



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Notification Number : 2022/0818/F (France)

Decree adopting the list of products for which sale in bulk is prohibited for public health reasons

Date received : 22/11/2022

End of Standstill : 23/02/2023 (23/05/2023) (closed)

Message

Message 002

Communication from the Commission - TRIS/(2022) 04194

Directive (EU) 2015/1535

Translation of the message 001

Notification: 2022/0818/F

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidējimai nepradedami - Nem nyitja meg a késéseket - Ma' jiftaħ il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 202204194.EN)

1. MSG 002 IND 2022 0818 F EN 22-11-2022 F NOTIF

2. F

3A. Ministères économiques et financiers

Direction générale des entreprises

SCIDE/SQUALPI - Pôle Normalisation et réglementation des produits

Bât. Sieyès -Teledoc 143

61, Bd Vincent Auriol

75703 PARIS Cedex 13

3B. Ministère de l'économie et des finances et de la relance

Direction générale de la concurrence, de la

Consommation et de la répression des fraudes

Bureau 4B - Qualité des denrées alimentaires

59, boulevard Vincent Auriol - Télédod 223

75703 Paris Cedex 13

Tél : 01 44 97 30 37

Courriel : bureau-4B@dgccrf.finances.gouv.fr

4. 2022/0818/F - C00A

5. Decree adopting the list of products for which sale in bulk is prohibited for public health reasons

6. List of products for which sale in bulk is prohibited for public health reasons



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7. -

8. This Decree adopts the list of products for which sale in bulk is prohibited for public health reasons pursuant to paragraph 3 of Article L. 120-1 of the Consumer Code [code de la consommation]. This Decree identifies the products for which sale in bulk is prohibited by the legislation in force and those for which sale in bulk is impossible under EU law, in particular on hygiene grounds, but also where use of such products may pose a risk to consumers. The list also includes products that the National Agency for Food, Environmental and Occupational Health and Safety [ANSES], which the French authorities consulted on the content of the draft Decree, identified as incompatible with sale in bulk.

If sale in bulk is not expressly prohibited for certain products, but doubts remain and conditions for their sale appear unsatisfactory, in particular on safety grounds, the Decree provides the option to regulate these by means of an Order.

9. To bring the law into line with shifting consumption patterns, and with a view to reducing single-use packaging, Law No 2020-105 of 10 February 2020 on combating waste and on the circular economy introduced a definition of 'bulk sale' in the Consumer Code.

Thus, it added a new Article L. 120-1 to the Consumer Code. This states that 'bulk sale is defined as sale to the consumer of products offered without packaging, in quantities chosen by the consumer, in reusable containers. Bulk sale is offered on a self-service or assisted service basis at itinerant points of sale.

It may take the form of a distance selling contract.

Any consumer good may be sold in bulk, barring exceptions duly justified on public health grounds.

The list of exceptions shall be adopted by Decree.'

This text is intended to promote sale in bulk, which the French authorities believe will contribute towards their packaging reduction targets. It is necessary to support the development of this practice, now bolstered by a national legislative framework, while also ensuring that products offered for sale in bulk do not pose a risk to consumers.

An initial draft Decree was notified to the European Commission in January 2021. Its contents did not elicit a reply from the Commission.

In the interest of legal clarity, this initial draft listed pre-existing bans on public health grounds and those stipulated under European Union law. At the same time as the notification under the TRIS procedure, in March 2021 the French authorities submitted the draft text to ANSES, which issued its opinion on 15 November 2021. In this opinion, ANSES stated that the draft list of exceptions received from the French authorities was appropriate. ANSES nevertheless deemed it fitting to supplement this list for public health requirements, and for certain products, it proposed alternative bulk sale methods to self-service.

To incorporate the recommendations of ANSES, the French authorities added products to the initial list of exceptions, such as chemicals, hygiene products, batteries, etc.

To clarify the range of products covered, the new version of the draft Decree submitted for the TRIS procedure includes a definition of consumer goods by way of reference to the definition given in Article D. 441-1 of the Commercial Code.

