



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2025) 1061

Directive (EU) 2015/1535

Notification: 2024/0560/IT

Forwarding of the response of the Member State notifying a draft (Italy) to comments (5.2) of Sweden.

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1. MSG 201 IND 2024 0560 IT EN 08-04-2025 10-04-2025 IT ANSWER 08-04-2025

2. Italy

3A. Ministero delle Imprese e del Made in Italy

Dipartimento Mercato e Tutela

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Divisione II - Normativa tecnica - Sicurezza e conformità dei prodotti, qualità prodotti e servizi

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Ufficio Legislativo

4. 2024/0560/IT - C00A - AGRICULTURE, FISHING AND FOODSTUFFS

5.

6. Response note to the European Commission's detailed opinion and comments, as well as Austria's and Sweden's comments and Spain's detailed opinion.

With reference to the notification specified in the subject, the Commission, with communication TRIS/(2024)3325 of 12 December last year, issued a detailed opinion pursuant to Article 6, paragraph 2 and formulated observations, together with Austria and Sweden (with communications TRIS/(2024)3418 of 18 December last year and TRIS/(2025)0057 of 8 January last month), pursuant to Article 5(2) of Directive (EU) 2015/1535; Spain also issued a detailed opinion pursuant to Article 6(2) with communication TRIS/(2025)0852 of 26 March last month

The issuance of a circumstantial opinion resulted in the extension of the terms of the mandatory abstention period from the adoption of the notified measure, which are now set to April 8, 2025.

With reference to these comments, the following is represented.

As a preliminary remark, it should be noted that the draft technical rule notified by Italy on October 7, 2024 was amended in the Parliamentary work. The current text is as follows:

Art. 23 (formerly Art. 21)

Provisions on repackaging of prepackaged products.

1. After Article 15 of the Consumer Code, set forth in Legislative Decree No. 206 of September 6, 2005, the following is inserted:

"Article 15-bis (Provisions on repackaging of pre-packaged products).

1. Producers who place on the market, including through distributors operating in Italy, a consumer product that, while maintaining the previous packaging unchanged, has undergone a reduction in the nominal quantity and a related increase in the price per unit of measurement dependent on them, shall inform the consumer of the reduction in quantity



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by affixing, in the main visual field of the sales package or on a sticker label, the following wording: "This package contains X (unit) less product than the previous quantity."

2. The information requirement in paragraph 1 shall apply for a period of six months from the date the product concerned is placed on the market.

3. The provisions of this article shall apply as of April 1, 2025."

In light of the new wording of the technical rule, it is also possible to account for the comments of the Commission and member states (Austria, Sweden and Spain).

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Detailed opinion of the European Commission with communication TRIS/(2024)3325 of December 12, 2024

The Commission, in specifying that labelling requirements aimed at informing consumers of the actual quantity of product purchased are not among the matters for which the Packaging and Packaging Waste Directive (Directive 94/62/EC) provides for full harmonization, notes, however, that placing a label on packaging could have an 'equivalent' effect to a quantitative import restriction, which is prohibited under Article 34 TFEU. Notwithstanding this, even if a measure is considered contrary to Article 34 TFEU, it may still be justified under Article 36 TFEU or on the basis of one of the overriding requirements of the general interest recognized by the CJEU, if the measure-especially if it is likely to restrict the free movement of goods-is justified on particular grounds and its regulation is nevertheless appropriate to ensure the achievement of the legitimate objective pursued, without going beyond what is necessary for its achievement. Although the CJEU recognizes consumer protection as an "overriding need" that can, in principle, justify certain restrictions on the free movement of goods, the Commission objects that a measure requiring a specific label to be affixed to each product does not seem proportionate for the purpose of guaranteeing the objective pursued, since it could, the same, be fulfilled through the display of a label at the point of sale, in close proximity to the product category concerned. It also points out that affixing a specific label in the sales package would require manufacturers to incur specific costs to adapt their products only for the Italian market, resulting in costs and the need to organize compliance procedures, implying a significant regulatory burden on economic operators.

With regard to the objections raised, without prejudice to the acknowledged non-applicability of the packaging directive to the present case, it is pointed out that the current version of the draft technical regulation no longer refers to an obligation on the part of producers to inform the consumer about the price change in percentage terms, but merely imposes an information obligation on producers about the fact that the quantity of the product within the package has been reduced. In fact, this information obligation responds to the more general standard of transparency required in the context of business practices between professionals and consumers, and is embodied in the need to properly inform the latter in order to ensure free, informed and informed negotiation choices.

Fully falling within the hypotheses of "overriding needs" of general interest, as elaborated by the European Court of Justice, it is believed that the rule in question can nevertheless be considered compatible with the derogations provided for in Article 36 of the Treaty, as it fulfils a hitherto unaddressed need for transparency.

