



EUROPEAN COMMISSION

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His Excellency
Mr Antonio Tajani
Ministry of Foreign Affairs and
International Cooperation
Piazzale della Farnesina, 1
00135 Rome
Italy

Subject: Notification No 2024/560/IT

Article 21 of the ‘2023 Annual draft law for the market and competition’

Delivery of a detailed opinion and comments pursuant to Articles 5(2) and 6(2) of Directive (EU) 2015/1535

Dear Sir,

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services ⁽¹⁾, on 07/10/2024 the Italian authorities notified to the Commission the draft Article 21 of the ‘2023 Annual draft law for the market and competition’ (hereinafter, ‘the notified draft’).

According to the notification message, the notified draft “*amends Legislative Decree No. 206/2005 (Consumer Code) in order to regulate the phenomenon of the so-called ‘Shrinkflation’, i.e. the practice of producers to reduce the quantity of product inside the packaging, while keeping the price substantially unchanged or even increasing it, with the consequence of disorienting consumers who are faced with a price increase in a non-transparent manner*”. Based on the above it is specified that “*An obligation is introduced*

¹) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

for the producer to inform consumers about the actual quantity of product purchased and the actual cost incurred”.

In particular, the notified draft (draft Article 21) provides that:

“Producers who offer for sale, also through distributors operating in Italy, a consumer product that, while maintaining the previous packaging, has undergone a reduction in the nominal quantity and a related increase in the price per unit of measurement, shall inform the consumer about the reduced quantity and the increase in the price in percentage terms, by affixing a specific label with special graphic highlighting such in the sales packaging.

The obligation to inform referred to in paragraph 1 shall apply for a period of six months from the date on which the product is displayed in its reduced quantity.’.

In the message accompanying the notification it is specified that *“This requirement must be ensured by inserting, directly on the packaging, including by affixing in the sales packaging, a specific label for a specific product with special graphics clearly, legibly highlighting such in the same font size as that used to indicate the unit price of the product. It is also established that the obligation to provide information applies for a period of six months from the date on which the product is put up for sale in its reduced quantity”.*

The examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.

DETAILED OPINION

The notified draft relates to a sector which is covered by provisions of secondary EU legislation, in particular Directive 94/62/EC on packaging and packaging waste (hereinafter ‘PPWD’ ⁽²⁾). However, the Commission considers that labelling requirements aimed at informing consumers about the actual quantity of product purchased do not fall within the matters for which the PPWD provides for a full harmonisation.

It should be noted that parts of the PPWD, notably its Articles 8 ⁽³⁾, 9 and 11 and Annex II can be considered to provide full harmonisation concerning the marking and identification of packaging for the purpose of waste management by the industry concerned and requirements on the composition of packaging and its capacity to be reused or recovered. These provisions, however, are not pertinent with regard to the aspects covered by the notified draft.

²() European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, OJ L 365, 31.12.1994, p. 10–23.

³() And related Commission Decision 97/129/EC: of 28 January 1997 establishing the identification system for packaging materials pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste.

The provision could be considered as a packaging waste prevention measure intended to implement Article 4 of the PPWD. However, nothing in the notified documentation provided by Italy seems to indicate that packaging waste prevention was the main objective of this measure and, regardless, any packaging waste prevention measure adopted by Member States should be in conformity with the Treaty.

It should be concluded, therefore, that the PPWD does not provide for harmonised EU labelling requirements addressed at consumers in relation to reduced product content of packaging. The same can be said about the upcoming Packaging and Packaging Waste Regulation which, once adopted, will replace the PPWD. The PPWD does not preclude, therefore, the application of Articles 34 to 36 TFEU to the notified draft.

Article 34 TFEU provides that:

“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States”.

Article 36 TFEU provides that:

“The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”

Article 34 TFEU, as interpreted by the Court, prohibits any measures that is likely to form an obstacle to intra-European Union trade, directly or indirectly, actually or potentially. National 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 (⁴). In accordance with constant case-law of the Court, national-specific labelling requirements might have an effect equivalent to a quantitative restriction prohibited under Article 34 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 (⁵).

In absence of harmonised rules governing the labelling information requirements concerning “shrinkflation practices”, the affixing of a specific label on each product, as required by the notified draft, would require producers to face specific costs for adjusting

⁴) Judgment of the Court of 11 July 1974, , *Procureur du Roi v Benoît and Gustave Dassonville*, Case 8-74, EU:C:1974:82.

⁵) Judgment of the Court of 14 December 2004, *Commission of the European Communities v Federal Republic of Germany*, C-463/01, EU:C:2004:797 and judgement of 14 October 2004, *Commission v. Italy*, C-143/03, EU:C:2004:629.

their products only for the Italian market, with consequent costs and need to organise compliance procedures. Such requirements might be therefore burdensome, notably for SMEs. Moreover, the fact that the obligation “*shall apply for a period of six months from the date on which the product is displayed in its reduced quantity*” does not change the impact of such requirement, and could actually add complexity in its implementation phase, as producers would need to adjust the display requirements depending on when products were first offered for sale in any given retail point. The draft measure would likely result, therefore, in a significant regulatory burden for economic operators, notably SMEs.

