



EUROPEAN COMMISSION

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

Message 303

Communication from the Commission - TRIS/(2022) 02355

Directive (EU) 2015/1535

Notification: 2022/0196/I

Observations from the Commission (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

Observaciones - připomínky - Bemärkninger - Bemerkungen - Märkused - Παρατηρήσεις - Comments - Observations - Osservazioni - Piezīmes - Komentarai - Megjegyzések - Kummenti - Opmerkingen - Uwagi - Observacoes - Comentáre - Pripombe - Huomautuksia - Synpunkter - Коментари - Comentarii.

Sin plazo de statu quo - Doba pozastavení prací se neaplikuje - Ingen status quo frist - Keine Stillhaltefrist - Ooteaeg ei ole kohaldatav - Δεν υπάρχει statu quo - Standstill period does not apply - Pas de délai de statu quo - Termine di status quo non previsto - Bezdarbības periods netiek piemērots - Atidējimo periodas netaikomas - A halasztási időszak nem alkalmazandó - Il-perijodu ta' waqfien ma japplikax - Geen status quo-periode - Okres odroczenia nie ma zastosowania - Prazo do statu quo não previsto - Períoda pozastavenia neplatí - Obdobje mirovanja ne velja - Ei status quon määraaika - Ingen tidfrist för status quo - Не се прилага период на прекъсване - Perioada de stagnare nu se aplică.

(MSG: 202202355.EN)

1. MSG 303 IND 2022 0196 I EN 08-07-2022 05-07-2022 COM 5.2 08-07-2022

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2022/0196/I - S00E

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the Italian authorities notified to the Commission on 7 April 2022 the draft 'Decree No 114 of the Minister for Ecological Transition of 16 March 2022 adopting the Guidelines on the labelling of packaging, pursuant to Article 219(5) of Legislative Decree No 152/06' (hereafter 'the notified draft').

The notified draft, as indicated in the notification message, relates to 'the adoption of Guidelines on the labelling of packaging, pursuant to Article 219(5) of Legislative Decree No 152/062' (emphasis added).

The notification message further clarifies that, 'The objective of the regulatory intervention is to provide clear and uniform indications to operators subject to packaging labelling obligations, also in order not to incur legal infringements and consequent penalties. The application of the Guidelines in question will have an impact on the productive, social and environmental sectors'.

Examination of the notified draft has prompted the Commission to issue the following comments.

1. Context

Article 219(5) of Legislative Decree No 152/2006 (the 'Italian Environmental Code'), in its current consolidated version, provides as follows:

'5. All packaging must be appropriately labelled according to the procedures established by the applicable UNI technical standards and in compliance with the decisions adopted by the EU Commission to facilitate collection, reuse, recovery and packaging recycling, as well as to provide consumers with correct information on the final destinations of packaging, and to provide consumers with accurate information on the final destinations of packaging [...].

5.1. Within ninety days of the date of entry into force of the present provision, the Minister for the Ecological Transition adopts, with a non-regulatory decree, the technical guidelines for the labelling referred to in paragraph 5'.

In force of the Law 15/2022, the application of Article 219(5) of the 'Italian Environmental Code' is suspended until 31



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December 2022 (products lacking the requisites prescribed therein and already placed on the market or labelled on 1 January 2023 can be marketed until stocks are exhausted) .

It is the understanding of the Commission that the notified draft constituted the draft non-regulatory decree mentioned in Article 219(5.1) of the 'Italian Environmental Code'

2. Analysis of the draft: potential incompatibility with Articles 34-36 TFEU (rules on the free movement of goods)

The Commission would like to make comments on the notified draft from the perspective of Articles 34-36 TFEU.

Article 219(5) of the 'Italian Environmental Code' implies, as mentioned, that, to be placed on the Italian market, products lawfully marketed in other EU Member States need to carry specific labelling aimed at 'facilitate collection, reuse, recovery and packaging recycling [...] as well as to provide consumers with correct information on the final destinations of packaging'.

