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**4 AUG 2017**

**CROATIA - ENVIRONMENTAL REGULATIONS: TRIS NOTIFICATION 2017/245/HR**

**OBSERVATIONS BY EU SPIRITS PRODUCERS**

spiritsEUROPE is grateful for the opportunity to comment on the law recently notified by Croatia on packaging and packaging waste. The notified text contains rules relevant to the spirit sector in a number of areas. While we are not familiar with the domestic administrative procedures that brought about the notification of the text, it appears to be a retrospective act since several of the provisions have been in force for many years, while others are more recent. We had previously registered concerns about the compatibility of these rules with EU free movement principles. The further occasion to do so, formally, is much appreciated. Indeed, we are extremely grateful that, in an unexpected move, the notified text has actually removed one of the problematic labelling requirements and instead made it voluntary.

By way of introduction, spiritsEUROPE is the trade association representing the interests of the EU spirits industry. spiritsEUROPE proudly represents the most valuable European agri-food export and with it the interests of the spirits sector in 31 national associations as well as of the 8 leading multinational companies.  Distilled spirits are as diverse as the EU itself, spanning 46 product categories and including a host of geographically-specific products that contribute to the culture of their regions.

Our concerns with regard to the provisions set out in the TRIS notification are shown below.

1. Certification Requirement for Packaging

 The requirement for producers and importers to supply Croatia’s Environment Protection Fund (FEP) with a certificate attesting that packaging meets the maximum concentrations of heavy metals, as set out in Directive 94/62 (as amended), was introduced in 2015. It remains unclear why it was introduced and, until now, it was not notified to other Member States even though it had a significant impact on free movement. We and our members have repeatedly registered concerns that it is both unnecessary and acts as a barrier to free movement within the EU.

 While article 9 (3) and (4) of the notified law suggest that the producer or importer only needs the certificate so that it can be shown to the inspection authority on request, in practice the certificate is a pre-requisite to be able to trade. While we understand that producers / importers were initially able to satisfy the requirement through a letter / certificate from company headquarters, in autumn 2016 the rules were tightened and instead the certificate was required to be issued by an accredited laboratory. Furthermore, they have to confirm that the bottle complies with EU Regulation 1935/2004 (materials and articles intended to come into contact with food), and with EU Regulation 2023/2006 (good manufacturing practice for materials and articles intended to come into contact with food).

 Once the FEP has sent confirmation that the product complies, the spirit can be placed onto the market. This process of authorisation can take up to 3 weeks. This means that products legally on sale in other EU Member States are not allowed to be freely traded in Croatia until the FEP has approved the packaging. The requirement for prior approval is not consistent with Croatia’s EU obligations to permit the free circulation of goods legally on sale in other EU Member States. The requirement to provide undertakings to one national authority is a significant barrier to free movement in the internal market.

 Traders are also required (as set out in article 23 (2)) to provide the FEP with a sample bottle for every single new or amended product placed on the market[[1]](#footnote-1). The bottles are not returned. This is a wholly unnecessary requirement and, for high value products, involves substantial losses for importers.

 In other Member States there are controls on the production of packaging and market surveillance activities for goods on sale which ensure that EU legislative requirements for packaging are respected. Hence, under the requirements of article 18 of Directive 94/62, “*Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive*”. Croatia is failing to comply with this free movement principle.

 We would therefore urge the Commission to liaise with Croatia to require the immediate removal of the current certification and bottle sample obligations. spiritsEUROPE believes that the current situation is such a blatant breach of free movement rules that it would not be unreasonable for the Commission, in the event the certification requirement persists, to open infringements proceedings.

2. Recyclable Logo

 Article 13 of the notified text requires products to be marked with an environmental logo, as shown in Annex VI. This has been a requirement for at least 10 years, and probably longer. The logos set out in Annex VI are, for the most part (the two-dimensional Mobius loop - style logo is new), the same as those set out in the Commission’s proposed Directive (COM (96) 191 final) on marking of packaging, which aimed to implement art 8 of Directive 94/62.

 Although Directive 94/62 allows Member States to require a logo, when they looked at the options in detail, and a proposal (96/191) was prepared, they did not accept that the proposed logos were either appropriate or necessary. Among the reasons why the logos were never introduced is that Member States were not convinced consumers would understand them and that they would place unnecessary additional costs on industry. Consequently, they were never enacted and no other EU Member State requires any logos to denote recyclability of glass packaging.

 Throughout the EU about three quarters of all glass packaging is recycled. Given that glass is one of the EU’s most recycled packaging materials, and that consumers are both aware of and actively participate in its recycling, there is no need for a logo to advise consumers in Croatia that they should do something they are already doing.

 The obligation in Croatia to use an environmental logo which EU Member States specifically declined to endorse is a further barrier to trade in the internal market because since it requires producers to prepare labels uniquely for the Croatian market, adding unnecessarily to costs and for a measure of questionable value.

