Toy Industries of Europe

Toy Industries of Europe (TIE) Comments

TRIS Notification 2022/325/E (Spain)

Brussels, 6 July 2022

TIE (Toy Industries of Europe), the voice of reputable toy manufacturers, wishes to comment on the draft Royal Decree on Packaging and Packaging Waste notified by Spain (TRIS Notification 2022/325/E).

We are concerned that numerous aspects of the Decree severe as barrier to trade and are incompatible with EU law. They also pre-empt the upcoming revision of the EU Packaging & Packaging Waste Directive (PPWD) and contribute to further fragmentation of the Single market. They make the Spanish market difficult to access for toy manufacturers from other EU Member States.

Pursuant to Article 4(3) TFEU and in line with the principle of sincere cooperation, we believe Spain should refrain from adopting legislation to address an issue which can only be adequately resolved at EU level and in a field which the EU plans to harmonise.

Also, as per Article 6.3 of Directive (EU) 2015/1535 on Technical Regulations, "*Member States shall postpone the adoption of a draft technical regulation for 12 months [.....], if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU".* Given the ongoing revision of the PPWD, we recommend that Spain puts on hold adoption of this Decree.

TIE has specific concerns with the following provisions of the Draft Decree.

- **Article 6 - Prevention objectives.** Article 6(1) of the draft Decree introduces the following prevention objectives that need to be met at state level: 13% packaging waste reduction in weight by 2025, and a 15% reduction by 2030 compared to 2010 levels.
    - These unilateral waste reduction targets go beyond to what is currently stipulated in Directive on Packaging and Packaging waste.
    - They also pre-empt the ongoing revision of the PPWD where the European Commission intends to set EU-wide waste reduction targets at Member State level.
- **Article 8 – Re-use targets.** Article 8 (1) introduces ambitious reuse targets for packaging applications[1] which will have to be achieved at national level in Spain.
    - Meeting such a re-use target is impractical for toys, which require appropriate warnings, model number, etc. as per the Toy Safety Directive (2009/48/EC). It would therefore need to be the exact same toy/model to be inserted in the reused packaging.
    - The proposed targets may have the effect to restrict the free movement of products and discriminate against foreign manufacturers who need to set up specific logistic system in Spain, also because re-use needs to take place on the Spanish market. Thereby, the measures could infringe upon Articles. 34-36 TFEU.
    - The measure also pre-empts the ongoing revision of the PPWD where the European Commission intends to introduce measures to boost re-use of packaging, in selected sectors where there are proven benefits for this approach.

[1] 1) 5% by 2030 and 10% by 2035 for domestic channel; 2) 20% by 2030 and 30% by 2035 for the commercial packaging and reusable industrial packaging.

- **Article 11 - Measures to promote the recycling of packaging waste**. Article 11(3) and (4) asks the producers to ensure that the plastic packaging they place on the Spanish market, and is not made of compostable plastic, meet minimum recycled plastic content requirements by 2025 and 2030
    - This will ban certain packaging which is legally allowed on the market in other EU Member States.
    - This is contrary to Article 18 of the PPWD and infringes Articles 34-36 TFEU.
    - Also, the European Commission has publicly announced its intention to set recycled content targets for plastic packaging as part of the PPWD revision.
    - As per Article 6.3 of Directive (EU) 2015/1535 on Technical Regulations, Member States shall postpone the adoption of a draft technical regulation for 12 months [.....], if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.
- **Article 13.2 – obligation to indicate if packaging is reusable.** The decree provides the labelling obligation to indicate if a package is reusable and display the symbol associated with the deposit, return and refund system or accrediting the participation to an Extended Producer Responsibility (EPR) scheme. Article 13 also introduces the ban to mark packaging as ''environmentally friendly'' or similar labels that may lead to its abandonment in environment.
    - EU Member States are increasingly introducing cumulative or even contradictory marking requirements. The ongoing review of the PPWD represents an opportunity to set common requirements on which information should be provided to consumers and how this should be done.
    - By introducing unilateral marking requirements, Spain is anticipating forthcoming EU legislation, most notably the revision of the PPWD and the recent European Commission proposal for a Directive on Empowering Consumers for the Green Transition. This clearly undermines the effectiveness of actions undertaken at EU level and places unproportionate burdens on economic operators.
- **Annex VIII – Criteria for modulation of contribution to EPR schemes.** A penalty for the use of certain mineral oils (MOSH & MOAH) is introduced.
    - This would lead to an automatic malus which will apply in case economic operators cannot prove that they comply with the requirements. Economic operators might have to adjust their packaging to meet the thresholds. This will function as a barrier to trade.
    - Several national initiatives are targeting the use of MOSH and MOAH in printing ink in packaging. We're concerned by numerous national divergences and recommend Spain assesses the possibility to trigger an EU-approach, e.g. through the REACH Regulation, instead of unilaterally introducing national requirements.

We call on the European Commission and EU Member States to present a detailed opinion asking Spain to address the above-mentioned concerns.

We call on the Spanish Government to refrain from introducing these unilateral provisions and wait for the EU harmonised approach on these measures, which will be introduced by the PPWD revision.

About Toy Industries of Europe

Toy Industries of Europe (TIE) is the voice of the reputable EU toy manufacturers. Our mission is to promote the right of every child to play safely and securely and to promote fair practices and fair legislation, allowing responsible toy companies to continue to grow. TIE's membership includes 18

direct international companies, eight European national toy associations who represent their local manufactures, and seven affiliate members who also have an interest in toy manufacturing.

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