In the notified draft this is reflected, in particular, in the mandatory requirement described below (Table at Page 6 of the notified draft):

Indications for the consumer regarding separate collection Mandatory For manually separable components of packaging intended for the final consumer Guide on Labelling for citizens The Guide suggests, in order to convey clear and complete information, that the following information be placed on the packaging:

- FAMILY OF MATERIAL

- INFORMATION ON COLLECTION

Or

- INFORMATION ON COLLECTION BY FAMILY OF MATERIAL

With instructions to check the provisions of the municipality

The table described above provides, therefore, that, information on 'FAMILY OF MATERIAL, INFORMATION ON COLLECTION or INFORMATION ON COLLECTION BY FAMILY OF MATERIAL, with instructions to check the provisions of the municipality' be 'placed on the packaging'.

This seems to suggest that the above-mentioned information shall be affixed 'on the packaging'. However, the notified draft also suggests that operators are provided flexibility as regards the methods that can be used to provide indications for the consumer regarding separate collection:

- 'All packaging must be labelled in the form and manner the company considers most suitable and effective to achieve the aim' (Page 5);
- 'The instructions for waste disposal can be communicated using the proposed formula 0 with other freely chosen methods, provided that they are effective.' (Page 9);
- 'The information for taking in waste can be communicated using the proposed formula 0 with other freely chosen methods, provided that they are effective.' (Page 11);
- The notified draft includes, in particular, a reference to the 'Clarification note' from the Ministry for the Ecological Transition of 17 May 2021. The notified draft refers, in particular, to the following part: 'In order to comply with the environmental labelling requirement for packaging, the use of digital channels is always allowed (e.g. apps, QR codes, websites), in line with the process of technological innovation and simplification, a fundamental aspect provided for in the National Recovery and Resilience Plan (NRRP). Such digital channels may replace or complement the information directly on the packaging. These tools can be used both to facilitate the transmission of mandatory information along the supply chain in commercial and industrial channels, and to convey to the final consumer the nature of the packaging materials and information on how to correctly dispose of the waste. Where the packaging is intended for the final consumer, the obliged entity is required to indicate on the packaging or at the point of sale, whether it is physical or virtual, to which the consumer has access, instructions to enable the consumer to acquire the mandatory environmental information via the digital channels provided (apps, QR codes, websites, etc.). In order to make environmental labelling information available, it is therefore possible to use a digital tool which redirects one to a page specifically dedicated to conveying environmental labelling content relating to the specific packaging, provided that access to the specific information for the packaging in question is easy and direct, and that this information is timely and not difficult to interpret. It is therefore recommended that the packaging in question be clearly indicated on these channels in order to make the information available to the final consumer more readily available and accessible'.

In this part, the notified draft suggests, therefore, 'digital channels may replace [...] the information directly on the



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packaging', also to 'convey to the final consumer the nature of the packaging materials and information on how to correctly dispose of the waste'.

The Commission observes that it would be useful if the notified draft could underline the possibility to use digital channels to convey sorting rules to final consumers (also) in another part of the document (e.g. in the table at page 6 of the notified draft or by way of amplifying the statements provided at page 5, 9 or 11).

It was observed that Article 219(5.1) provides that '[...] the Minister for the Ecological Transition adopts, with a non-regulatory decree, the technical guidelines for the labelling referred to in paragraph 5'. It appears suitable, therefore, that it is the same non-regulatory decree that provides for the possibility to use digital channels to convey sorting rules to final consumers, rather than referring to the content of a previous 'Clarification note' whose legal binding nature is unclear.

It is important that the clarification above is provided in the notified draft, to avoid that the Article 219(5) be interpreted as imposing the physical/material affixing of labelling aimed at describing final sorting rules for products marketed in Italy, as such obligations would be likely to constitute an obstacle to the free movement of goods.

