



18.2.2020

NOTICE TO MEMBERS

Subject: Petition No 1905/2014 by G. L. (Italian) on the ban on the sale of plastic bags in Italy

1. Summary of petition

The petitioner refers to the Government Decree to be adopted in Italy that would ban the sale of non-biodegradable plastic bags and bags that do not conform to the technical standard UNI EN 1432/2002, arguing that this absolute ban is in breach of European law and also of the most recent directive on the issue, namely Directive 2013(0761).

2. Admissibility

Declared admissible on 17 June 2015. Information requested from Commission under Rule 216(6), (new Rule 227(6)).

3. Commission reply, received on 18 December 2015

In 2011 the Commission launched an infringement procedure (ref. 2011/4030) aimed to address the breach of Art. 18 of Directive 94/62/EC¹ (hereinafter the "Packaging Directive") by Italy, which established in 2006 a ban on the marketing of non-biodegradable plastic carrier bags. This ban had entered into force on 01/01/2011 without being notified to the Commission at the stage of draft, as required by Art. 16 of the Packaging Directive and Art. 8 of Directive 98/34/EC².

The petitioner contends the compatibility with the Packaging Directive of the ancillary legislation adopted by Italy with the aim to better specify the ban, i.e. Art. 2 of Decree Law 2/2012, converted by Law 28/2012 as amended. These provisions foresaw the suspension of the ban in relation to bags complying with the standard UNI EN 13432:2002, whereas for the

¹ on packaging and packaging waste, OJ L 365, 31.12.1994.

² laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 204, 21.7.1998.

bags not complying with this harmonized standard further conditions - regarding thickness, handle and percentage of recycled plastic - were required for their marketing in Italy.

On 29/04/2015 the co-legislators adopted Directive 2015/720/EU¹ amending Directive 94/62/EC. The new Directive is aimed at limiting the negative impacts of plastic carrier bags on the environment, in particular in terms of littering, encouraging waste prevention and a more efficient use of resources, while limiting its negative socio-economic impacts.

This new directive allows Member States to *inter alia* adopt marketing restrictions, in derogation from Art. 18 of the Packaging Directive, with regard to lightweight plastic carrier bags (below 50 microns) which meet the essential requirements of the Directive, provided these marketing restrictions are proportional and non-discriminatory. It follows that the new directive allows the banning of non-biodegradable and non-compostable bags below 50 microns.

Following the adoption of Directive 2015/720/EU, by Note of 23/06/2015 the Commission asked Italy to provide clarifications on the application of the Italian legislation in force to the marketing of plastic bags, and on the way Italy intends to amend this legislation, to render it compliant with the new directive.

By note of 07/08/2015, Italy informed the Commission that, with the transposition of the new Directive, the ban on plastic carrier bags will be confirmed and the legal provisions introduced by Art. 2 of the Decree Law 2/2012, converted by Law 28/2012 and aimed to "better specify the ban" will be abrogated. Hence, after the transposition of the new directive, there will be no more marketing restrictions regarding bags above 50 microns, which meet the essential requirements of the Directive and the Italian legislation will therefore be in line with the EU legislation on packaging.

Conclusions

In this context, and taking into account the commitments of the Italian Authorities, the Commission intends to archive this infringement procedure, which is based on Directive 94/62/EC prior to the amendments referred to above. The Commission reserves however the right to pursue this matter further, should the Italian provisions specifying the ban not be adjusted within the transposition deadline (November 2016).

4. Commission reply (REV.), received on 18 February 2020

The Commission's observations

This petition concerns the Italian legislation in force at the time of its lodging², which enforced a ban on the non-biodegradable plastic carrier bag, in breach of Article 18 of Directive 94/62/EC ("Packaging Directive")³.

¹ amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags, OJ L 115, 6.5.2015.

² Law Decree n. 91/2014, amending Law n. 28/2012.

³ Directive 94/62/EC of the European Parliament and Council Directive of 20 December 1994 on packaging and packaging waste, OJ L 365, 31.12.1994.

In 2015, Directive 2015/720/EU¹ (hereinafter: the “Directive”) amending Directive 94/62/EC was adopted. Article 4 (1a) of the Directive allows Member States to adopt marketing restrictions, in derogation from Article 18 of the Packaging Directive, with regard to lightweight plastic carrier bags (wall thickness below 50 microns) which meet the essential requirements laid down in the Directive, provided these marketing restrictions are proportionate and non-discriminatory. It follows that the Directive allows the banning of non-biodegradable and non-compostable bags with a wall thickness below 50 microns.

Italy has transposed the Directive with Law Decree 20 June 2017, No 91, converted with amendments by Law 3 August 2017 No 123, which has repealed the legislation at the origin of the petition.

Conclusion

In light of the changes in EU law and in national legislation, the subject matter of this petition appears no longer relevant. However, some issues of non-conformity might remain, as the Italian legislation presently in force appears to go beyond the scope of the derogation allowed by the Directive and to include in the ban plastic carrier bags with a wall thickness above 50 microns. The Commission is currently looking into these aspects.

¹ Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015, amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags, OJ L 115, 6.5.2015.