In fact, the identification of producers as obligated parties is deemed necessary because it is only on them that the commercial choice to change the quantity of product within the same package falls; with the real risk that, if this variation is not reported (at the time of its introduction into the national market and before it is put on sale), the consumer will not have the useful information to parameterize the quantity of product purchased to the real cost incurred.

On the other hand, the affixing of graphic highlights bearing information on product quantities is no stranger to commercial practices: think of the informative labels, affixed by the manufacturer, indicating the percentage increase in the quantity of product in a certain package, useful to make the purchase of the same good more attractive and convenient. Therefore, this technical standard speculatively proposes to make such graphic highlighting mandatory even when the quantitative change in the product is decreasing. If, in fact, the former responds to a legitimate interest of corporate marketing, the latter responds to a more general interest of consumer protection in terms of transparency and is to be considered all the more necessary since the lack of information, in this case, is solely to the disadvantage of the consumer.

The effect on price disclosure, which is not the subject of this provision, will be consequential and automatic, already



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regulated by Legislative Decree 84/2000, on "Implementation of Directive 98/6/EC on consumer protection in the indication of prices offered to consumers."

With respect to the phenomenon regulated by the Italian legislator of Shrinkflation, on which as is well known France and Romania have also issued a specific provision, the EU Commission also recognizes the compatibility of the intervention with the imperative requirements, aimed at the protection of the consumer in order to counter an objectively underhanded and non-transparent practice towards the latter.

This need also emerges from the findings in the Consumer Conditions Scoreboard 2025, a document that aims to monitor the consumer ecosystem in the 27 EU member states. It was found that 74 percent of European consumers noticed--in addition to the general price increase--a reduction in the size of consumer product packaging, as well as a decrease in the quality of consumer products, without a corresponding decrease in the purchase price.

Proposing the same packaging that consumers are accustomed to, keeping the price unchanged but reducing the product content, is unacceptable behaviour that violates the principle of transparency and fairness. The EU Commission agreed with this conclusion, although it considered that the objective could be achieved in ways that are in line with the principle of proportionality, i.e., less burdensome for producers, such as through a notice on the shelf rather than directly on the packaging.

As for the complaints about the proportionality of the measure in relation to the objective pursued, it should be pointed out that, for example, in comparison with the regulations recited on the same subject, by France and Romania, the rule of the Italian legislator stands on a different level.

First of all, the purpose of this rule is to target the phenomenon from the very beginning, that is, from the moment when the practice of product reduction is put in place, because that is the genetic moment of the lack of information to the consumer. The effect on price is a subsequent and consequential phenomenon with respect to the initial (producer's) willingness to make the quantity reduction.

Second, the Italian legislature's choice to place the transparency obligation on the producer, rather than the distributor, responds to the need to also take into account sales made in small businesses (which in Italy are still the majority compared to large retailers). In fact, the merchants of such small stores do not have adequate bargaining power vis-à-vis suppliers, so it is possible that compared to large retailers, they may not receive all the necessary information regarding changes made to the quantity of product. The Italian regulation, in fact, does not distinguish between small establishments and medium and large sales facilities, as is the case, for example, with the French regulation, which limits the obligation to establishments larger than 400 m<sup>2</sup>, considering that "by virtue of the principle of fairness of transactions, as soon as the supplier changes, during the course of the year, a product purchased from a distributor, he is obliged to inform the distributor."

Furthermore, since the Italian rule provides that the information is to be provided either by affixing it in the main visual field of the sales package or in an adhesive label, the possibility of also (alternatively) providing it by means of an adhesive label points out that such a label can be affixed at a time subsequent to the packaging of the product, i.e., at the time the product is placed on the Italian market until the time of its position for sale. In this case, no additional burden would be placed on the producer with respect to the packaging of the product. This approach is corroborated by the fact that in placing the information obligation on the producer, the rule under consideration expressly says that this can also be done through distributors operating in Italy, by which is meant all the operators in the chain placed downstream of the product's placement on the Italian market, up to the moment when the product is placed on sale.

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Comments of the European Commission with communication TRIS/(2024)3325 of December 12, 2024

The Commission notes that it would be important for Italian authorities to provide more clarity to operators regarding the specific characteristics that the "special graphic highlighting" should have.

In this regard, it is reiterated that in the current wording (amended from the notified draft) of the technical rule, the obligation to provide information about the price increase in percentage terms has been eliminated, with only the obligation remaining on manufacturers to provide information about the fact that the quantity of the product within the package has been reduced "by affixing, in the main visual field of the sales package or on an adhesive label, the following wording: [...]". The specific characteristics that such "wording" must have are already provided for in current legislation, both national and European. And indeed, on the one hand, the Consumer Code (Legislative Decree 205/2006, see Articles 5 to 12) contains provisions to ensure, in general, that commercial information provided to the consumer is



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appropriate to the communication technique used and expressed in a clear, understandable, clearly visible and legible manner; on the other hand, Regulation (EU) No. 1169/2011, on the provision of food information to consumers, indicates strict requirements about the characteristics of labels to be affixed to products.

