



Initial appraisal of a European Commission Impact Assessment

Lightweight plastic carrier bags

Impact Assessment (SWD (2013) 444, SWD (2013) 443 (summary)) for a Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags (COM (2013) 761 final).

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment accompanying the above proposal, submitted on 4 November 2013.

High consumption of single-use plastic carrier bags, their inappropriate end-of-life treatment and their resistance to degradation are damaging the environment, notably marine ecosystems. There are also additional implications for human health and resource efficiency. It has been estimated that in 2010, on average, every EU citizen used 198 plastic carrier bags, 90 per cent of which were lightweight, single-use bags. In 2010, more than 8 billion plastic bags were littered in the EU. These bags tend to escape waste management streams and accumulate in the environment where they can last for hundreds of years, mostly in fragmented form. If not, they are often sent to landfill which has further negative implications for resource efficiency and pollution. In the EU, per capita annual consumption of single-use plastic bags ranges from four, in the best performing countries, to 466 in the worst.

The situation has given rise to strong concerns among the public and policy-makers, both within the EU and beyond. At EU level, a number of Member States have taken measures to address the problem with varying degrees of success. Attempts by some Member States to go as far as introducing a ban on plastic carrier bags were withdrawn due, inter alia, to objections raised by the European Commission in the light of the provisions of the Packaging and Packaging Waste Directive (Directive 94/62/EC), since any packaging that complies with the basic requirements of that Directive cannot be banned. In 2011, the EU Environment Council, on the initiative of Austria, invited the Commission to analyse possible EU action against plastic bag use, in order to address the issue in a more coherent and effective way.

Objectives of the legislative proposal

The general objective of the Commission proposal is to limit negative impacts on the environment, in particular in terms of littering, to encourage waste prevention and a more efficient use of resources, while limiting negative socio-economic impacts, and to tackle a common and trans-boundary problem in a coordinated and coherent way across the EU. More specifically, the proposal aims to reduce significantly the number of single-use plastic carrier

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bags with a thickness of below 50 microns (0.05 mm) consumed per capita in the EU by 2015. It seeks to amend the current packaging directive in such a way as to require Member States to take measures to achieve a reduction in the consumption of lightweight plastic carrier bags on their territory within two years of entry into force. Under the proposal, these measures may include the use of national reduction targets, economic instruments and marketing restrictions, including bans, on such bags.

Range of the options considered

The IA provides a measured presentation of the various options considered. It includes reference to options which were ruled out at an early stage because they were felt to be either unfeasible or unlikely to offer an adequate or effective response to the problem. The reasons for this are clearly explained in each case. Four options are retained for in-depth analysis.

The analysis of option 1 - *the base-line scenario: status quo* - appears to have been carried out in a balanced and thorough manner, with adjustments made where necessary to take account of the effect of national policies already in place. The IA recognises that under this scenario the problem is not expected to increase dramatically, but concludes that the situation will definitely not improve, and that on-going negative effects will continue to accumulate year on year. All other options are compared against this base-line scenario. There is no reference to the fact that presumably under this scenario any Member State wanting to introduce a ban on such bags would risk being in breach of the Packaging Directive (which is one of the reasons that EU action has been requested).

Option 2 - a voluntary commitment from a significant part of the retail sector to stop distributing single-use plastic bags - is opposed by a significant group of retailers. It has been retained as a policy option analysed for impact because the outcome of the negotiations is very recent - otherwise it seems likely that, in the absence of the necessary cooperation of such a large number of retailers, it would have inevitably been ruled out as unfeasible due to lack of support.

Option 3 proposes the *setting of an EU-level prevention target for single-use plastic carrier bags*, combined with *economic instruments* - which are described as 'the common denominator of policies that have successfully reduced plastic bag consumption' (*IA*, p. 27) - and the possibility for Member States to introduce *marketing restrictions* by way of derogation from article 18 of the Packaging Directive. This is the Commission's preferred option.

Option 4 proposes the introduction of an EU wide ban on single-use plastic carrier bags.

Scope of the Impact Assessment

The IA points out that all options to reduce the use of single-use plastic carrier bags share the same types of impacts. It is the *magnitude* of those impacts which will differ from one option to another depending on the ambition and effectiveness of the measure.

The IA sets out clearly and comprehensibly the underlying methodology and assumptions used to arrive at the conclusions presented. The impact of each of the four options retained for indepth analysis is assessed first from a quantitative point of view, and then from a 'qualitative

one'. The quantitative analysis focuses on three environmental impacts: resource use; littering rates, and impacts on public spending on waste management and litter collection (although arguably this latter point might have fitted better under the economic heading); and on six economic and social impacts: administrative burden; impacts on EU producers; impacts on EU retailers; impacts on consumers; impact on employment levels; and public awareness. Although elsewhere in the IA there is reference to possible public health implications, this aspect has not been retained for the analysis.

