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APPLiA Position on the draft Spanish Royal Decree on the Packaging and Packaging Waste

Summary

APPLiA, the EU Association representing the manufacturers of home appliances, would like to share its comments on the Spanish draft Royal Decree related to Packaging and Packaging Waste as notified to the European Commission on the 6th of May 2022, i.e. Notification Number 2022/325/E-S10E.

While APPLiA supports the general objectives stemming from the draft Notifications focused on packaging and packaging waste reduction reuse, recycling and marking requirements, we would strongly recommend establishing harmonised requirements at the EU-level, instead of diverging national ones. EU-harmonising any related packaging-requirement would consequently avoid disrupting the EU Single Market, while promoting legal certainty to packaging manufacturers, downstream users and any other relevant stakeholder across the Union. APPLiA would like to take into consideration Europe's (The European Organisation for Packaging) principles in their TRIS submission, giving a special remark on the marking concern.

1. Introduction

APPLiA is engaged in striving for a coherent policy framework which would further achieve the Circular Economy objectives, while preserving the Single Market, competition and innovation.

The aim to set reliable and comprehensible packaging and packaging waste harmonised information across the different Member States is crucial to have a well-functioning EU Single Market which would in turn provide legal certainty to the relevant packaging stakeholders. In this sense, APPLiA supports the Packaging & Packaging Waste Directive revision and [we have provided our main concerns to the European Commission.](#)

APPLiA supports the main objectives of the draft Spanish Royal Decree, but we seek that any related measure would be fully coherent with already existing and enforced national obligations related to packaging and packaging waste, thereby ensuring compliance with the Single Market. Concretely, we would like to highlight our different concerns on the proposed Spanish Notification.



For this purpose, we believe that the [EUROPEN TRIS submission](#) as a feedback to the draft Spanish Royal Decree reinforces very well our sectoral concerns. However, with this additional submission, we aim to emphasise specifically on the marking and reuse requirements.

2. Critical issues identified in the draft Spanish Royal Decree

2.1. Packaging prevention and reuse measures

Article 6.1.(a) of the new Spanish Royal Decree sets different goals on packaging waste reduction: To achieve a 13% packaging waste reduction in weight by 2025, and a 15% reduction by 2030, compared to 2010 levels. The Royal Decree sets unilateral and ambitious waste reduction targets, which go beyond what is currently stipulated in Directive 94/62/EC on Packaging and Packaging Waste ('PPWD'). However, it anticipates effectively the revision of such a Directive, as the European Commission will (most likely) seek to set equally ambitious EU-wide packaging waste reduction targets at Member State level. These latter two parallel legislative processes will undoubtedly create confusion in the regulatory framework and additional regulatory hurdles for economic actors operating on the Spanish market primarily.

To avoid creating a situation loaded with legal uncertainties for stakeholders dealing with packaging and packaging waste, we would recommend competent authorities to refrain from setting national targets which would unavoidably deviate from upcoming EU-wide harmonised obligations which would be enshrined in the new PPWD.

Article 8.1 (d) further sets specific reuse goals for commercial and industrial packaging, specifying that the proportion of reusable commercial and industrial packaging, as compared to the total packaging by weight for each of these categories, shall be 20% by 2030 and 30% by 2035. We would like to warn the authorities that this requirement does not consider the specificities of the packaging that is used in the home appliance sector where, in most of the cases and when unpacking the product, it is simply impossible to reuse. It is also equally important to highlight that, for legal reasons, our packaging has particular printed information (e.g. for sorting and recycling purposes), and which is product model specific, valid and relevant. Therefore, a packaging may only be reused to pack the same product model, as originally intended. This latter aspect would need to be rigorously considered when it comes to assessing packaging reusability for the home appliance sector, as it may outline the technical limits of such a measure.

As mentioned above, and in order to create a clear and meaningful legal situation to all stakeholders, we call the Spanish authorities to ensure that any new (national) legal requirement on packaging and packaging waste is fully harmonised with the measures that would be incorporated in the upcoming new PPWD.

In addition, we strongly believe that Spain should refrain from adopting national legislation to address an issue which can only be adequately addressed at the EU level, and in a field which the EU intends to harmonise. This is the case for the deployment of reusable packaging systems.