In addition to what is already provided for in the applicable current regulations, the proposed technical rule merely specifies the textual content that such "wording" must contain, which specifically is as follows: "This package contains X (unit) less product than the previous quantity."

It is therefore considered that, without prejudice to the provisions already in force, the newly introduced obligation is a simple matter of integrating it into the company's organisation and that, as stated above, it can also be carried out downstream in the production chain and as part of the operations already foreseen, since it takes the form of an ancillary, eventual and subsequent operation resulting from the changes made and related to the information that producers must already comply with when they decide to change the quantities of product contained in the packages. In this case, such fulfilments meet a simple but necessary need for transparency to consumers.

The Commission also notes that consideration should be given to providing an appropriate transition period in order to allow the producers concerned sufficient time to adjust to this new requirement.

In this regard, it is represented that the initial deadline for the application of the technical rule was first postponed to April 1, 2025 during parliamentary consideration of the annual market and competition law, in order to allow for the receipt of comments from member states and in order to allow sufficient time for affected manufacturers to adjust to this new requirement. Most recently, this deadline was postponed to Oct. 1, 2025 as provided by Article 13(1e) of Law Decree Dec. 27, 2024, No. 202, converted with amendments by L. Feb. 21, 2025, No. 15.

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Comments of Austria with communication TRIS/(2024)3418 of January 3, 2025

Austria claims that the notified draft technical regulations are incompatible with EU law for numerous reasons. In light of the new wording of the technical standard-which imposes the information obligation on manufacturers only with reference to the reduction in the amount of product within the package, and no longer with reference to the percentage increase in price-the following is represented.

Presentation and packaging of products:

Austria notes that entrepreneurial freedom is expressed, among other things, in the choice of packaging, its design and size; and that packaging changes are complicated and costly for companies, given the limited availability of the same, associated with long lead times from the coronavirus crisis.

On this point, it is pointed out that the technical regulations do not cover the choice of packaging, nor its design or size, these being the sole prerogative of business choices. Instead, the regulations concern the requirement to affix a statement specifying any quantitative variation in the product contained in the same: operators will choose whether this statement will be affixed in the main visual field of the sales package or on a sticker label. In the latter case, the label may also be affixed at a later time on the product packaging (as part of the production chain consequent to the placing of the product on the Italian market).

Packaging sizes:

Austria notes that a clear discrepancy between the content and size of packaging may be legally relevant in the case of food products "as misleading to the consumer." Austrian case law, based on existing deception regulations, has clarified that packaging is considered deceptive when it is filled to less than 50 percent without any understandable reason.

In this regard, it should be noted that the cases covered by the proposed technical standard (quantitative variation in the contents of a package) are outside the scope of cases in which the packaging is filled to a level of less than 50 percent without any comprehensible reason (so-called "deceptive packaging"); instead, it concerns cases in which the same packaging, without prejudice to compliance with the minimum quantitative percentage of product contained therein, undergoes a reduction-sometimes minimal-of the product without this being properly reported.

Quantity actually contained in a package (net quantity):

Austria still notes that the EU Regulation on the provision of food information to consumers contains provisions on the



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technical characteristics that certain information-such as information on the net quantity of a product-must possess to ensure good legibility. Therefore, he believes that a look at the declared net quantity already provides information about the amount of contents actually present in the package.

The proposed technical standard aims to ensure that the information on the amount of product actually contained in the package is clear and legible, with a view to transparency in order to protect the purchasing choices of consumers, who, although reasonably attentive and circumspect, may not immediately perceive the non-obvious variation in the product purchased, especially for those consumer products they are used to buying.

Austria further notes:

- that the principle of price transparency to consumers enshrined in EU law in Directive 98/6/EC on the indication of prices also includes the labelling of unit prices, which must be guaranteed by the retailer. Instead, the proposed technical regulation assumes that manufacturers set selling prices;
- that the producer's indication of the percentage increase in the selling price required by the Italian draft legislative amendment is considered to be maintenance of selling prices (see Article 101(1) TFEU) and therefore concerns a hardcore restriction under Article 4(a) of Regulation (EU) 2022/720;
- that the proposed technical regulation constitutes a violation of the right of enterprise guaranteed by Article 16 of the Charter of Fundamental Rights, under which the freedom to determine the price of a service is also included.

In light of the proposed new text, the information obligation on producers does not concern the obligation to provide information about the price increase in percentage terms, but only concerns the obligation to provide information about the fact that the quantity of the product within the package has been reduced; therefore, the comments about the possible negative impact on price competition are considered outdated.

