

TRIS Notification 2021/118/P (Portugal)

The circular economy is both a challenge and an opportunity for retailers and wholesalers. It gives the opportunity to rethink our business models, create innovative solutions to ensure that we keep the use of resources within our planet's limit. As a business, the sector also supports the strengthening of the EU single market to enable the upscaling of sustainable products.

While we recognise the importance and necessity to provide the right legislative framework to foster enhanced waste management and improve the sorting of packaging waste, the introduction of country-specific requirements conflict with the free circulation of goods, such as in Portugal mandatory labelling information to consumer or in other Member States.

We ask the Commission to request a detailed opinion to Portugal and extend the standstill period allowing for a more in-depth discussion on compliance of the *draft Decree-Law is the fifth amendment to Decree-Law No 152-D/2017 of 11 December 2017* with European legislation.

Conflict with European legislation

We believe the requirements set in the draft Decree-Law do not comply with basic component of the EU legislation:

- There is a strong concern that the proposed new article constitutes a serious barrier to the free movement of goods as it translates into significant additional, technical, financial and administrative burden contrary to **articles 34 and 36** of the Treaty of the Functioning of the European Union
- Furthermore, the draft Decree-law as it stands now is not justified under environmental legislation now since does not comply with the requirements set in **art. 8 of the Waste Framework Directive 2008/98/EC** repeating the requirement of "equal treatment", without placing "a disproportionate regulatory burden on producers". Nor does the draft text echo **art.18 of the Directive 94/62/EC on packaging and packaging waste** also calling for "equal treatment" and free movement of goods.

Analysis of draft decree

Goods circulating in the EU cannot be dissociated from their packaging. Packaged goods, including labelling and/or other information, are created for several EU markets to reduce waste and streamline production. We are hence concerned by paragraphs 5, 6 and 7 of article 28: "*Primary packaging, secondary packaging intended for the consumer and recyclable packaging placed on the market must be marked with the indication of their appropriate destination, namely **the colour of the ecopoint where they must be placed**, in accordance with the terms to be determined. The indication must be printed in a visible, legible and indelible form and may be presented by pictograms, written text, or both*".

We believe this measure to be disproportionate and unfit for reaching environmental purpose for several reasons:

- Specific marking requirements for a national market restrict the free circulation of goods and their packaging in the EU
- This will highly increase costs for economic operators, as different production lines would need to be in place to meet mandatory national labelling requirements

- The need for re-labelling of packaging and/or the need to establish market-specific packaging approaches will also lead to an increased packaging waste, which is opposite to the core objective of this measure
- We also foresee that this measure may be particularly burdensome for our sector, given our position in the supply. Such measures would imply a disproportionate transfer of responsibilities to distributors in case of failure of producers to provide the required information.

Request

We welcome national governments' willingness to take measures to protect the environment. At the same time, while EU legislation is pending, it is difficult to see national measures of this kind as justified in interrupting the free movement of goods, particularly for retailers operating across EU borders. In view of this manifest incompatibility with EU law, EuroCommerce requests the European Commission to:

- issue a detailed opinion and subsequently extend the standstill period from 3 to 6 months;
- seek additional information and clarification from the Portuguese State with regards to the concerns raised in this submission;
- require the Portuguese State to modify the draft decree order to comply with EU law;

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