

Ms Francesca Stephania Condello
European Commission
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Unit B.2. Prevention of Technical Barriers
Avenue des Nerviens 105
1040 Brussels

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Subject: EUROOPEN's comments on TRIS notification 2017/245/HR ordinance on packaging and packaging waste

I am writing to you on behalf of [EUROOPEN](#) – the European Organization for Packaging and the Environment - an EU cross-industry association representing the packaging supply chain in Europe, independent of any specific materials or systems. Our members are comprised of multinational corporate companies spanning the packaging value chain (from raw material producers to brand owners) plus six national packaging organizations, all committed to continuously improving the environmental performances of packaged products, in collaboration with their suppliers and customers, also in relation to the consumer.

We also wish to avoid the proliferation of disparate initiatives at member state level and hereby share our concerns in relation to the notification 2017/245/HR of the Croatian Government as regards its draft [amendments](#) to the Packaging Waste Management Regulation which would deny the free movement of packaged goods in Europe and likely create trade barriers.

Although EUROOPEN welcomes the efforts made by the Croatian Government to align with the EU rules on on-pack identification of packaging materials, we consider that some provisions, especially under article 9 (on "Heavy metal content in packaging") and under article 13 (on "Marking of Packaging") of the notified text to be disproportionate and damaging for the functioning of the Internal Market in creating new trade barriers.

On the mandatory certification for heavy metal content in packaging (notified art.9)

EUROOPEN questions the compatibility with the EU legislation of this mandatory requirement on producers to obtain from his packaging supplier a certificate guaranteeing that the heavy metal content of the packaging does not exceed the maximum concentration levels¹, and that this certificate must be made available to the enforcement authority on request.

EUROOPEN believes that the requirements for prior approval by the Croatian environmental authorities – which can take up to three weeks - are not consistent with Croatia's obligations towards the EU to permit the free circulation of goods that are legally on sale in other Member States and hence breaches article 18 of the Packaging and Packaging Waste Directive 94/62/EC on "Freedom to place on the Market" which stipulates that *"Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive"*.

The requirement to provide undertakings to one national authority is a significant barrier to the free movement of (packaged) goods in the Internal Market.

On the mandatory "recyclability" and "returnability" marking (notified art.13)

The Croatian Government also notified its requirement on producers to mark packaging as "recyclable" or "returnable", and to indicate the amount of the deposit on beverage containers covered by the deposit scheme.

There is no legal basis for such national legislation in areas of harmonized EU legislation and hence there is also no justification to implement legislation enforcing the use of packaging marking. These requirements are similar to

¹ As specified in Article 11 of Directive 94/62/EC and in amending Commission Decisions 2001/171/EC and 2009/292/EC

those laid down in the 1996 proposal for a directive on marking of packaging (COM (96) 191 final) put forward by the European Commission to implement article 8 of the Packaging and Packaging Waste Directive 94/62/EC on "Marking and Identification system". The proposal received no support from Member States who were not convinced that consumers would understand these logos, while placing unnecessary additional costs on industry. The European Commission finally withdrew it in 2004.

This mandatory marking which has been in force since 2005 in Croatia consists in a trade barrier and tends to distort the competition within the Internal Market. It harms the competitiveness of imported products as packaged goods have to be marked specially for the Croatian market which increases costs associated with market-specific labels and delays imports. In addition, the likelihood that the final cost of such logos is ultimately borne by the consumer should be considered.

Consequently, this hinders access of products originating in other member states to the market within Croatia and should be assessed against Article 34 of the Treaty of the Functioning of the European Union (TFEU) on the free movement of goods. In addition, the exports of Croatian products displaying the mandatory national symbol potentially confuses consumers in other member states.

The Commission should take action in this respect to avoid unnecessary burden to the industry and obstacles to the internal trade within the EU, in line with its previous decision last year as regards similar provisions laid down in a draft legislation notified by Germany².

The use of marking requirements on pack would not even be justified for environment reasons, because sorting of packaging waste is in most cases possible without it. A further assessment of whether such logos would in reality result in higher collection rates and more targeted sorting of packaging waste is required. With respect to the "returnable packaging" marking, the meaning of "returnable" packaging is even not clear in the draft Croatian text, and seems to be confused with "reusable" packaging sometimes.

The draft ordinance also raises questions regarding the proportionality principle. A less burdensome alternative would be to make the marking voluntary and/or to deploy a national public education campaign necessary to raise awareness on packaging's end-of-life and environmental performance.

For all the above reasons, EUROPEN would strongly encourage both the European Commission and Member States to record Detailed Opinions under the TRIS procedure.

This notified text which is jeopardizing the Internal Market highlights even more the importance of retaining the current and sole Internal Market legal base of the Packaging and Packaging Waste Directive as part of the ongoing inter-institutional negotiations on its amending directive. This legal base, in addition to the article 18, helps safeguard the free movement of (packaged) goods and should be maintained.

I thank you in advance for taking our views into consideration and would be happy to expand upon our views on this matter in the meantime.

Yours sincerely,



Virginia Janssens
EUROPEN Managing Director

² In July 2016, the Commission blocked an attempt by the German government to make it mandatory for all deposit-bearing beverage containers to be marked as non-refillable or refillable, arguing that this would be a barrier to trade.