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European Potato Trade Association

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Contribution to notification ref. 2022/325/E
Draft Royal Decree on packaging and packaging waste

Europatat is the European Potato Trade Association, comprising both national associations and individual companies involved in the trade of seed, ware and early potatoes throughout Europe. Its members include a wide range of traders (including breeders, distributors, storers, packers, importers and exporters) delivering seed potatoes to farmers, raw material to the food industry, and packed potatoes to the retailers and food service sector. As such, Europatat wishes to send additional input to the relevant European Commission's services in relation with TRIS Notification Number 2022/325/E on '*Draft Royal Decree on packaging and packaging waste'.*

More concretely, Europatat wishes to bring the following messages to the attention of the European Commission in relation to article 7.4.a of the Spanish Draft Royal Decree (ban on all packing for fruit and vegetable in food retail stores):

- **The proposed measure does not find any EU legal basis and can have unintended consequences regarding food waste and healthy diets**

Article 6 of the Spanish Draft Decree states the following: "*progress will be made progressively towards the end of the marketing of single-use plastic packaging covered by Part A of Annex IV to Law 7/2022 of 8 April.*"

However, the Single-Use Plastics (SUP) Directive does not include a ban on any type of packaging of fruit and vegetables. These packaging applications are not listed in Part B of the Annex to the SUP Directive, which provides an exhaustive list of the single-use plastics items subject to restrictions on the placing on the market, nor are fruits and vegetables covered by the Spanish measure intended for immediate consumption or typically consumed from the receptacle. Similarly, for other packaging materials, the requirement is not justified by any of the Essential Requirements listed in Annex II of EU's Packaging and Packaging Waste Directive (PPWD). Referred to this Directive, the proposed measure also clearly infringes Article 18 which provides that Member States "*shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive*".

Therefore, Europatat and its members do not see any justification for a ban on the marketing of all potato packaging in batches of less than 1,5 kilograms. Potato packaging plays a central role in extending potatoes life shelf (for instance, in the case of washed potatoes, it prevents greening and other skin issues) thus minimising food losses and preventing the waste of resources and the greenhouse gases emissions associated with discarded food. Packaging also provides positive characteristics to the products marketed, such as food safety, traceability, quality, consumer convenience, indication of the origin and production methods. Finally, packaging also allows potato producers and businesses to differentiate their offer from the competition and consumers to identify the product and facilitate the purchasing decision in base of economic, culinary and/or sustainability criteria.

The Spanish ban overlooks how high-performance packaging solutions such as biocompostable/biodegradable plastics or paper/cardboard packaging and technologies that can preserve food safety by minimising sources of contamination and reduce food waste from spoilage. Innovative packaging designs help consumers buy and use fresh products in convenient portions that match their need. In this sense, the ban of all packaging for potatoes under 1,5 kg risk to have another unintended consequence as consumers may turn into processed products and therefore less healthy diets.

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- **The proposed measure will create an unjustified trade barrier in the EU's Single Market as many companies will face restrictions to enter the Spanish market.**

Potatoes are traded mainly on the EU internal market. Member States export potatoes both outside and within the EU (to other Member States), the latter being far more significant in terms of both value and volume. As an example, about 7 million tonnes of potatoes were traded within the EU in 2020, with a market value of EUR 1.7 billion. Three Member States accounted for two-thirds of intra-EU exports of potatoes in value terms: France (31.0 %), the Netherlands (25.4%) and Germany (16.7 %).

As we understand, Article 7.4.a of the Spanish Draft Royal Decree on packaging and packaging waste will apply to all professionals exercising their activity on the Spanish territory. The proposed measure will therefore impede the placing on the Spanish market of packaging that is fully compliant with the provisions of the EU packaging legislation, thus being contrary to article 18 of the PPWD as mentioned above. Operators located in other EU Member States will be affected when marketing potatoes in Spain and will have to change their businesses strategies. In this situation, most of the European potato operators will have to choose whether to export to Spain or to other EU markets based on their choice of packaging, as they will not have the investment capacities (most of the business in the potato supply chain are SMEs) to address both of them. Other possible unintended consequence of the Draft Royal Decree is the unnecessary raise of packaging waste as many plastic-packaged potatoes will be unpacked on entry into Spain and re-packed in alternative packaging or marketed in bulk.

