

EUROPEN's comments on TRIS notification 2024/0560/IT (Italy)

2023 Annual draft law for the market and competition, Chapter II, Article 21 (Amendments to Legislative Decree No. 206 of 6 September 2005)

1. Object of the TRIS contribution

On 7 October 2024, the Italian Government notified to the European Commission [Article 21 of its 2023 Annual draft law for the market and competition](#), amending the Consumer Code (Legislative Decree No. 206 of 6 September 2005) by introducing in the code Article 15a on “Measures to counter the commercial practices of resizing pre-packaged products”.

The proposed measure aims to regulate the so-called phenomenon of ‘Shrinkflation’, i.e. a practice by which a producer reduces the quantity of a product inside the packaging while keeping the price unchanged or increasing it. The obligation is set to apply to producers and distributors operating in Italy who offer for sale a consumer product, and requires them to affix a specific label on the sales packaging for a period of six months to inform consumers about a reduction in quantity and the increase in the price of a product in percentage terms.

The following draft measure is the object of this contribution (English):

- ‘1. Producers who offer for sale, also through distributors operating in Italy, a consumer product that, while maintaining the previous packaging, has undergone a reduction in the nominal quantity and a related increase in the price per unit of measurement, shall inform the consumer about the reduced quantity and the increase in the price in percentage terms, by affixing a specific label with special graphic highlighting such in the sales packaging.
2. The obligation to inform referred to in paragraph 1 shall apply for a period of six months from the date on which the product is displayed in its reduced quantity.’,

EUROPEN contests the lawfulness of the above-mentioned measure on the following grounds:

- > The proposed measure will impede the placing on the market of packaging that is fully compliant with the provisions of the EU packaging legislation, thus being contrary to Article 18 of the Packaging and Packaging Waste Directive (PPWD).
- > The obligation will create unjustified barriers to intra-EU trade and consequently amount to quantitative restrictions on imports or measures having equivalent effect, which are prohibited by Article 34 of the TFEU.
- > If adopted, Article 21 will have negative economic impacts on economic operators. The impact of the proposed measure is even greater and disproportionate than a simple marking obligation as the labelling requirement would be mandated only for a period of six months from the date on which the product is displayed in its reduced quantity. Economic operators would thus have to redesign the packaging twice, in a short period of time, or utilise stickers that will need to be applied and removed manually, which will require significant human and financial resources.

- > The obligation will run counter to some of the sustainability requirements put forward by the upcoming Packaging and Packaging Waste Regulation (PPWR), amending the PPWD and due to enter into force in Q1 2025.

2. Infringement of EU legislation

The measure proposed by the Italian Government infringes EU legislation and TFEU provisions on Single Market.

- > The notified text infringes **Article 18 of the Packaging and Packaging Waste Directive (94/62/EC)**, which provides that, even if Member States are allowed to go beyond the requirements laid down in its provisions, they “*shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive*”. The measure analysed as part of this contribution will effectively impede the marketing of packaged goods in Italy that are fully compliant with the PPWD and are therefore in violation of Article 18. It is also noteworthy that the legal basis of the PPWD is Article 114 of the TFEU. This further limits the discretion of Italy vis-à-vis imposing additional requirements on packaging in contradiction with Article 18 of the PPWD.
- > According to established case law, labelling requirements must be regarded as barriers to intra-EU trade in that they directly affect the product and thus trade within the EU. In the absence of harmonized rules, **Article 34 TFEU** prohibits “*quantitative restrictions on imports and all measures having equivalent effect between Member States*”.
- > Any such restrictive measure can only be justified by one of the public interest grounds set out in **Article 36 TFEU** or by one of the overriding and mandatory requirements developed by case-law in the EU Court of Justice. Such rules must be necessary in order to attain legitimate objectives and be in conformity with the principle of proportionality, which requires that the least restrictive measure be used. The Italian Government has not provided justification on the proportionality of the proposed measure in its notification, and the proportionality of the requirement can be questioned on several grounds:
 - Even if the intended objective to protect consumers and provide them transparent information in relation to the actual quantity of the product purchased and the cost actually incurred would be considered legitimate, the measure is not proportionate as this objective can be achieved by less restrictive measures with a lesser impact on intra-Community trade. For instance, instead of mandating such label to be affixed on packaging, increasing manufacturing costs and disrupting the free movement of goods, the information could be made available at the point of sale (e.g. on shelves). A similar measure [is in place in France](#) since 1st July 2024, and provides the possibility to inform the consumers on packaging or on a sign placed next to the product on shelves. Spain is also considering adopting such a measure, enabling the information to be displayed at the point of sale. This would be far less restrictive than forcing companies to change the packaging of products marketed across multiple Member States.
 - The proposed measure is set to apply only for a period of six months from the date on which the product is displayed in its reduced quantity. Economic operators would thus have to redesign the packaging twice in a short period of time. As an example, indicative cost per artwork change would amount to approximately € 1000-2000, which include evaluation by a regulatory specialist to ensure veracity of all other mandatory labelling requirements. Even if the latest text of Article 21, as amended during the legislative process in the Italian Parliament, foresees the possibility of applying stickers on pack this does not remove the disproportionate trade barriers. The stickers will have to be applied and removed manually, at the end of the six months’ period. A worker can apply on average approximately 250 packaging labels per hour. This would require significant additional manpower, diverting the allocation of human and financial resources away from other business activities.

- The notified text does not foresee transition periods. Following the amendments to the text adopted by the Italian Parliament, the unilateral obligation is set to enter into force on 15 April 2025, thus foreseeing an insufficient timing for the artwork change or for the production of the stickers so that they can be manually attached on each pack.
- > Although the notified text is still subject to a TRIS standstill period (extended until April 2025) and received a detailed opinion from the European Commission, the Italian Senate adopted the measure as part of its [Annual law for the market and competition](#) on 12 December 2024 (see Art. 23), thereby infringing Article 6(1) and 6(2) of **Directive (EU) 2015/1535 on the Technical Regulations Information System**.

3. Conclusions

Pursuant to the EU principles of subsidiarity and sincere cooperation, Italy should abstain from adopting such a unilateral requirement which will create barriers to trade. Based on the findings from our contribution, we submit the following requests to the European Commission:

- to adopt a detailed opinion, before 8 January 2025, concluding that the notified text may create barriers to the free movement of goods in Europe and should not be adopted as such since it contravenes TFUE Single Market provisions and EU legislation.
- to inform Italy that if it wishes to proceed with adopting this obligation, it should ensure Article 21 is amended so that the goal of the measure is still met, i.e. informing consumers, without any disruption of the Single Market.
