content in beverage bottles that is based on the application of certain chain of custody models as defined in ISO 22095-2020 (Chain of custody — General terminology and models). In particular, controlled blending, which allows to account also for non-mechanically recycled PET, is a possible chain of custody model. In addition, a mass balance approach may be included as an admissible chain of custody model to also account for plastic in non-PET bottles resulting from feedstock recycling.	Recital 10 (10) In order to take into account also recycled plastic in beverage bottles that has not been obtained by mechanical recycling of PET waste, the Commission plans to draft an amendment of this Decision to include a methodology to calculate, verify and report recycled plastic content in beverage bottles that is based on the application of certain chain of custody models as defined in ISO 22095-2020 (Chain of custody — General terminology and models). In particular, controlled blending, which allows to account also for non-mechanically recycled PET, is a possible chain of custody model. **Allocation of recycled content to the outputs are to be based on a proportional basis.** In addition, a ***proportional* batch-level** mass balance approach may be included as an admissible chain of custody model to also account for ***recycled*** plastic in non-PET bottles ~~***resulting from feedstock recycling***~~***, while acknowledging lower traceability than with the segregation and controlled blending models and lower priority.***
Article 1 (2) 'recycled plastic' means plastic which was post-consumer plastic waste before recycling as defined in Article 3(17) of Directive 2008/98/EC and which has been produced by recycling;	Article 1 (2) 'recycled plastic' means plastic which was post-consumer plastic waste before recycling as defined in Article 3(17) of Directive 2008/98/EC ~~***and***~~ which has been produced by recycling ***in a form to be directly reprocessed into new products and materials meeting the requirements of the Regulation (EC) No 1935/2004 for food contact materials, and which excludes the recycling process conversion losses***; ***(2a) - NEW - 'recycling process conversion losses' mean any losses in weight of materials or substances due to physical or chemical transformation processes inherent in the recycling operations as laid down in the recital (46) of the Directive (EU) 2018/851;***

Article 3 1. The weight of the plastic parts of beverage bottles placed on the market shall be calculated as the sum of the weight of the plastic parts of beverage bottles collected from economic operators.	Article 3 1. The weight of the plastic parts of beverage bottles placed on the market shall be calculated as the sum of the weight of the plastic parts of beverage bottles **placed on the market** ~~**collected from economic operators**~~
Article 4 1. The weight of recycled plastic in beverage bottles placed on the market shall be calculated as the sum of the weight of recycled plastic in beverage bottles collected from economic operators.	Article 4 1. The weight of recycled plastic in beverage bottles placed on the market shall be calculated as the sum of the weight of recycled plastic in beverage bottles **placed on the market** ~~**collected from economic operators**~~.
Article 5 3. The percentage of recycled content in a bottle part shall be the percentage that is stated in the declaration of compliance in field 2.1.4 of part B of Annex III to Regulation (EU) 2022/1616.	Article 5 3. The percentage of recycled content in a bottle part shall be the percentage that is stated in the declaration of compliance in field 2.1.4 of part B of Annex III to Regulation (EU) 2022/1616**, and shall be certified by an independent third party**.