Therefore, the limitations imposed on the free movement of goods on the Single Market as set it Articles 34 and 35 of the Treaty of the Functioning of the EU (TFEU) appear here to be disproportionate and not justified. The absence of objective justification *de facto* prevails over an obstacle to the free movement of goods and characterizes a measure having an effect equivalent to quantitative restrictions incompatible with the mentioned TFEU's articles.

In a trading environment with increasing costs for potato operators, higher consumer prices and a steady decreasing trend in fresh produce consumption, any measure adding additional costs and trade barriers along the potato supply chain, namely diverging packaging requirements across Member States, should be avoided. In this sense, Europatat strongly supports an harmonized EU packaging legislation to avoid any distortions on Europe's Single Market.

- **The proposed measure is not supported by any scientific-based evidence demonstrating the need for and the non-discriminatory nature of it.**

When publishing the Draft Royal Decree, Spain has not provided any scientific evidence demonstrating the positive environmental impact, nor the need for and the non-discriminatory nature of the proposed ban. If adopted, the Royal Decree will have both environmental (food and energy waste) and negative economic impacts on the fresh potato supply chain without added environmental value.

Prior to the adoption of this Decree, the Spanish Government should carry out a quantified impact (in terms of environmental management of packaging and its waste, levels of food waste, food safety) of what the replacement of packaging (those currently used and optimised by the value chain) with other packaging (those to be introduced at the point of sale when the consumer buys in bulk, to transport the product to his home) would entail.

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- **The transition period proposed by the measure is not long enough for operators to adapt.**

Article 7.4.a of the Spanish Draft Decree establishes that "*shops shall have a period of four months for their adaptation in the case of fruit and vegetables not excepted*".

Whilst the European potato sector is committed to enhancing its sustainability to reach EU's ambitious goals as set as in the Green Deal, the Circular Economy and Farm to Fork strategies, it needs a suitable timetable to adapt itself and reach these goals. In other countries such as France, potato operators have calculated that a gradual phase-out plan of 24-36 months is needed to adapt and develop industrial capacities to switch to full non-plastic packaging. The transitional period announced by Spain is thus not sufficient to phase out all packaging that is currently used for food safety and convenience reasons explained before.

Potato packers are nowadays investing in testing and using alternatives to reduce the use of virgin plastic in packaging such as bags made from 50% sugar cane or packaging made of cellulose film and biodegradable paper. The extremely short deadline announced in the Draft Royal Decree does not consider the requirements in terms of research and development to find solutions that are sustainable for the environment and safe for the health of consumers, nor does it allow the investments required by businesses to adapt their industrial capacities to switch to non-plastic packaging. If adopted, the Royal Decree will have severe economic consequences to those operators that have made such investments in the past recent years.

Europatat therefore supports the request done by Spanish producers and traders to first publish a Royal Decree transposing the SUP Directive, and only after to discuss with more time any further requirements to be added by the Spanish Government and implemented at a later stage.

Conclusion

Given the above-explained reasons, Europatat would like to ask the European Commission to:

- Ask the Spanish Government to carry out a quantified environmental and economic impact assessment to justify the need of the proposed measure;
- Adopt a detailed opinion stating that the Spanish Draft Royal Decree may create barriers to the free movement of goods in Europe and should not be adopted since it contravenes TFUE Single Market provisions and EU legislation.

If adopted, Europatat and its members recommend amending Article 7.4.a of the Spanish Draft Royal Decree as follows:

Present fresh fruits and vegetables whole in bulk or on recyclable/biocompostable/biodegradable packaging. This obligation does not apply to fruit and vegetables packaged in batches of 1.5 kilograms or more, as well as to fruit and vegetables that present a risk of deterioration or loss of product traceability when sold in bulk or where no functional alternative packaging is available, which will be determined by the Spanish Agency for Food Safety and Nutrition, in coordination with the Ministry of Agriculture, Fisheries and Food, within three months of the entry into force of the Royal Decree. Once the above list has been published, the shops shall have a period of at least one to two years for their adaptation in the case of fruit and vegetables not excepted.

Europatat makes itself available for any further input, information or feedback that the European Commission might deem useful.

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