



American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

Comments on the Ordinance on Packaging and Packaging Waste, Single-use Plastics, and Fishing Gear Containing Plastic

Introduction

The Ordinance on packaging entered into force on November 23, 2023.

The Ordinance was previously published by the Ministry of Economy and Sustainable Development (hereinafter referred to as: "the Ministry"). The consultation report of November 10, 2023, shows that numerous substantive comments on the Draft Ordinance on packaging, given by numerous businesses, natural persons, and associations, including the American Chamber of Commerce in Croatia, were not accepted. AmCham believes that in that process, an opportunity for constructive dialogue among stakeholders was missed in the formulation of specific legal provisions in the Ordinance, which may lead to adverse consequences for numerous representatives across various industries in Croatia.

One of the provisions the interested parties pointed out during the public consultation phase was the provision on double labeling of beverage packaging, i.e., packaging intended for the Croatian market with a deposit refund label and packaging intended for export without a deposit refund label. The proposal to revise such a legal regulation was rejected with the explanation that it protects the national deposit refund system. Hence, the provision, in the form initially conceived by the legislator, entered into force.

Nevertheless, the drafting of the announced implementing regulations and instructions by the implementing bodies is an opportunity for Croatia to improve and amend the provisions of the Ordinance with solutions to avoid additional financial, administrative, and logistical burdens on industries that have been proactive in supporting the deposit refund system since its establishment in 2005, making Croatia one of the European pioneers in this process. This would ensure that all participants would still be in compliance with the law in its current form, without the need to make amendments and deviate from the deadlines the European Union set for harmonization.

Some of the representatives of the mentioned industries are also members of the American Chamber of Commerce in Croatia and propose some constructive solutions.

Implications for Industry and the Economy

Different labeling of beverage packaging that is in the deposit refund system for beverages intended for sale on the Croatian market compared to beverages intended for export, which are exempted from the deposit refund system according to the legislation (Article 17, paragraph 2, read in conjunction with Article 30, paragraph 7 of the Ordinance), will undoubtedly bring additional burdens for manufacturing industries with a significant share in all state revenues.

These are various negative consequences that will have a cumulative effect, such as:

- Significantly higher production costs due to lower filling capacity (smaller filling batches due to the introduction of a large number of new products with different packaging materials),
- Significantly higher storage (additional space) and distribution (labor and transport) costs,
- Change and increase in complexity of all operational processes of production, storage and distribution of products,
- Higher energy consumption,
- The need to carry out increased, double production cycles for the same product while relying on the same infrastructure (complex organization of shifts for employees on production lines, in quality control and implementation control, the monitoring process, etc.),
- Lower production efficiency (line productivity) due to the interruption, preparation, and restart of production lines for the same product, for sale in different markets,
- The risk of failing to meet market demands (the same product in different packaging will not be able to be sold in all markets) and, consequently, an increase in the age of stock, the financial value of stock,
- Higher costs of raw materials caused by the lower quantities of different raw materials ordered due to the introduction of additional, differently declared raw materials,

all of which will inevitably lead to a disincentive for the export of Croatian products. It will also affect the final price of the product – it will increase the price of drinks and decrease demand, thereby reducing investment opportunities and possibly negatively affecting the number of employees in the beverage production and distribution industry.

AmCham believes that the literal application of the legal measure under Article 17, paragraph 2 of the Ordinance would be too harsh since even with the previous practice of not insisting on different labeling of beverage packaging intended for export, the Environmental Protection and Energy Efficiency Fund (hereinafter referred to as: “the Fund”) suffered no harm. That is, the Fund regularly reported that only 70-80% of the amount paid by packaging manufacturers to the Fund for deposit refunds was used. What is more, it is not even realistic to expect that all the packaging sent to foreign markets will be returned, maybe only a small portion from neighboring countries.

Despite the fact that the introduction of the deposit refund system for beverage packaging created a model to reduce pollution and achieve the goals set by the Directive on single-use plastics, the consequences caused by the described provision of the Ordinance make it possible for Croatia to move away from the set goals in the coming years if it neglects the industry arguments and fails to understand the secondary effects of certain provisions.

If the resolution of the aforementioned negative consequences is left up to the market, industries will be forced to seek solutions in commercial decisions that will be made within the framework of free competition and the free market, quite possibly outside the borders of Croatia. The result will be a contribution to cross-border production instead of achieving the intended fiscal and environmental impact of the proposed measure.

In addition, the period between the official legislative proposal and the actual amendment of the Ordinance was extremely short. The deadline for the entry into force of the provision of

Art. 17, paragraph 2 is remarkably short given the implications of the changes introduced by the Ordinance on the overall industry, i.e., on manufacturers, distributors, retail outlets, customers, and various state institutions (customs, supervisory bodies, the Fund, etc.). This way of enacting and communicating significant legislative amendments to the beverage industry representatives calls into question their ability to plan and forecast the business for the current year. The overall situation has a negative effect on the general business environment since it violates the principle of business predictability.

Recommendations and Conclusion

AmCham and its members actively engaged in the public consultation process, providing constructive proposals. We also welcome and support the Government's efforts in fulfilling the goal of higher packaging waste recycling and overall waste reduction.

Insisting on only one way of applying the legal solution, which inevitably brings significantly higher logistical and administrative costs for certain industries, is not a comprehensive solution to the problem and needs to be reviewed. AmCham, therefore, proposes the following:

- Under a regulation that has yet to be adopted (Article 30, paragraph 13 of the Ordinance), envisage paying a flat-rate fee for the packaging of beverages intended for export, which will be lower than the fee determined for the packaging of beverages sold on the Croatian market. That would mean that the beverage producers would pay flat fees for the entire exported quantity.
- Pay fees for the beverage packaging returned. In that case, producers should be obligated to submit internal reports on products sold on the Croatian market, the Fund should be obligated to report on return rates regularly, and producers would pay deposit refund fees for the determined difference in beverage packaging.

It is anticipated that public authorities will prioritize activities aligned with the objectives of the circular economy. AmCham believes that achieving these goals requires a partnership with the business community and other parties. Effective collaboration between the industry and the competent institutions in implementing and securing necessary funding requires long-term planning of activities and costs. AmCham calls for a dialogue that takes into account both the expectations and needs of public authorities and the needs and capabilities of industry representatives, upon which a significant portion of the planned circular economy depends.

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