

Brussels, 13 July 2017

CEEV COMMENTS ON TRIS NOTIFICATION 2017/245/HR – ORDINANCE ON PACKAGING AND PACKAGING WASTE

On 12 June 2017, the Croatian Government notified a draft ordinance, amending the rules on packaging and packaging waste, to the European Commission under Directive (EU) 2015/1535.

These rules relate to, amongst others, procedures and objectives of packaging waste management; conditions of management of packaging and packaging waste; requirements concerning collection, storage and processing of packaging waste; requirements for production, marketing and use of packaging; labelling methods and requirements; record-keeping and reporting obligations; obligations of producers of packaged products and ways of fulfilment thereof; and include provisions regarding:

- Heavy metal content in packaging;
- Marking of packaging;
- Returnable fee system and the coverage of new beverages;

These amendments to the existing rules on packaging and packaging waste, aims preventing packaging waste generation and encouraging packaging reuse, recycling and other packaging waste recovery procedures, as well as the reduction of final packaging waste disposal.

While, the Comité Européen des Entreprises Vins (CEEV), welcomes the efforts made by the Croatian government to prevent the impact of packaging on the environment of all EU Member States and third countries and reduce such impact, we consider some of the requirements laid down in the ordinance to be disproportionate and in breach with the European legal framework and hinder the functioning of the internal market, creating trade barriers and disruptions and restrictions of market competition in the European Union.

Albeit the Croatian government just notified these new rules, this ordinance has actually been in force since 2015 (Regulation Narodne Novine n° 88/15, 78/16 in 2015 and 2016). It has led to a significant administrative burden on traders and delayed the importation process.

Therefore, the operations carried out by the Croatian services on pre-market-entry preconditions for European wines (namely, barriers to market entry and labelling requirements) are not in line with free movement of wine from other EU Member States, thus breaching Article 34 of the TFEU on free movement of goods.

You will find below our detailed comments on the notified text.

A. BARRIERS TO MARKET ENTRY AND FREE MOVEMENT OF GOODS

According to article 9 of the notified text (on heavy metal content in packaging), a product certification is required. Under this rule, the brand owner or producer of glass bottles is required to provide the FEP with a statement regarding the concentration levels of heavy metals in the packaging. This producer has to obtain the certificate mentioned above for each packaging material it uses for packing of products, by type and composition. He also has to present it to the competent inspection authority upon request at any time.

Operators must also confirm that the bottles comply with EU Regulation 1935/2004 (on materials and articles intended to enter into contact with food), and with EU Regulation 2023/2006 (on good manufacturing practice for materials and articles intended to enter into contact with food). Indeed, according to these new rules (article 23 of the notified text), the Croatian Fund for Environmental Protection (FEP) physically checks the compliance of product packaging with the requirements of EU Directive 94/62 on packaging and packaging waste through analysis. Wine traders are also required to submit detailed product information. These actions have to be repeated every-time the companies place new or amended product on the Croatian market.

Once the Fund has sent confirmation that the product complies with national legislation, the bottles can be placed on the market. However, it seems that there is no system to return the bottles that operators deliver as samples.

The Fund relies on EU Directive 94/62 for some of the requirements that have been implemented since 2015. However, CEEV does not think they are compatible with EU laws, especially under article 18 of the above-mentioned Directive on "Freedom to place on the market" which states "*Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive*", which is the case for EU wines bottled in the EU.

CEEV thinks that the requirements for prior approval by the Croatian environmental authorities are not consistent with Croatia's obligations towards the EU to permit the free circulation of goods that are legally on sale in other EU Member States, neither are the requirements to provide further undertakings to one national authority. As the wine is produced in the EU and bottled in accordance with the EU regulation, there is no legal reason for the products not to be accepted as such on the Croatian market.

These requirements represent barriers to market entry, limit free movement of goods and do not respect the internal market that comprises an area without internal frontiers in which free movement of goods is ensured. It also results in heavy costs for companies that have to provide products, as no system is foreseen to return the bottles.

B. LABELLING REQUIREMENTS

According to the notified text (article 13 on Marking of packaging), the Fund also checks the label of products to ensure they comply with national legislative requirements. These rules mean that additional national labelling requirements apply, over and above the rules set out in Regulation 1169/2011:

A recycling logo has to appear. Croatia imposes wine producers to use the following logo:



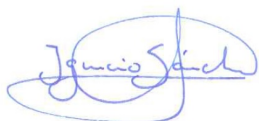
CEEV is not aware of such logo being used anywhere else in the EU. Moreover, it is strikingly similar to a logo that was contained in a 1996 proposal¹ for a Directive to implement article 8 of Directive 94/62 on “Marking and identification system”. This proposal was rejected by Member States on the grounds, among other things, that additional labelling requirements would place an unnecessary burden on industry and would not be understood by consumers. It is therefore particularly surprising that the proposed logo is now required in Croatia.

Given that glass recycling is very well established in the EU, with around 80% of glass bottles being recycled, it is clear that consumers do not need a logo to be reminded that glass is recyclable and the requirement to display such logo is entirely superfluous.

The requirement to include the above-mentioned logo solely for the Croatian market acts as a barrier to the free movement of goods in the internal market as goods without this logo, that are however legally on sale elsewhere in the EU, are not allowed access to the Croatian market. The logo requirement act as technical barriers to trade and is inconsistent with EU law. Therefore, and even though they have been in place for years, such requirements should be removed.

As explained previously, we consider that the different requirements detailed above create barriers to the free movement of wine from other EU Member States. They delay import and are costly for the EU operators, albeit we do not see a legal basis or rationale for their implementation. We believe that EU internal trade would greatly benefit from the prohibition of quantitative restrictions on the movement of goods and of measures having an equivalent effect. This is one of the basic principles of the Union.

Considering the above, we strongly encourage both the European Commission and Member States to record Detailed Opinions under the TRIS procedure, asking for the elimination of some of the rules that are in breach with the single market, and for the suspension of the application of the ordinance as it is until the Croatian government remove those rules.



Dr Ignacio Sánchez Recarte
Secretary General

¹ COM (96) 191 final, in Official Journal C382 of 18 December 1996