Even if a measure is considered as contrary to Article 34 TFEU, it may still be justified under Article 36 TFEU or based on one of the overriding requirements in the public interest recognized by the Court. However, national legislation which is capable of restricting a fundamental freedom guaranteed by the Treaty, such as the freedom of movement of goods, can be properly justified only if it is appropriate for securing the attainment of that objective and does not go beyond what is necessary in order to attain it ⁽⁶⁾.

To the extent that some of the products covered by the notified draft are agricultural products governed by the common organisation of the markets established by Regulation (EU) No 1308/2013 ⁽⁷⁾, the Commission recalls that Treaty provisions on the abolition of quantitative restrictions and of all measures having equivalent effect on imports and exports are an integral part of the common organisation of the market (judgment of the Court of 22 March 2003, *Freskot*, C-355/00, EU:C:2003:298, paragraph 38). In this regard, any provisions or national practices which might alter the pattern of imports or exports by preventing producers from buying and selling freely within the State in which they are established, or in any other Member State, on the conditions laid down by Union rules are incompatible with the principles of a common organisation of the market (judgment of the Court of 19 March 1998, *The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming*, C-1/96, EU:C:1998:113, paragraph 43).

However, the establishment of a common market organisation does not prevent the Member States from applying national rules intended to attain an objective relating to the general interest other than those covered by that common market organisation, such as for instance the protection of consumers, even if those rules are likely to have an effect on the functioning of the common market in the sector concerned, provided that those rules are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for attaining that objective (see, to that effect, judgment of 13

⁽⁶⁾ See judgment of 19 October 2016, Case C 418/15, *Deutsche Parkinson Vereinigung*, EU:C:2016:776, para. 34; judgment of 9 December 2010, Case C-421/09, *Humanplasma*, EU:C:2010:760, para. 34 and judgment of 23 December 2015, Case C-333/14, *The Scotch Whisky Association and Others*, EU:C:2015:845, para. 33.

⁽⁷⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013, p. 671.

November 2019, *Lietuvos Respublikos Seimo narių grupė*, C-2/18, EU:C:2019:962, paragraphs 30 and 56).

In the notification message it is provided that the purpose of the draft is to “*protect consumers in relation to the actual quantity of the product purchased and the cost actually incurred*”.

While the Commission services acknowledge the valid need to inform consumers about ‘shrinkflation practices’ a measure imposing the affixing of a specific label on each product does not seem proportionate in order to ensure the objective pursued.

In light of the internal market effects of the mandatory labelling on-pack described above, other measures less restrictive for the trade between Member States could be available to ensure transparency for consumers. In particular, the same information could be provided to consumers by displaying a label at the point of sale, in the vicinity of the category of products concerned (e.g. on the shelf). It is also observed that other Member States adopted similar measures to address the same problem at stake ⁽⁸⁾.

The Commission reminds the Italian authorities that under the terms of Article 6(2) of Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State which has drawn up the draft technical regulation concerned to postpone its adoption for six months from the date of its notification. This deadline comes to an end on 8 April 2025.

The Commission further draws the attention of the Italian Government to the fact that, under this provision, the Member State, which is the addressee of a detailed opinion, is obliged to inform the Commission of the action which it intends to take as a result of the opinion.

Should the Italian Government not comply with the obligations foreseen in Directive (EU) 2015/1535, or should the text of the draft technical regulation under consideration be adopted without account being taken of the abovementioned objections or be otherwise in breach of European Union law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

COMMENTS

The Commission further notices that the specific mandatory content/appearance of the information to be provided is not clearly defined.

The draft measure (Article 21) requires the “*affixing a specific label with special graphic highlighting such in the sales packaging*”. It is not clear, however, what is the meaning of “special graphic”. In the message accompanying the notification it is indicated that the label shall be “*in the same font size as that used to indicate the unit price of the product*”.

⁸⁾ France : Arrêté du 16 avril 2024 relatif à l'information des consommateurs sur le prix des produits dont la quantité a diminué ([link in FR OJ](#)) notified under [2023/0757/FR](#)).

This requirement, however, is not provided also in the draft Article 21 and it is not clear, therefore, if it is part of the mandatory features of the label.

It would be important that the Italian authorities provide more clarity to operators as regards the specific features/characteristics that such “special graphic” should have.

In addition, the Commission notices the draft decree does not foresee transition periods. A suitable transition period should be considered, in order to provide sufficient time to the concerned producers to adjust to this new requirement.

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

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Stéphane Séjourné
Executive Vice-President