ASOCIACIÓN DE BEBIDAS REFRESCANTES ANFABRA

SPANISH SOFT DRINKS ASSOCIATION COMMENTS ON THE SPANISH DRAFT ROYAL DECREE ON PACKAGING AND PACKAGING WASTE

(TRIS NOTIFICATION 2022/325/E)

AUGUST 2022

Spanish Soft Drinks Association appreciates the opportunity to share our observations to the draft Royal Decree on packaging and packaging waste, since the provisions contained in it have a direct impact on the activity of the sector.

First, we welcome some of the changes that have been introduced that relax or extend deadlines as the modification on prevention targets. However, there are still some provisions that represent a huge loss of competitiveness for our industry.

In this context, it is key to take into consideration that the European Commission is about to adopt a legislative proposal that will amend the existing Packaging Directive, either in the form of a Directive or a Regulation. It is expected that a first proposal will be published in autumn, so we consider it is essential that this future Royal Decree will be in line with this future European regulation, otherwise Spanish measures may result contradictory to the European proposal.

Consequently, it is crucial for the competitiveness of our industry that deadlines introduced in the draft royal Decree won´t anticipate the timings that the European regulation will incorporate in the new revision of the Packaging and Packaging Waste Directive.

Please find below some provisions we have identified through which the Spanish regulator may have breached EU provisions by establishing additional environmental protection standards that are disproportionate, discriminatory or contrary to the harmonizing nature of the Packaging and Packaging Waste Directive.

Provisions to consider for the TRIS PROCEDURE

REUSE: TARGETS AND MEASURES (art 8 and 46)

Article 8 introduces reuse targets to all types of packaging. Focusing on soft drinks, it is pivotal to point out HORECA and household targets (expressed in sales units or equivalent units):

- HORECA channel (soft drinks): reuse 70% of packaging by 2025 and 80% by 2030.
- Household channel (beverages): at least 10% by 2030.

Soft drinks sector, continue to bet on reuse in the hospitality and catering channel (**HORECA**), in order to move towards more ambitious levels than the current ones. However, the objectives proposed in the draft Royal Decree are excessively high. Such an ambitious challenge in such a short period would have a very important economic impact for companies in the sector, since it would result in a change in the business model, which could compromise the competitiveness of the sector and could even have a disincentive effect for companies that bet on reuse.

As a result of this provision, producers that put products on the Spanish market would have to create an entirely new logistics chain to meet the reuse targets, which puts them at a competitive disadvantage compared to other producers. This measure could therefore be regarded as a quantitative restriction on free movement and should be duly justified.

In addition, crisis caused by COVID has left companies in a very difficult situation when facing these new measures proposed in the future regulations. Companies need time, acceptance by consumers and support measures to face the new binding challenges.

For all these reasons, soft drinks sectors would be able to assume next reuse objectives in the HORECA channel: 50% of packaging by 2025 and 60% by 2030.

If it is not possible to address a reduction of the target, we propose as a subsidiary proposal for Article 8, to eliminate the objectives set for reuse in the HORECA channel by 2025 and move them to 2030**.** From the industry we need a realistic and viable calendar to be able to achieve the objectives in the draft Royal Decree and the figures set for just 2 years from now are too ambitious for the term that is available. A larger margin would facilitate this transition.

The proposed measures would allow a sufficient margin of innovation in products with reduced circulation and access for smaller companies, which do not have facilities to package products in reusable containers, to the hospitality channel.

Another concern in this article 8 is the reuse target included in the **household channel.** We request that the reuse target set in the domestic channel for beverage packaging be replaced by a more flexible wording, which allows progress in that direction.

This reuse model is not operational in the domestic channel, so it is necessary to previously assess the acceptance it will have by the consumer, and the different problems at a technical and logistical level. It involves a huge economic investment in a short period of time, since it implies great changes in the structure of the production and packaging plants, which not all companies can afford, and less at this time.

We also take the opportunity to highlight the enormous difficulties that the requirement for standardized packaging would cause in our sector.

As it was mentioned at the beginning of this document, the Commission is about to adopt a legislative proposal that will amend the existing Packaging Directive and one of the key parts of this new EU regulation will be reuse measures, promoting refill through standardized measures in the EU. So, as indicated before, it is essential that this future Royal Decree will be in line with this future European regulation.

In this context we would like to highlight the importance of moving towards a broad concept of "reusable packaging", which includes new solutions on which work is being done and which favor reuse in the future.

