

NMWE – Comments on TRIS Notification 2022/818/F

Draft Decree adopting the list of products for which sales in bulk is prohibited for public health reasons

General context

Many initiatives are being taken under the EU Green Deal, to reduce EU's carbon footprint, such as the Circular Economy Action Plan and the EU Single Use Plastics Directive. Under the latter, very ambitious targets have been laid down for the collection of plastic beverages bottles (90% in 2029) and their recycling back into new bottles (30% in 2030).

More policy measures, such as reuse/refill targets, are currently being considered in the Commission's proposal for a Regulation on Packaging and Packaging Waste (PPWR).

In parallel, some member states, particularly France, are advancing initiatives going beyond current EU legislation (for instance by setting targets for packaging reduction or packaging reuse).

France also introduced the concept of 'bulk sale' 2020 in its Consumer Code in February; it is defined as *"sale to the consumer of products offered without packaging, in quantities chosen by the consumer, in reusable containers. Bulk sale is offered on a self-service or assisted service basis at itinerant points of sale"*.

It is against that backdrop that the French draft *"Décret fixant la liste des produits pour lesquels la vente en vrac est interdite pour des raisons de santé publique"* – TRIS 2022/818/F – was notified on 22 November 2022.

The French draft Decree in a nutshell

The Decree lists:

- **Products which may be sold in bulk only under certain conditions** (Article 1, Subsection 2 of the draft Decree) such as single use nappies and cosmetic products. Those products need to be sold only in assisted service or by means of a suitable distribution method for self-service sale in bulk.
- **Products for which sale in bulk is prohibited** (Article 1, Subsection 3) such as frozen products and infant formula and also, *"any products whose sale in bulk is incompatible with the public health obligations provided for by the Regulations and directives in accordance with the Treaty on the Functioning of the European Union"* (Art. 1, Subsection 3, 13).

We understand from the notification message, that France regards natural mineral waters and spring waters as falling within subsection 2 (i.e., products which may be sold in bulk under certain conditions).

Position of Natural Mineral Waters Europe

Our industry is using full recyclable packaging materials (whether glass or PET plastic) and is committed to packaging circularity and resource efficiency and to meeting the set EU collection and recycling targets. It is also committed to increasing its share of reusable packaging where it makes environmental and economic sense, depending on local context.

However, having regard to:

- **Annex I. 1 of Directive 2009/54/EC** which states that “*Natural mineral water can be clearly distinguished from ordinary drinking water by its nature..., by its original purity, both characteristics having been preserved intact ...*”
- **Annex II. 2 (d) of Directive 2009/54/EC** which also states that “*the transport of natural mineral water in containers other than those authorised for distribution to the ultimate consumer shall be prohibited*”,
- **Article 6 of the same Directive**, which states that: “*Any containers used for distribution to the ultimate consumer shall be fitted with closures designed to avoid any possibility of adulteration or contamination*” and,
- **Article 7 and 8** laying down labelling requirements to be found on the containers in which the natural mineral waters are offered for sale,

NMWE is of the opinion that the sale of natural mineral water and/or spring water in bulk is not permitted under applicable EU legislation, namely *Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters*.

Among the key concerns raised by our members are the following:

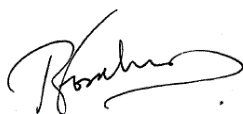
- The transport of natural mineral water in a container other than the one in which the natural mineral water will be sold to consumers;
- The ability of the bulk marketing system to effectively maintain and preserve the main characteristic of the natural mineral water, in particular its original purity and its microbiological wholesomeness until the consumption phase – in strict compliance with Article 4.1 of Directive 2009/54 (absence of corrective measures);
- The absence of the prescribed information (name of the spring and place of exploitation, mineral composition, potential separation technique applied, etc.) at the time of effective consumption by the final consumer.

Conclusions

We therefore call upon the Commission to confirm that Directive 2009/54/EC, in its current wording, prohibits the sale in bulk of natural mineral waters and spring waters and to request that the notified Decree be amended accordingly.

We thank you for your attention and remain available should you have any additional enquiries.

With best regards,



Patricia Fosselard
Secretary General

Natural Mineral Waters Europe has been the voice of natural mineral water and spring water since 1953, and today represents 550 producers. The sector provides European consumers with healthy, natural and high-quality hydration. Pioneers in sustainable management, our members have a long tradition of working in partnership with local communities to safeguard the environment around water resources. Our mission now extends to achieving full circularity for all packaging.

Cc: - Ms. Sabine Pelsser, Head of Unit A1.
 - Ms. Panagiota Filippou, Policy Officer, DG Sante, Unit A1.