Letter to the European Commission with comments from producers of electrical and electronic equipment concerning Notification 2022/0325/E related to the draft Royal Decree on packaging and packaging waste

Introduction

On 6 May 2022, Spain submitted a draft royal decree on packaging and packaging waste under notification number 2022/0325/E — S10E. It is intended to replace Decree 11/1997, last amended in 2011, in order to meet the new requirements for the circular economy at Community level. In order to comply with the obligations of producers, the adoption provides for transparency, monitoring and control. In addition, new rules on labelling of packaging shall promote high quality recycling, which is at the third level of the waste hierarchy. However, the prevention of packaging is highlighted as the highest objective of the waste hierarchy.

The Association for the take-back and recycling of waste electrical and electronic equipment (VERE) welcomes further regulations for the protection of the environment and measures to make all obliged entities fulfil set obligations equally. However, the implementation of the above mentioned leads to the contrary to the objectives of Directive 2018/852 such as uniform transposition and the avoidance of packaging waste. The identification of contributions in invoices and the country-specific labelling regulations, in which VERE sees an overregulation, as well as the prohibition on the use of the Green Dot are to be mentioned in this context. In addition, VERE also sees the verification of compliance by customs as an unjustified impediment to the free movement of goods.

VERE is an international community for the optimal organisation and execution of all obligations and consequences arising from environmental laws for manufacturers, importers and distributors. With over 3,900 members, VERE represents the interests of small and medium sized companies and supports them in implementing and complying with environmental laws.

Financial contribution in invoices

Article 16(1) allows Product Producers to submit a simplified quantity declaration as long as the packaging weight placed on the market in a calendar year does not exceed 15 tonnes. This is a sensible regulation to reduce bureaucracy. It saves resources. On the other hand, the obligation to indicate the financial contribution pursuant to Article 23(5) undermines the sense of that simplification. Flat-rate fees for certain quantities of packaging, which are currently paid by small producers to the take-back system in Spain, will no longer be possible. In addition, record keeping for the quantity of packaging consumed in order to determine the exact contribution for disposal represents a considerable effort. Moreover, programming of additionally required IT systems is associated with a significant time and cost factor.

In order to monitor the compliance with regulations in accordance with financing the waste management, the indication of the registration number, as required by Article 15(3), should be sufficient. This is a proof to the competent body that the product producer is registered. A comparison of the reported quantities with the take-back system is as revealing as the reconciliation of contributions paid.

Furthermore, it remains unclear how contributions are reflected in downstream invoices along the supply chain.

Country-specific information

Article 34 TFEU prohibits measures which impede, directly or indirectly, actually or potentially, trade between Member States within the meaning of the Dassonville ruling (Case 8/74 [1974] ECR 837). Requirements for packaging labelling, face product producers with the challenge of redesigning the packaging. This requires a significant financial effort and sufficient time. Distributors who purchase products from a third country face the challenge of adding additional labels to products or pass on the implementation of labelling requirements to their suppliers. Different labelling rules in the Member States of the EU, which become known and enter into force at different times, thus constitute a barrier to the free movement of goods.

For VERE, the requirement to apply the phrase ‘no abandonar en el entorno’ (do not abandon in the environment) on compostable packaging is particularly unsuitable for EU-wide use. An inscription in Spanish does not make sense in any other Member State. A separate packaging for each country would require that the product is already planned in advance for a given country. Smaller manufacturers and importers in particular do not generate sufficiently large sales to keep their own packaging for each country. And even for large producers, such an approach is neither economical nor sensible.

Compliance with regulations for each individual country with only one packaging design, in turn, may require larger packaging or additional labels,

which is not only contrary to the highest objective of the waste hierarchy - the prevention. It also leads to an overload of information, which tempts the end user to disregard the inscriptions. From VERE point of view, the number of end-users who decide to throw the packaging into a waste container instead of in the wild, just because of this sentence, will not have a noticeable impact on the environment.

Green dot

The take-back system in Spain with a monopoly position has chosen the Green Dot as a symbol for identifying the reported packaging. The use of this symbol on the packaging is required by Decree 11/1997. For the use of the registered trademark, Green Dot in turn requires the acquisition of a licence per country, which is shown by legal disputes such as case C-341/01 (EuGH)[1]. The abolition of that provision is in the sense of a free market economy. The ban, on the other hand, is of little help. The prohibition on the use of the Green Dot symbol in France under Article 1 L.541-10-03 was annulled by the judgment of Conseil d'État, 15/03/2021, 450160. This makes it difficult for producers to comply with legal regulations. Moreover, the reasoning that a symbol that has marked every household package for years leads to confusion is hardly comprehensible. In addition, a transitional period of 18 months according to the new packaging decree is also very short. A new design for the packaging needs to be generated, only then can the printing be changed. However, already printed packaging still needs to be used up.

