Message 201

Communication from the Commission - TRIS/(2023) 3355

Directive (EU) 2015/1535

Notification: 2023/0490/BE

Forwarding of the response of the Member State notifying a draft (Belgium) to of Romania.

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1. MSG 201 IND 2023 0490 BE EN 08-02-2024 30-11-2023 BE ANSWER 08-02-2024

2. Belgium

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3B. Interregionale Verpakkingscommissie - Directie

4. 2023/0490/BE - S20E - Waste

5.

6. Below you can find Belgium’s response to Romania’s detailed opinion concerning notification 2023/0490/B.

The Belgian authorities have deliberately chosen to apply the scope of the proposed legislation more broadly, and to include all tobacco products with filters. We are of course aware that the European SUP Directive only targets ‘tobacco products with filters, and filters sold for use in combination with tobacco products’, but Belgium is in the position to expand this producer responsibility as part of the overall policy on littering. It is a fact that the tobacco products with filters represent a significant proportion of the litter, regardless of whether or not they are made of plastic. No distinction can be made between the two categories when cleaning up litter. It seems to us appropriate to involve all tobacco products with filters in order to avoid unwanted side effects, namely an increase in litter due to the incorrect implicit message that the filter does not contain plastic, and can therefore be thrown onto the ground. The aim of the Belgian legislation is to prevent litter, and to place the responsibility of the litter costs on the producer.

The extension of the scope of the SUP Directive is permitted, as the SUP Directive imposes minimum obligations that Member States can incorporate into their overall littering policies. The extension is necessary because, on the one hand, Belgian legislation is based on litter measured effectively and the effectively determined costs for litter management, and on the other hand the litter measurements cannot reasonably distinguish between filters with or without plastic. All filters must be removed in the context of public cleanliness, not just those containing plastic. Plastic-free filters have to be removed as well and the cost is not relatively lower. The expansion is also proportionate. Plastic-free filters entail the same cleaning costs.

The definition of the producer is in line with the SUP Directive, and is consistent with how this standard is regulated in the application of the extended producer responsibility policy instrument. This means that the Belgian producer is treated in the same way as the Belgian importer of foreign products. There can therefore be no distortion of competition, an

obstacle to the free movement of goods or a distortion of the internal market.

The same extension of the scope is also envisaged for certain packaging, for similar reasons. This extension is also permitted, reasonable and proportionate.

The fact that the levy does not distinguish between filters with or without plastic is irrelevant, as the costs of cleaning up litter are the same.

The reference to Article 7 of the SUP Directive is irrelevant, since the measure is based solely on Article 8 of the SUP Directive.

As regards packaging, reference is made to the fact that extended producer responsibility is already achieved by the Packaging Directive 94/62/EC. It should be noted that the costs of cleaning up litter from household packaging have not yet been fully covered in the Belgian transposition of the Packaging Directive by the Cooperation Agreement of 4 November 2008 on the prevention and management of packaging waste. Only voluntary contributions by producers to these costs were provided for. This voluntary contribution shall be cancelled by the new Cooperation Agreement (it will be devoid of purpose). There is therefore no case of double payment.

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