 We hope that Croatia can be urged to remove the logo as it acts as a barrier to intra-EU free movement.

3. Returnable Deposit Logo

 The second labelling requirement under the notified law is the deposit logo, as set out in article 13 and the design of which is in Annex VI. (Detailed rules for the operation of the deposit and return scheme are in articles 22- 27.)

 Croatia is the only country in the EU which requires imports to be subject to a deposit and return scheme. As with the recycling logo above, it is also the only EU country that requires a logo on labels to denote involvement in the scheme. Elsewhere in the EU, active participation in the national packaging waste recovery schemes is considered sufficient to ensure the recycling of packaging materials. (While involvement in some of the national schemes brings a requirement to show the ‘green dot’, it is not a legal obligation and it is not as prevalent as hitherto, with both Germany and France having removed the obligation.)

 Eurostat statistics show that the national recovery system works and that the amount of recovered packaging has grown significantly: for glass the recovery rate grew from 59% in 2005 to 74% in 2014; for paper and cardboard it grew from 84% to 90%; while for plastic it grew from 51% to 70%. A deposit and return scheme, and its attendant logo, is therefore not needed to encourage recycling.

 The effectiveness of Croatia’s scheme is in any event questionable, given that it is mandatory only in larger retail outlets and consumers can, obviously, seek to reclaim the deposit only during opening hours. In addition, the deposit amount of HRK 0.5 equates to around €0.07 so it hardly acts as an incentive for consumers to use the scheme.

 Furthermore, while a deposit and return scheme makes sense for bottles or other containers that are designed to be re-used, such schemes are generally thought only to be environmentally effective in very limited geographical areas. They provide no advantage for packaging of imported products that are not intended to be re-used but which are nonetheless fully recyclable and for which other, well-established, recovery channels exist.

 Given that producers have to pay the deposit to the FEP for every bottle they introduce to the market, and the FEP only then returns to consumers the deposit for the bottles they bring back to retailers, the outstanding money accrues to the FEP. Thus FEP retains the deposits paid by producers when consumers recycle packaging through non-retail recycling mechanisms and also when the packaging is not recycled. That seems to place an unreasonable burden on producers and importers given that they also pay the FEP to take responsibility for packaging through the national packaging waste recovery scheme. In other words, producers and importers are paying the FEP twice for packaging they place on the market.

 There is full support for a national packaging waste recovery system in Croatia, as there is in other markets, but it seems unreasonable to ask producers (a) to be subject to 2 payments for the recovery of their products, and (b) for their labels to have to include an additional logo.

 We therefore hope that Croatia can be urged to remove spirits in glass bottles from the scope of the deposit and return scheme and that, consequently, the logo will no longer be necessary. Failing that, the scheme’s funding mechanisms should at least be significantly amended so that spirits producers and importers are not required to finance the FEP for bottles which they place on the market but which consumers do not recycle via the deposit and return scheme.

4. Packaging Raw Material Logo

 On a more positive note, there has been a requirement for many years, possibly since as long ago as 1997, for the raw materials of packaging to be declared on labels. In essence Croatia took the system set out in Commission Decision 97/129 and made it mandatory even though article 3 of the Decision clearly states that the measure is voluntary. (Along with many of the other environmental measures, Croatia has been the only country that imposed this requirement.) Having urged Croatia repeatedly to remove the unnecessary labelling requirement, we are naturally extremely grateful that, under article 13 (5) of the notified text, the raw material marking scheme has now been made voluntary. That is very welcome news.

Conclusion

spiritsEUROPE is very grateful that Croatia has notified its draft rules on packaging and packaging waste since this provides us with an opportunity to submit views on a number of problematic measures, some of which are longstanding. **We very much hope the Commission and Member States will submit Detailed Opinions since there are several provisions in the draft which give rise to intra-EU barriers.**

In particular we hope Detailed Opinions can be submitted to:

- explain that the packaging certification system for goods from other EU Member States (which is already in place) is a fundamental breach of EU free movement and should therefore immediately be abolished;

- indicate that the recycling logo (which is already required) is superfluous and, as it also acts as a barrier to free movement, should be abolished;

- advise that the deposit and return scheme should be amended so as to remove imported products. (Such a move would thereby also remove the 2nd problematic logo currently required for spirits. Note: in the event that EU and national officials have concerns regarding the spiritsEUROPE request on the deposit scheme, we hope at least they will press for substantial changes in the operation of the scheme so that imports do not face a double payment requirement. )

Naturally, spiritsEUROPE is ready to provide additional information if that would help.

1. If a producer changes the bottle or the label, or if the EAN code changes, this brings a requirement to subject the new ‘Stock Keeping Unit’ (or SKU, to use the industry language) to scrutiny by FEP [↑](#footnote-ref-1)