Sorting instructions

Informing consumers about the correct sorting of packaging waste is a sensible way to promote high recycling rates. Directing the public's increased attention to waste prevention and resource conservation, especially in the field of education, is an effective measure. Education campaigns are well suited for this, as stipulated in Article 23(2)(b). These are financed by producers in accordance with the polluter pays principle. In addition, illustrations and instructions on the collection containers, as already found in the streets of Spain, are eye-catching. Mainly those consumers who are already informed and are not sure about the nature of the packaging take a look at the packaging. Therefore, a marking of the packaging to identify the material in accordance with Commission Decision 97/129/EC might be of use. However, educational campaigns on the use and meaning of alphanumeric codes, including voluntary use, would be necessary in this context.

According to Article 31(3) consumers must separate the packaging waste according to the instructions on the packaging. The labelling referred to in Article 13(2) must therefore be specifically adapted to the corresponding collection system. Collection and disposal systems are set up differently

[1] https://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-341%252F01&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=de&avg=&cid=7952402

within the internal market. An EU-wide sorting instruction does not comply with these different collection systems. The sorting instructions must also be understood in Spain. Prior knowledge is essential for understanding and observing sorting instructions. These are achieved through educational campaigns and the labelling of waste containers. Recital 20 of Directive (EU) 2018/851 stresses that the implementation of the waste hierarchy should not affect the free movement of goods in the internal market. However, a country-specific sorting instruction impedes the free movement of goods as described above. It can also lead to increased packaging volumes.

Inspection by customs

In general, it is also desirable for VERE to strengthen controls to detect and avoid free-riders. Customs control pursuant to Article 52(3) is an appropriate means of supply to households. According to the producer definition, however, a wholesaler is not yet obliged to register at the moment of import. Thus, prior to customs clearance, in the event of a transfer of the products to wholesalers, registration fails to fulfil the purpose of that registration, namely to ensure the financing of disposal in the Member State in which the packaging ends up as waste. The entry of a registration number from another Member State in the customs documents, as recommended by the Ministry of Industry, Trade and Tourism in the published FAQ[2], is a good solution for the cases where the registration number can be entered for the already established downstream purchases.

Looking at other Member States

The detailed labelling rules in France and Italy are already causing difficulties for producers in the design of packaging. The mandatory labelling for only France takes up a lot of space for packaging. At the same time, the legally required marking for Italy can take up much of its own place. But, it is not compatible with that for France. Detailed explanations on the implementation will soon be put in force[3]. Setting detailed rules deprives companies of even more opportunities to use one label for several countries. The requirement to print the Möbius loop in Bulgaria on all packaging leads to an obligation to have all packaging certified as recyclable in Italy by an accredited institute for a lot of money.
The use of the alphanumeric code was required several years ago in Lithuania and Romania. In both countries, the use is now voluntary. In Malta, Latvia and Bulgaria, the alphanumeric code is currently mandatory on packaging. In Italy, the transition period ends in December 2022. Then the use is also mandatory there. In Luxembourg, a draft with the obligation to use the code is about to enter into force.

Conclusion

[2] https://comerciomig2.serviciosmin.gob.es/WEBEstacice/ayuda/PRESENTACION_ROHS_AMPLIADA_V1.pdf

[3] https://ec.europa.eu/growth/tools-databases/tris/index.cfm/it/search/?mLang=IT&num=196&trisaction=search.detail&year=2022

The labelling requirements laid down in Article 13 as well as the requirement to include the disposal contribution in invoices and other business documents impede the free movement of goods. There is no uniformity within the internal market. Labelling requirements disregard the first level of the waste hierarchy for the promotion of the third level. There is an urgent need for a strict EU framework for uniform labelling to promote recycling rates, to which Member States are bound. On behalf of its members, VERE urges the European Commission to intervene and stop the further development of divergent labelling rules in individual Member States in order to allow producers to have a legitimate market presence throughout the EU.

VERE also encourages the deletion of the provision to indicate the financial contribution in invoices. This does not provide any added value in the verification of compliance with producer obligations, but results in a disproportionate additional effort.

The checking of the registration number by customs only makes sense for those transactions in which an obligated party is involved. When checking the registration number by customs, a solution must be created for wholesalers.

VERE also supports the comments already submitted by the industry associations entitled “Joint industry comments on TRIS notification 2022/325/E (Spain)”.

VERE Association would be pleased to have its suggestions considered and is available for further discussion.

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