



EUROPEAN COMMISSION

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

Message 527

Communication from the Commission - TRIS/(2023) 00551

Directive (EU) 2015/1535

Notification: 2022/0863/F

Note taken by the Commission: Notification regarding a matter covered by a proposal submitted to the Council (article 6 paragraph 4, of Directive (EU) 2015/1535). This note extends the standstill period until 15-12-2023.

(MSG: 202300551.EN)

1. MSG 527 IND 2022 0863 F EN 15-03-2023 08-03-2023 COM 6.4 15-03-2023

2. Commission

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

4. 2022/0863/F - C50A

5. article 6 paragraph 4, of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the French authorities notified to the Commission on 14 December 2022 the draft “Decree on the obligation to offer for sale unprocessed fresh fruit and vegetables without packaging made entirely or in part of plastic” (hereinafter the “notified draft”) registered under the reference 2022/863/F.

According to the notification message, the notified draft amounts to modifying the dates of progressive entry into force applicable to certain fruit and vegetables covered by Decree No 2021-1318 of 8 October 2021, in accordance with the decision of the French Council of State.

The French authorities note that In order to accompany manufacturers in the implementation of the ban on displaying for sale unprocessed fresh fruit and vegetables in plastic packaging (contained in Article 77 of the Law on Combating Waste and on the Circular Economy of 10 February 2020 which provides that retail outlets displaying unprocessed fresh fruit and vegetables for sale will be required, as from 1 January 2022, to offer them for sale without plastic packaging), the French Government adopted Decree No 2021-1318 of 8 October 2021 which provided for the progressive entry into force between 2022 and 2026 of these prohibitions for the fruit and vegetables most susceptible to deterioration.

The national authorities further note that The French Council of State has received a number of legal proceedings challenging the Decree and annulled it on 9 December 2022 (Decisions No 458440, 459332, 459387, 459398 of 9 December 2022), considering that French law did not permit the progressive entry into force of those prohibitions.

Therefore, the Draft Decree which is the subject of this notification amounts to modifying the dates of progressive entry into force applicable to certain fruit and vegetables covered by Decree No 2021-1318 of 8 October 2021, in accordance with the decision of the French Council of State.

The examination of the notified draft has prompted the Commission to issue the following decision on the postponement of the adoption.

Article 1 of the draft decree provides for the definition of ‘fruits and vegetables’, ‘unprocessed fresh fruit and vegetables’, ‘packaging’, ‘plastic material’ and for the list of fruit and vegetables not subject to the obligation laid down by the law, as they risk deteriorating when sold in bulk.

Article 2 of the draft allows the use of packaging stocks made entirely or in part of plastic material until 31 December 2023, for specific listed fruit and vegetables covered by the prohibition laid down by the Law.

The draft regulates the use of packaging and is thus within the scope of Directive 94/62/EC on packaging and packaging waste (adopted on the basis of what is today Article 114 TFEU, the internal market legal basis).

On 30 November 2022 the Commission proposed a Regulation to replace the Packaging and Packaging Waste Directive (i.e. Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC).

This revision aims to prevent the generation of packaging waste, reducing it in quantity, and promoting reuse and refill,



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to ensure that all packaging on the EU market will be recyclable in an economically viable way by 2030 and to increase the use of recycled plastics in packaging, thus enabling more high quality ("closed loop") recycling and substituting virgin materials.

The key measures proposed in the draft regulation include targets for packaging waste reduction at Member State level, as well as mandatory reuse targets for economic operators for selected packaging groups, restricting over-packaging and certain forms of unnecessary packaging, supporting reuse and refill systems, establishing criteria for recyclability to be applied to all packaging, minimum inclusion rates for recycled content in plastic packaging, restrictions of substances of concern in packaging, mandatory deposit return systems for plastic bottles and aluminium cans, harmonised labelling of packaging and waste bins to facilitate correct consumer disposal of packaging waste, and further harmonisation of requirements on EPR, waste collection, and reporting.

The proposed draft regulation includes specific restrictions on the use of certain forms of unnecessary packaging, including single-use packaging for fresh fruits and vegetables of less than 1.5 kg.

Consequently, all the provisions of the notified draft fall within the scope of the Commission's Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC.

The Commission would also like to remind the French authorities that once the Regulation on packaging and packaging waste is adopted, Member States will not be able to maintain or introduce national rules on the issues covered by harmonised rules under that Regulation.

Article 6(4) of Directive (EU) 2015/1535 provides that "Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive, if, within the three months following that date, the Commission announces its finding that the draft technical regulation concerns a matter which is covered by a proposal for a directive, regulation or decision presented to the European Parliament and the Council in accordance with Article 288 TFEU."

Therefore, in accordance with Article 6(4) of Directive (EU) 2015/1535, the French authorities are invited to postpone the adoption of the notified draft for a period of twelve months from the date of receipt by the Commission of the notification in question.

This deadline therefore comes to an end on 15 December 2023.

The Commission notes that according to Article 6(6) of Directive (EU) 2015/1535, "[t]he obligations referred to in paragraphs (3), (4) and (5) shall lapse:

- (a) when the Commission informs the Member States that it no longer intends to propose or adopt a binding act,
- (b) when the Commission informs the Member States of the withdrawal of its draft or proposal,
- (c) when a binding act has been adopted by the European Parliament and the Council or by the Commission."

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