Moreover, for certain products (perishable foods, frozen foods, hygiene products, certain chemicals, cosmetics), the new draft Decree grants exemptions from the bulk sale ban under certain non-cumulative conditions, such as assisted service or the use of a self-service distribution device suitable for bulk sales.

The principle of these alternative bulk selling methods allows incorporation of the ANSES proposals regarding the risks



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associated with self-service bulk sales, without barring access to the bulk market for the products falling under these exceptions.

If bulk sales are not expressly banned but the conditions of sale appear unsatisfactory, in particular on safety grounds, the Decree provides the option to set special risk management measures by ministerial Order.

In the notification process for the initial draft Decree, the European Commission did not directly address the issue of bulk sales of natural mineral water and spring water. It nevertheless indicated in its letter of 15 July 2021, in response to a note from the French authorities on the same subject, that it finds the notified draft to be in accordance with EU law where its Article 11 prohibits 'the sale in bulk of any product for which sale in bulk is incompatible with the public health obligations laid down in the regulations and directives adopted in accordance with the Treaty on the Functioning of the European Union, such as Directive 2009/54/EC'. Where the French authorities refer to setting a framework for bulk distribution of said water by ministerial Order to guarantee its quality and consumer safety, the letter from the Commission further indicates that it could not 'assess a measure that had not been notified'.

From the point of view of the French authorities, Article 6 (requiring closures designed to avoid any possibility of falsification or contamination) and point 2(d) of Annex II to Directive 2009/54/EC (prohibiting the transport of natural mineral water in containers other than those authorised for distribution to the ultimate consumer, to avoid any possibility of contamination and to preserve the properties, corresponding to those qualifying it, which the water possesses at source) do not preclude bulk sales to the final consumer, provided that it is supervised in such a way as to guarantee the quality of the water, particularly in terms of health, at the time of its distribution. Further, natural mineral water and spring water do not pose any more health risks than other liquid foods (in particular fruit juice) due to their sale in bulk.

The planned system will transport this water from the source to points of sale in containers (canisters) intended for distribution to final consumers. Once opened, they fall into the category of 'perishable foods that may pose a risk to human health after a short period of time' as per Article D. 120-5(I)(4) of this draft Decree, for which sale in bulk is only permitted under certain conditions: distribution by means of a device suitable for self-service or assisted-service bulk sales (Article D. 120-5(II)). Because this water may pose a risk to consumers, the method of sale - whatever it may be - must guarantee adequate consumer protection from the risks inherent to the product (Articles D. 120-1 and D. 120-2). This general framework enables preservation of the properties of the water, as it is sealed with a suitable closure until distribution to the final consumer. It also enables protection from contamination after the packaging is opened, in view of the requirement for a suitable means of distribution. If necessary, an Order may be issued to supplement these conditions of sale, which apply to all perishable foods that may pose a risk to human health after a short period of time.

As for the labelling, as referred to in Article 8 of the aforementioned Directive, the text states that the indications that must appear on the labels of this water must also appear on the suitable water distribution devices in a way that is directly accessible to consumers, and that consumers must be informed of the need to store this water in a cool place and consume it within a reasonable period of time after purchase.

10. References to basic texts: - Article L. 120-1 of the Consumer Code;
- Article 41 of Law No 2020-105 of 10 February 2020 on combating waste and on the circular economy;
- ANSES note on scientific and technical support for a draft Decree providing for a list of exceptions to the bulk sale obligation in Article L. 120-1 of the Consumer Code for public health reasons

The reference texts had to be forwarded with an earlier notification: 2021/16/F

11. No

12. -

13. No

14. No



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15. -

16. TBT aspect

No - The draft does not have a significant impact on international trade.

SPS aspect

No - The draft does not have a significant impact on international trade.

European Commission

Contact point Directive (EU) 2015/1535

Fax: +32 229 98043

email: grow-dir2015-1535-central@ec.europa.eu