Besides, article 46 of the Draft Royal Decree also requires implementing a mandatory DRS through an Extended Producer Responsibility (EPR) scheme.

In the still in force ministerial orders that regulate the **mandatory guarantee** of our reusable packaging and continue to be applied in HORECA, it is not necessary to provide additional financial guarantees by the individual extended responsibility systems that must accompany the communication to be made to the Autonomous Community.

According to this, we request that it won´t be mandatory to provide a financial guarantee in addition to the communication of the individual extended producer responsibility system for reusable beverage containers

RECYCLED PLASTIC CONTENT (art 11)

First of all, note that provisions included in this article demand these targets to be fulfilled by every individual producer placing plastic packaging on the market. We request to return to the previous wording in line with the provisions of Directive 2019/904, which states that the targets for the incorporation of recycled plastic are set at Member State level and that they will be calculated as an average of the packaging placed on the market within its territory. This would provide greater flexibility to companies and sectors to meet the objectives, since not all soft drinks industries have the same resources or purchasing capacity of recycled material of the quality necessary for food contact (especially SMEs), which is also not enough availability to meet demand in the short term. It would be necessary to evaluate whether these requirements would be proportionate for the economic operators concerned, with particular emphasis on the impact that compliance could have on small and medium-sized enterprises.

Furthermore, while the SUP Directive imposes recycled content obligations (Article 6.5) for beverage bottles with a capacity of up to three liters (Annex F), this draft

Spanish Decree applies obligations on the minimum recycled plastic content requirements for other packaging types (listed in section 4) that are not beverage bottles and with a different recycled plastic target from those provided for in the SUP Directive. For example, art 11.4.d) stablishes a target of 30% of recycled material for plastic films used in secondary packaging, such as shrink wrap, liners and envelopes. This requirement is added to the SUP Directives objectives, so we request the elimination of these specific targets. As we mentioned before the European review of the Packaging Directive already envisages new recycled material targets for plastic packaging, which will ultimately require their uniform application across the EU.

These measures therefore go beyond the requirements of the SUP Directive and could constitute a quantitative restriction on the free movement of goods, requiring these to be duly justified. In particular, insofar as the minimum recycled plastic content requirements are not imposed by the Packaging Directive, said measures would be contrary to Article 18 of said Directive, according to which Member States cannot prevent the placing on the market of packaging that complies with its requirements.

PREVENTION TARGETS (art 6.2)

Article 6.2. says: " Efforts will be made to achieve a 20% reduction by 2030 in the number of single-use plastic beverage bottles placed on the market, compared to the information contained in the packaging section of the Register of Product Producers for the year 2022"

We really appreciate the change in the wording of this article compared to a previous draft, however, this aspirational target of a 20% reduction in the number of single-use plastic beverage bottles by 2030 (Art. 6.2) it is a is a discriminatory measure that has not been duly justified and could constitute a quantitative restriction on the free movement of goods. In addition, it sets a precedent for regional laws within Spain, that, in such cases, would distort the free movement of goods in the EU market.

FINANCIAL OF EXTENDED PRODUCER RESPONSABILITIES -EPR- (art 34)

The Draft Decree introduces new EPR costs associated with separate collection targets for packaging waste. These targets have been set for all packaging – global targets, applicable to all materials, and material-specific targets (plastics, paper, beverage cartons, metals, glass and wood).

Article 34.1.b.1º of the Draft Regulation, requesting EPR schemes to cover for 50% of the costs associated with recovering packaging waste from residual waste and clean-up operations (cleaning of public roads, green areas, recreational areas and beaches), expands EPR costs in a disproportionate manner and without justification, breaching both the necessary cost and efficiency principles stipulated in Art. 8a of the Waste Framework Directive.

From our perspective, procedures included in this article should be simplified and financial burden on the actors involved should be reduced.

MARKING REQUIREMENTES (art 13 & second transitional provision)

This article includes making obligations that are not provided for in the Packaging Directive, meaning that they should not be imposed unilaterally by a Member State as they introduce technical regulations that constitute restrictions on the free movement of packaged products within the EU, thus infringing the Directive's harmonizing nature.

Once again, it is key to consider that the European Commission is currently working on the revision of the Packaging and Packaging Waste Directive, being one of the key points to regulate the marking and labelling of packaging. So as, it is expected to be published in the coming months, we recommend waiting for the publication of the EU regulation, before imposing obligations in this regard that could create obstacles to the free movement of packaged goods in the EU internal market.