In this regard, at first glance, it does not seem that the harmonisation brought about by UE Directives on waste precludes the compatibility with Article 34 TFEU of the national rules in question (requirements concerning labelling addressed at consumers in relation to waste sorting rules) from being examined.

In particular, as regards the the European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (hereinafter 'PPWD'), it should be recalled that:

- Article 8(2) PPWD is related to the marking of materials used in packaging and states: 'To facilitate collection, reuse and recovery including recycling, packaging shall indicate for the purposes of its identification and classification by the industry concerned the nature of the packaging material(s) used on the basis of Commission Decision 97/129/EC'. This provision and the related Decision 97/129 concern the indication of alphanumerical codes aimed at indicating the nature of the packaging material(s), and are addressed to waste operators rather than consumers;
- Article 13 PPWD obliges Member States to take measures 'to ensure that users of packaging, including in particular consumers, obtain the necessary information about, inter alia, return, collection and recovery systems available to them, as well as their role in contributing to reuse, recovery and recycling of packaging and packaging waste', without providing detailed harmonised rules regarding logos and/or sorting instructions directed at consumers.

It should be concluded, therefore, at first glance, that the PPWD does not provide for a harmonisation that precludes the compatibility of the national rules in question with Article 34 TFEU from being examined.

Having clarified this aspect, labelling requirements in relation to national waste sorting rules need to comply with Articles 34-36 TFEU. Article 34 TFEU prohibits any measures that would be likely to form an obstacle to intra-European Union trade, directly or indirectly, actually or potentially. National indistinctly applicable rules that lay down requirements (such as those relating to presentation, labelling, packaging) to be met by goods coming from other Member States where they are lawfully manufactured and marketed, represent obstacles to free movement of goods and constitute measures of equivalent effect prohibited by Article 34 TFEU (see Case 8/74 Dassonville). In accordance with constant case-law of the Court of Justice of the European Union (CJEU), national-specific labelling requirements might have an effect equivalent to a quantitative restriction prohibited under Article 34 of the TFEU, where these requirements impact or are potentially liable to impact intra-EU trade by not only adding extra costs but also complicating marketing and distribution.

In the Commission's opinion, the imposition of physical/material labelling aimed at describing final sorting rules would require the organisation of specific production and compliance procedures only for those products to be placed on the Italian market.

In particular, products imported from other Member States would need to comply with Italian-specific labelling requirements to reflect the sorting rules applicable in Italy, which may be cumulative or even contradictory with respect to the sorting rules applicable in other Member States. Such a national-specific obligation can be highly problematic to industry, as many companies operating within the internal market use only one type of packaging execution for the EU as a whole or for a group of several neighbouring EU countries. To enter the Italian market, however, foreign economic operators would be required either to prepare Italian-specific packaging variants, or increase packaging size to accommodate different Member States' requirements, facing the related increased costs and affecting economies of scale. Moreover, it should be considered that non-compliance with Article 219(5) of the 'Italian Environmental Code' might result in the application of penalties.

These requirements could result, therefore, in an additional and significant economic and regulatory burden for economic operators, notably affecting SMEs from other Member States wanting to access the Italian market, and eventually hinder



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the free movements of goods, resulting in a violation of Article 34 TFEU.

Conversely, making available the related instructions on-line or by other electronic means to consumers without requiring the physical marking of sorting instructions on the products themselves (also referred to as 'e-labelling' or 'dematerialized display') could be an option to consider, whilst avoiding additional labelling of the packaging. This would also avoid other counterproductive effects, such as going against the efforts of industry to reduce the size of the packaging and, therefore, the amount of waste produced (notably for small-sized products). Where such a policy option would imply changes to the packaging design (artworks) it would need to be thought through carefully not to place unnecessary extra burden on economic operators.

The Commission invites the Italian authorities to take the above comments into account.

The Commission furthermore reminds the Italian authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Kerstin Jorna
Director-General
European Commission

Contact point Directive (EU) 2015/1535
Fax: +32 229 98043
email: grow-dir2015-1535-central@ec.europa.eu