

СЪЮЗ ПРОИЗВЕДЕНО В БЪЛГАРИЯ UNION MADE IN BULGARIA

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To whom it may concern,

The organization “Made in Bulgaria - Union of Small and Medium Enterprises” (the Union) is an independent professional association of small and medium sized enterprises (SME) producing goods and offering services on the territory of the Republic of Bulgaria. The association has over 25 years of history and more than 1,500 members, including 14 branch organizations. The main objectives of the Union are to defend and guarantee the rights and interests of employers who are members of the Union and to prevent unfair practices on the Bulgarian market (Article 6 of the Statute).

The Union is a full member of the most representable organization of the SME in Europe “SME United” (until recently UEAPME).

It is important for our members that the pan-European rules, basic principles and requirements laid down in the directives are translated faithfully and precisely into our national legislation and that the legal norms that transpose them are clear and transparent to allow uniform interpretation and application to all subjects.

Therefore, the Union is very concerned that the legal regulation of “Natural Mineral, Spring and Table Waters” (Chapter III, Section I of the draft Food Law) should be in line with the objective, meaning and requirements of Directive 54/2009/EC on the exploitation and marketing of natural mineral waters.

For several years, a wide public discussion has been held in Bulgaria regarding the names of bottled waters in the market and, in particular, whether the supply of spring and mineral water under the same trade description is in line with the objectives of the Directive referred to in Recital 5 and the requirements of Art. 8(2) of Directive 54/2009/EC. In the Ordinance on requirements for mineral, spring and table waters intended for drinking purposes (the Ordinance), which is effective in our country, the term “trade description” is still mistakenly equated with the concept of trade name/trademark. This creates a legal opportunity for bottled waters from different springs with different characteristics to be marketed simultaneously

under the same name, which misleads consumers and prevents them from making an informed decision.

Following the adoption of Resolution of 24 July 2015 of the ECJ in case C-207/14 concerning the interpretation of Art. 8(2) of Directive 54/2009/EC, there is no longer any doubt that a determining criterion in assessing the conformity of the trade description with the requirements of Art. 8 of the Directive is not the trade origin (the bottling company) but the characteristics of the water that are associated with the name of the relevant spring and place of its operation.

Despite the categorical interpretative practice, the notification of the draft Food Act (para. 1, item 19 of the Additional Provisions) of 29.06.2016 / 2016/0318/BG contained a definition of a trade name for bottled waters, according to which the trade name is an identifier of the economic origin of the product.

Following the Commission's objection to this definition of a trade name - Communication from the Commission - TRIS / (2016) 03042 of 30.09.2016, section "Natural Mineral, Spring and Table Waters" was revised, published for public discussion and submitted on 26.09.2017 in the National Assembly (signature 702-01.2017). On 11.10.2017 the Bill was discussed and adopted at the first vote by the Agriculture and Food Committee and on 26.10.2017 it was discussed and adopted at the first vote (in principle and in its entirety) by the National Assembly as well.

We are very concerned about the fact that the present notification of the draft Act includes an alternative version of the section "Natural Mineral, Spring and Table Waters" – a version completely different from the version that has been publicly discussed and adopted at the first vote. The version that was publicly discussed and adopted is referred to as Version II. The draft that has not been discussed at all neither in the committees of the National Assembly nor in the specially created working group, is referred to as Version I. In that regard, we would like to draw your attention to the following concerns:

□ Version I differs substantially from the notifications of 29.06.2016 and 27.06.2017. The difference is not only in the absence of a definition of "trade description", but also in the different philosophy. Since the attempts to define the term "trade description" as a trade name and identifier of economic origin have been thwarted, the trade description in Version I has been removed from all the texts as it was deemed unnecessary. Hence, the "trade description" is no longer among the mandatory information in the application for recognition of mineral and spring water extracted in Bulgaria (cf. Art. 69, para. 2), nor in the application for recognition of mineral or spring water extracted on the territory of a third country (cf. Art. 72, para. 1), nor on the list of natural mineral and spring waters recognized by the Republic of Bulgaria and approved by the Minister of Health (cf. Art. 68, para. 3). Since this is in complete contradiction to the spirit and objectives of Directive 54/2009/EC, it prevents and neglects the proper interpretation and application of the requirements laid down in Art. 8 and 9 thereof, among which is the principle: *"one source – one trade description"*.