The 'qualitative' analysis concentrates on issues such as flexibility of Member States to decide on specific policy measures; implementation and administrative costs; possibility to generate revenue; acceptance of the measure and awareness raising. Strictly speaking, it might have been more accurate to refer to these as 'horizontal' or 'non-quantifiable' issues.

Subsidiarity / proportionality

The Commission proposal takes the same legal base as the original Packaging Directive 94/62/EC (former Article 110a, now Article 114 TFEU). However, the IA points out that EU competence to take action in this area is based on the articles of the Lisbon Treaty relating to environmental protection (Article 191 TFEU) and on the trans-boundary nature of the consequences of the high consumption rate of plastic carrier bags. It recalls in this respect that the discussions at the Environment Councils of March and December 2011 indicated a concern shared by a large number of Member States, which led to a call on the Commission to analyse possible regulatory measures. According to the IA, current experience in the Member States points to the fact that, without an EU wide initiative, effective action to tackle the problem is unlikely. The added value of EU action would lie in providing a framework establishing shared objectives, concepts and definitions, as well as a timeframe and monitoring and reporting arrangements, whilst leaving Member States free to decide about precise implementation methods, in line with the subsidiarity principle. Common EU action would also facilitate the sharing of positive experiences and best practices. The main arguments put forward by some of the retailers opposed to the idea of an EU voluntary agreement to phase out single-use plastic bags were, however, based on subsidiarity and proportionality grounds.

At the time of writing this initial appraisal, no national parliament of a Member State has issued a reasoned opinion raising problems with respect to the subsidiarity principle. The deadline for submissions was 3 January 2014.

Budgetary or public finance implications

The IA recognises that 'measures to reduce the consumption of single-use plastic carrier bags, especially regulatory measures, are likely to entail some administrative burden, falling both on the private and public sector' (*IA*, *p*. 31). Even so, in all but the baseline scenario option, it identifies overall savings and gains for public authorities, manufacturers and retailers, thanks to savings on litter collection and waste management and, in some cases, potential revenue generation that could be used to offset related costs and fund environmental activities. The IA cites the example of Ireland, where, following the introduction of a direct levy on single-use bags, annual revenues rose from 12-14 million euros to 23.4 million euros in 2009. Just 3 per cent of those revenues were needed to cover collection and administration costs, with the remainder being used to support environmental programmes.

• SME test / Competitiveness

It is estimated that there are about 250 to 300 producers of plastic carrier bags in the EU, with 15, 000 to 20,000 employees. The IA recognises that 'a significant part of the EU plastic carrier bag producers are family-owned SMEs' (*IA*, *p*. 11), but refers to difficulties experienced in obtaining detailed information from national and European trade associations on the exact number of SMEs operating in this area. It is not clear if these particular manufacturers were explicitly consulted during the preparation of the IA.

Given that around 70 per cent of all non-biodegradable single-use plastic carrier bags on the market are imported, mainly from Asia, the IA anticipates limited negative impacts on European producers under options 2 and 3. However, it considers that an outright ban on single-use plastic bags (option 4) would have 'possibly drastic consequences on production and employment, especially for SMEs' (*IA*, *p*.39), saying that such concerns were expressed by a large number of the industry stakeholders who responded to the Commission's public consultation.

Although impacts on employment levels in the plastic bag sector are expected to be slightly negative under all options, EU producers of multiple-use plastic bags and other alternatives to single-use bags would experience a considerable rise in profits. The IA argues that the 80 per cent target proposed under option 3 would have the advantage of still allowing for some production of single-use bags, whilst providing an opportunity in the meantime for EU companies to increase their investments in the production of multiple-use plastic or other carrier bags.

In theory, therefore, producers of multiple-use bags should benefit from the changes proposed under these options since reduced availability of single-use bags would in part be off-set by a switch to reusable ones that are mainly produced in the EU. In practice, however, experience has shown that this might not always be the case. The IA refers in a footnote (*IA*, footnote 78, p. 31) to the experience in France where the progressive switch to reusable bags initiated by major retailers turned largely to Polypropylene (PP) bags, which are mainly produced in China, rather than to Low Density Polyethylene (LDPE) 'Bags for Life', produced largely in the EU. Although the IA cautions that the prospective impacts on producers should therefore be considered with care, it does not go any further into investigating all possible aspects of the impact on EU producers, notably SMEs, and in particular ways in which a negative impact, such as that experienced in France, might be averted.

