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EU Commission Challenges French Proposals to Ban Plastics Bags

On 21 December 2015 the European Commission formally issued a detailed letter to the French government objecting to parts of its draft decree to ban the use of single use plastics carrier bags. Croatia also lodged a complaint.

The so-called “standstill” arrangements (i.e. suspension of implementation of the draft decree) have been extended to end-March by the Commission to enable a dialogue and, hopefully, agreement with the French government, which would imply amendment of the French government’s draft. In reaction, Environment Minister Segolene Royal has been provocative, encouraging the application of the measure as of 1 January, even if the law is postponed.

The detail of the Commission’s letter of objection is not being made public and even our informal contacts with the relevant services have been very guarded (presumably because of the way in which the Minister has reacted, making the dossier highly controversial).

France sees this decree as implementing the so-called “Plastics Bags Directive” which mandated member states to take measures to reduce plastics bags consumption.

Attachment 1: Directive (EU) 2015/720 reducing consumption of lightweight plastic carrier bags

Background

In 2015 the EU institutions adopted an amendment to Directive 94/62/EC on packaging and packaging waste to oblige EU member states to restrict the use of plastics carrier bags on their territories¹, thereby breaking the guarantee to market for all packaging manufactured according to the essential requirements laid down in the Directive 94/62/EC.

In September last year, the French government notified the European Commission and its 27 EU colleague nations of its draft decree (“*décret*”) restricting use of plastics carrier bags in France. This statutory instrument (i.e. drafted by the government and not requiring further adoption by parliament) was prepared so as to implement the obligations on plastics bags that had been adopted by the French *Assemblée Nationale* to implement the EU requirements. In practice, the plastics bags rules were passed by the *Assemblée* as a sort of “add-on” to the French Energy Transition Law.

The system of obligatory notification to “Brussels” of measures of a technical nature that could create trade barriers in the EU single market is intended to allow the Commission and/or Member States to raise concerns/objections they may have on the draft measure before it is implemented in

¹ Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags

national law. A 3-month standstill period is invoked to allow Commission and member states to consider the draft measure. This may be extended by the Commission if objections are raised.

This issue is relevant to Serving Europe as “disposable plastics tableware” is set to be restricted by the same Energy Transition Law as of 2020.

Status

Late last year we were in touch with the relevant Commission services on an informal basis but could obtain very little further information because the officials were either very “quiet” on the topic or on year-end vacation. However, we did learn that Croatia had lodged observations.

Over the past weekend we had the occasion to meet one of the key officials on an informal basis. We learnt that on 21 December the European Commission formally issued a detailed letter to the French government objecting to parts of its draft decree to restrict the use of single use plastics carrier bags.

The so-called “standstill” arrangements (i.e. suspension of implementation of the draft decree) were extended to 28 March 2016 by the Commission to enable a dialogue and, hopefully, agreement with the French government. This would imply amendment of the draft decree unless the French government can justify its actions to the satisfaction of the Commission on the elements in question.

The detail of the Commission’s objection is not being made public because, we were informed, the Commission is in bilateral dialogue with the French government and the content of its objections are for the French government only at this time. Our contact (even though it was in an informal context) was guarded and would give no details on what the Commission sees as problematic because the dossier has become “highly controversial” – largely because French Environment Minister Segolene Royal has encouraged a “de facto” ban by operators as of 1 January 2016 even if the publication of the final decree is delayed.

That said, it seems that France’s decision to completely ban the very thin carrier bags may be the problem. The EU legislation requires that these carrier bags should no longer be free-of-charge after 2018 and wants their use reduced progressively to no more than 40 bags per inhabitant per year by 2025. The French draft decree envisaged a full ban as of 1 January 2016. We are not sure whether the wording of the requirement to oblige as of January 2017 the use of bioplastics for plastics service bags used for fruit, vegetables, cheese, etc is also contentious.

As soon as we can obtain more precise detail we will update Serving Europe members.

The soft line taken by the Commission regarding the Italian plastics bags ban (even if it did eventually issue objections and succeeded in getting the Italian government to amend its legislation), is perhaps encouraging the French minister to take a defiant approach.

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