□ The text of § 6 of the Transitional and Final Provisions of Version I, which legitimizes the violation of the law and the Directive, is of particular concern. Version I allows for an official recognition of all mineral and spring waters marketed as of the date of publication, which contain information on the place of operation and the name of the spring. This is in sharp contrast with the relevant provision¹ of the modified draft, notified on 27.06.017/

¹ §10 of the Transitional and Final Provisions

(TRIS)/(2017) 02649, which stands for the recognition of all mineral and spring waters **that comply with the legal requirements** (given that all of the said waters are being marketed as of the date of publication). Hence, the text in Version I is in direct contradiction to Directive 54/2009/EC as the requirements for the trade description of natural waters are not limited to information on the source and the place of operation. The trade description shall be unique to any unique water, not misleading consumers about its nature, origin or characteristics and complying with the requirements of Art. 8(3) of Directive 54/2009/EC.

□ The term “place of exploitation” referred to in Directive 54/2009/EC has been unjustifiably replaced by the term “place of bottling” in the texts of Version I Art.68. The two terms have a different scope and do not overlap. The concept of “place of exploitation” is broader and covers both the place of bottling and the place of extraction of water. This is essential in cases where water from different fields/springs of different characteristics is bottled in the same locality (bought there by pipes), since it allows different waters to be distinguished by the name of the place of extraction. Bulgaria is a mountainous country rich in natural waters, and therefore it is a common practice for natural waters from different distant springs to be bottled in the same town/village. The replacement of “place of exploitation” with “place of bottling” in Version I is encouraging the legalization of the existing practice that waters from different springs with different characteristics (mineral and spring water) are to be marketed under the same trade description on the grounds that this is the name of the place of bottling, which is in strong contradiction and violation of the Directive.

□ In Version I, the term “trade description” referred to in Art. 8 of Directive 54/2009/EC has been unjustifiably replaced by the term “trade name” in the text of § 6 of the Transitional and Final Provisions, even though in the official translation of the Directive into Bulgarian it has been translated correctly as **trade description**. The introduction of two different terms with the same content can lead to misinterpretation and misapplication of the law and the Directive. At present, the main argument of the operators offering water from different springs under the same trade description is that the Ordinance does not deal with the trade description but with the trade name that indicates the trade origin of the water.

□ Moreover, Version I does not take into account the European Commission’s recommendation of 10.01.2018 on EU Pilot 6788/14/SANCO, according to which “*Bulgaria shall introduce procedural provisions to ensure that the rule “one spring – one trade description” is respected in all cases. These provisions shall regulate the provision of information and coordination between the different administrative bodies involved in issuing permits for operation of springs (for mineral and spring waters)*”. In the proposed Version I, the following issues stand out – the provision of a Standing Advisory Council has been removed; there is no clarity and transparency on how and who chooses the trade description of the water and how and who assesses its legality, including whether its use is prohibited by other laws (for example, if a geographical indication for water from another spring has been registered) or its use violates earlier rights of a third party (for instance, on a registered mark for water).

On the other hand, in Version II the procedure for harmonization and approval of the trade description of water has been described clearly and in detail. Not only this, but also it has been specified in Version II that the trade description is offered by the operator and the assessment of legality is made by the Minister of Health who is assisted by a Standing Advisory Council which includes representatives of the Ministry of Health, the Council of Ministers, the Ministry of Environment and Water, the Ministry of Economy, the Consumer

Protection Commission and the Patent Office of the Republic of Bulgaria (Version II, Art. 65, para. 4 and Art. 71).

Especially concerning is the fact that in the English translation of Version II, the term "*trade description*" is wrongly translated as *commercial description*. Meanwhile, the correct term "*trade description*" also appears in that very same provision (Art. 71, para. 4), which is misleading. At the same time, in the Bulgarian text of Version II the term "*trade description*" has been used, which correctly corresponds to the official translation of Directive 54/2009/EC, where the term "*trade description*" is used. Therefore, the term *commercial description* should not be used in the English translation of Version II, since the correct term "*trade description*" should be the one applied in the document.

We hope that the above-mentioned concerns will help to understand correctly the problems "status quo" that has existed over the years in our country in the sector of natural waters. Likewise, we hope that these considerations will contribute to the creation of clear and transparent rules in Bulgaria in compliance with the European legal framework, in order to ensure predictability and certainty for bottling companies and protection of consumer rights and interests.

Yours faithfully,

Managing director:

Plamen Grozdanov