Simplification and other regulatory implications

The initiative appears consistent with the overall objectives of EU waste policy, as set out in the Waste Framework Directive 2008/98/EC, and to fit coherently with the existing body of legislation in the area. More specifically, it builds upon Directive 94/62/EC on packaging and packaging waste which the proposal seeks to amend. Although the issue of plastic bag waste can be linked to the broader debate on the planned review of EU waste policy announced for spring 2014, the IA stresses that specific solutions to the problem have already been tested and that there is a desire to see action at EU level. It therefore feels that a free-standing policy initiative at this time is justified.

Relations with third countries

With 70 per cent of single-use plastic carrier bags being imported from outside the EU, the third- country trade implications of a drastic reduction in demand, or even a ban on such bags within the EU, has not been examined in the context of the IA.

Quality of data, research and analysis

The assessments made appear to be based on sound research and analysis. Two external studies were commissioned: one study, between May and September 2011, on the production and consumption patterns of plastic carrier bags, their related impacts and the impacts incurred by the different policy options to reduce their use; and a second between July and October 2012, to assess in more detail the socio-economic impacts of the different options. The findings are presented in a balanced and comprehensible manner. The IA provides a detailed overview of national measures already in place in the Member States which highlights the varying rates of effort and success in addressing the problem.

Stakeholder consultation

The preparation of the report was preceded by a public consultation held from May to September 2011 on the EUROPA website. 15,538 responses were received, indicating high public concern about the issues and high expectations for EU action. The IA identifies the main stakeholders affected (notably, consumers, local authorities, retailers, manufacturers, and fishing and tourism industries). It appears to have taken on board comments received, to the point that one of its shortlisted options (voluntary agreements), which was added for further assessment as a result of stakeholder consultation, has since effectively been withdrawn from serious consideration due to lack of support from representatives of a significant group of large retailers.

Monitoring and evaluation

According to the IA, new measures aimed at the reduction of single-use plastic carrier bags will not imply major changes to monitoring obligations under existing legislation, notably the Packaging Directive, which provides for regular implementation reports. The core indicator for progress towards meeting the specific objectives of this initiative is the number of single-use plastic carrier bags placed on the market. A sub-category to this effect could be added to the existing EU production and trade databases managed by Eurostat. The Commission will encourage the sharing of best practices concerning data collection in the Member States.

Commission Impact Assessment Board

The initial opinion of the Commission IA Board called for the report to be strengthened in a number of respects. As a result, a revised report was issued on which the Board delivered a positive opinion, while nevertheless making further recommendations for improvements. The IA clearly sets out the ways in which it has attempted to respond to many of these recommendations. The call for a more thorough assessment of the impacts on EU plastic bag producers and jobs, and for clarification of the timing of the initiative in view of the

comprehensive waste policy evaluation currently under way, might nevertheless have benefitted from still further attention. The Board's comments with regard to the feasibility of the proposed EU-wide prevention target appear to have been echoed to some extent in the subsequent inter-service discussions which have led to a reconsideration of this aspect of option 3, with the result that this has in fact been dropped from the proposal itself.

Coherence between the Commission's legislative proposal and the IA

As mentioned above, the Commission proposal does not go as far as the preferred option 3 set out in the IA, in that it allows Member States to set their own targets, if they so wish, rather than imposing an EU-wide target of 80 per cent reduction. Despite the fact that the IA states that 'all Member States are deemed able to reach this target', and the clear presentation of the methodology used to define it (*IA*, *Annex V*), both the IA and the explanatory memorandum of the proposal go on to explain that further consideration of the policy options during interservice consultation led to the conclusion that it would be difficult to design and implement an EU-wide reduction target applying to all Member States. This seems somewhat contradictory.

However, while the dilution of the preferred option at such a late stage in the IA procedure could be seen as something of a climb-down, it could also be seen as a pragmatic and realistic response to concerns expressed. It allows some measures to be introduced, while leaving Member States free to choose the ones most appropriate to their respective situations, and while also leaving the option of an EU target open for future debate. In this respect, the Commission proposal actually seems to stem from the IA process (including the inter-service consultation), rather than vice versa.

The proposal does not oblige Member States to set national targets. Nor does it contain the suggested 'explicit recommendation to ensure that plastic carrier bags are not provided to consumers for free' (*IA*, *p* 26). It merely requires Member States to take measures, but leaves the choice of what those measures may be (targets, economic instruments or marketing restrictions) entirely up to them. The proposal is therefore largely coherent with the IA, but appears to lack some of its ambition.

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This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Environment, Public Health and Food Safety (ENVI), analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at: http://www.europarl.europa.eu/activities/committees/studies.html

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