Directive 2005/29/EC:

Austria notes that although the goal is to achieve a higher level of consumer protection, the proposed technical rule goes beyond the scope of the Unfair Commercial Practices Directive (Directive 2005/29/EC), which requires full harmonization at the union level.

On this point, it is noted that the rule in question does not fall within the scope of unfair trade practices referred to in the aforementioned Directive, but pertains to a requirement for proper information provided to the consumer to enable an adequate comparison of the product (also with reference to the effects on the price).

Charter of Fundamental Rights of the European Union:

Finally, Austria points out that the average consumer is normally informed and reasonably observant and circumspect, and takes into account several product characteristics, particularly product quality, in addition to price, when making a decision.

In agreeing with this assertion, the legislation is intended to provide the average consumer with an additional means of protection, precisely in cases where prudence and caution are insufficient precisely because of a lack of informational clarity. The introduction of an appropriate wording about the change in the net quantity of product within a package that remains identical is, in fact, functional to ensure, for the consumer, the completeness of information about the quantity of product purchased and the relative price incurred.

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Comments from Sweden with message TRIS/(2025)0057 of January 14, 2025

Sweden supports measures to protect the interests of consumers and provide them with the information they need to make informed purchases, pointing out, however, that labelling requirements may in themselves constitute measures that impede free movement within the EU internal market in an unauthorized manner, to the extent that it falls on businesses to repackage products or create larger packages to accommodate the labelling. On this point, it is reported that there is no information from Italy on why other less invasive measures would not be sufficient. Finally, it is noted that Italy has not explained how the draft relates to existing EU law, such as the packaging directive.

On the first point, it is clarified the requirement is to adequately inform the consumer about the changes made. In fact, the decision to require that information about the nominal quantity reduction be placed directly on the packaging, including through a sticker label, is guided by lessons from behavioural science that marketing communication conveyed



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through means close to the consumer (i.e., the product being purchased) is more effective and less prone to "leakage." In fact, one can imagine that among the numerous visual and audio inputs that the consumer is exposed to at the time of purchase, the more the information offered is generally distant from the product, the more likely it is to be lost and not adequately perceived. Moreover, the presence of information on the product reduces the risk of the consumer unknowingly making the same purchase choices, since once the product is purchased, the consumer has more opportunities to consider the variation in content as well as format.

Finally, we reiterate what the Commission said in the detailed opinion about the Packaging and Packaging Waste Directive's failure to provide harmonized labelling requirements aimed at consumers in relation to reducing the content of products in packaging. In fact, the Commission states that certain parts of the Packaging and Packaging Waste Directive, in particular Articles 8 (3), 9 and 11 and Annex II, provide full harmonization with regard to the marking and identification of packaging for the purpose of waste management by the industry concerned and the requirements for the composition of packaging and its ability to be reused or recovered. These provisions, however, are not pertinent with regard to the aspects covered by the notified draft.

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Detailed opinion of Spain by message TRIS/(2025)0852 dated March 26, 2025

Spain believes that the wording "producers who offer for sale, including through distributors operating in Italy" is ambiguous, since, in the food trade, it is unusual for producers or distributors to sell directly to the final consumer and, as a result, do not determine the final price of the product.

In this regard, it is pointed out that the new wording of the technical regulations stipulates that "manufacturers who put on the market, including through distributors operating in Italy. This clarifies that the rule applies to manufacturers who make a product available on the market, without necessarily selling it directly to the end buyer.

In addition, Spain objects that the requirement for producers to affix a specific label in the sales package with appropriate graphic highlighting is too restrictive and constitutes an obstacle to intra-Community trade, since, on the one hand, producers are not obliged to know the final sale price and are not responsible for setting it; on the other hand, that the mode of information on the price of products offered to consumers could be carried out in a less restrictive manner, if provided in accordance with Directive 98/6/EC of the European Parliament and of the Council of February 16, 1998, which for the purpose places this obligation on traders and not on producers. Finally, Spain argues that the specific labelling requirement on sales packaging established in the draft constitutes a measure equivalent to a quantitative import restriction, which is an obstacle to the free movement of goods within the EU.

On this point, as these objections coincide with those made by the Commission, we refer to the considerations made above.

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Given the above, in relation to the goodness of the objectives pursued by the Italian legislator, also recognized by the European Commission, it remains without prejudice to the willingness of the Administration, as a result of further ongoing interlocutions with the Offices of the Commission, to comply with the indications likely to better bring the aforementioned legislation within the scope of the requirements of European law, considering also the initiation of infringement procedure No. 2025/4000 concerning the same technical rule (Article 23 of Law No. 193 of December 16, 2024).

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