2.2. Mandatory minimum content of recycled plastic in plastic packaging

The Royal Decree requires producers to ensure that the plastic packaging they place on the market, and which is not made of compostable plastic, meets a number of minimum recycled plastic content requirements by 2025 and 2030, i.e. at least 20% and 30% recycled plastic (calculated as an average of all such packaging placed on the market) by 2025 and 2030, respectively. As a result of such targets, economic operators from across Europe will not be able to place on the Spanish market plastic packaging that does not contain the prescribed amount of recycled content. This latter even if that same packaging would be considered compliant with the PPWD in another Member State. Therefore, we would like to emphasize that such a proposed Spanish-specific measure is contrary to Article 18 of the PPWD, i.e. *Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive.*

Furthermore, the European Commission has publicly announced its intention to set recycled content targets for plastic packaging as part of the PPWD revision. To avoid creating legal barriers to the development of a Single Market for recycled plastic packaging, it is important that (plastic) recycled content targets are set in an EU-wide harmonised manner.

2.3. Packaging marking requirements

Article 13 of the draft Spanish Royal Decree on marking and information obligations sets a number of measures in relation to the labelling of packaging, including (i) the use, on a voluntary basis, of the alphanumerical codes regulated by Decision 97/129/EC to indicate the material composition of the packaging, (ii) the obligation to indicate that a packaging is “reusable” and display the symbol associated with the relevant deposit, return and refund system or accrediting the participation to an Extended Producer Responsibility (EPR) scheme, and (iii) the prohibition to mark packaging with the claim “environmentally respectful” or any other equivalent claim that may lead to their abandonment in the environment.

Further, Article 13.2 specifically calls for a mandatory indication on household packaging, with a view of letting consumers know the fraction or container in which such waste packaging is to be deposited.

In addition to these markings and information obligations as listed above, Article 21.3, which establishes general obligations for EPR schemes, states that accreditation symbols shall be clear and unambiguous and not mislead consumers. In this regard, Article 21.3 also indicates that the “Green Dot” is considered to be misleading to consumers.

We notice that in the current draft Spanish Royal Decree, there is a lack of information on how to comply with these indications, i.e. which symbols/labels/markings/etc. would need to be affixed on the packaging to be compliant with the envisaged new Spanish requirements.

The Spanish marking and information obligation requirements would also add a disproportionate regulatory burden on producers and downstream users of packaging, which would be required to adopt



their packaging executions to comply with the Royal Decree. To date, most companies operating within the Internal Market use only one type of packaging execution for the EU as a whole, or for a group of several neighbouring EU countries. The new Spanish requirements would impede this and require the redesign or restickering of all packaging destined for the Spanish market, or the production of separate variants for that market only, thereby (most likely) ending up in a situation which would be opposite as to mitigating the environmental footprint of products and their packaging.

It is equally important to note that packaging stakeholders are increasingly required to comply with cumulative or even contradictory marking requirements. As an example, the use of the “Green Dot” logo is penalized in France in contrast to the use of the Triman logo and sorting instructions, but is allowed in other Member States and, to date, is even mandatory in Cyprus. In the absence of clear and harmonized measures, stakeholders would need to develop national-specific packaging or use stickers to cover the “Green Dot”. Similarly, the use of the alphanumeric codes, which would be voluntary in Spain, is soon to become mandatory in Italy and Bulgaria.

We therefore call for the complete deletion of these national-specific markings and information obligations as we support that any indication of this type is established in an harmonised-manner across all Member States, hence, at the EU-level through the revision of the PPWD.

3. Conclusion

APPLiA supports the draft Spanish Royal Decree principles, however we strongly see the need to ensure that any related new measures on packaging and packaging waste are established coherently with already existing national requirements, and EU provisions stemming from the PPWD.

In the case scenario where a new Spanish requirement would deviate from an established requirement in another Member State, or even penalise stakeholders as a result of implementing such a requirement, we would recommend the Spanish authorities to refrain from setting those obligations at their national-level. We truly believe that Spain should abstain from imposing unilateral requirements which would further preempt forthcoming EU legislation and create barriers to trade.

As a general principle, APPLiA calls for EU-wide harmonised requirements on packaging and packaging waste, to not create disruptions in the Single Market. We would thus highly support any new measure that would create the appropriate conditions to effectively manage packaging and packaging waste uniformly at the EU-level during the revision of the PPWD.

APPLiA - Home Appliance Europe represents home appliance manufacturers from across Europe. By promoting innovative, sustainable policies and solutions for EU homes, APPLiA has helped build the sector into an economic powerhouse, with an annual turnover of EUR 53 billion, investing over EUR 1.6 billion in R&D activities and creating nearly 1 million jobs.

