



The Brewers of Europe

Secretary General

Mr. Giuseppe Casella
Head of Unit B2, DG GROW
European Commission
Avenue d'Auderghem 45
1049 Brussels
Belgium

Brussels, 18 January 2021

0221DIV

Dear Mr. Casella,

Re: **Spanish TRIS notification 2020/658/E Preliminary draft law on waste and contaminated soils**

The Draft Law as notified by the Spanish authorities aims at transposing Directive 2018/851 on waste and Directive 2019/904 on the reduction of impact the of certain plastic products on the environment. It also establishes a tax on the production, import and intra-EU acquisition of non-reusable plastic packaging (broad scope) for its final use in the Spanish market, set to enter into effect on 1 July 2021 at a rate of EUR 0.45 per kilogram (Articles 59 to 75 Spanish version). This tax provision is not notified to the European Commission, though.

The proposed design of the tax will discriminate between Spanish and non-Spanish products. Article 68 provides that the tax base may only be reduced by the amount of recycled plastic used by the packaging manufacturer if the recycled plastic comes from national origin (not foreign origin). This will create an unjustified obstacle to trade between Member States of the European Union, making very difficult for a manufacturer outside Spain to claim a tax reduction compared to a Spanish manufacturer.

Furthermore, taxpayers which are not established on the Spanish territory will have to appoint a tax representative in Spain and will have to fill in specific registers, which will have to be submitted to the relevant authorities every three months. The added financial and administrative burden will not only result in an unfair competitive advantage for Spanish competitors versus non-Spanish ones, but they will also run counter to the goal of developing a fully integrated European Union market for secondary raw materials.

Title IV of the Draft Law will impose several additional obligations on producers in the context of the Extended Producer Responsibility. Producers will have to transmit periodical information to the authorities on the products placed on the market. When producers are not established on the Spanish territory, they will have to appoint an authorised representative responsible for fulfilling these obligations.

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The tax exemption, which only applies to recycled plastic originating from Spain, would thus result in both a custom duty and a quantitative restriction to intra-European Union sales, without justification or proportionality as to the environmental goal pursued by the draft law.

Additionally, the obligation for producers based in other Member States to appoint an authorised representative in Spain to comply with EPR obligations is considered to be exceeding the requirements set in the Waste Framework Directive. The draft law prescribes companies to do so whilst Article 8a of the Waste Framework Directive tables this as option. This would again result in an illegal barrier to trade and would put non-Spanish producers at a disadvantage compared to Spanish ones.

For the above reasons, The Brewers of Europe invites the European Commission to issue a detailed opinion which addresses the non-respect of European legislation and an infringement of the internal market.

Yours sincerely,



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