

Message 316

Communication from the Commission - TRIS/(2020) 03628
Directive (EU) 2015/1535
Translation of the message 315
Notification: 2020/0410/F

Detailed opinion from the Commission (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 01-01-2021.

(MSG: 202003628.EN)

1. MSG 316 IND 2020 0410 F EN 01-01-2021 01-10-2020 COM 6.2(2) 01-01-2021

2. Commission

3. DG GROW/B/2 - N105 04/63

4. 2020/0410/F - S00E

5. Article 6(2), second indent of Directive (EU) 2015/1535

6. Under the notification procedure laid down by Directive (EU) 2015/1535, on 30 June 2020 the French authorities notified the Commission of the draft Decree on consumer information symbols indicating the sorting rule for waste resulting from products subject to the principle of extended producer responsibility (Notification 2020/410/F, 'the draft Decree').

The aim of the draft Decree is to establish the conditions for applying the legislative provisions aimed at ensuring that any product placed on the market for household use and subject to the principle of extended producer responsibility (excluding household glass drinks packaging) bears a symbol informing the consumer that the product is subject to a sorting rule, together with information on how to sort or bring in waste resulting from the product (Triman symbol).

Examination of the notified draft Decree has led the Commission to issue the following detailed opinion.

Article 17 of Law No 2020-105 of 10 February 2020 on the fight against waste and on the circular economy introduces provisions making it compulsory to affix a regulatory logo to the product, its instructions or its packaging for all products belonging to an extended producer responsibility chain in order to indicate that the waste from these products is subject to a sorting rule. This logo is supplemented by simple information on the rules for sorting or bringing in waste in order to aid understanding and facilitate citizen action. To help consumers assimilate the information, the Triman symbol and the related information are compiled electronically and published online. The provisions of the notified draft Decree specify the procedures for applying these new provisions.

First of all, the Commission notes that the provisions of Article 17 of Law No 2020-105 of 10 February 2020 on the fight against waste and on the circular economy, and Article 1 of the notified draft Decree aim to alter the regulatory framework currently applicable in this area, in particular Decree No 2014-1577 of 23 December 2014 on a common set of symbols relating to recyclable products associated with waste sorting instructions. As regards the information symbol, that Decree provides that it 'must be affixed to the product' or 'failing this, [...] on the packaging, the instructions or any other medium including electronically' (Article R541-12-18(III)).

The Commission must conclude that, in stipulating that the symbol has to be affixed to the product, its instructions or its packaging, Article 17 of Law No 2020-105 of 10 February 2020 and Article 1 of the notified draft Decree amend Article R541-12-18(III) of Decree No 2014-1577 of 23 December 2014 to the extent that the economic operators concerned are no longer permitted to use only electronic media for the Triman symbol and that such media may be used only to supplement the affixing of the Triman symbol to the product, its instructions or its packaging. The Commission politely reminds the French authorities that in the absence of applicable harmonised rules, Article 34 TFEU prohibits any quantitative restrictions on imports and all measures having equivalent effect between Member States. This includes any measure likely to hinder, directly and indirectly, actually or potentially, intra-Community trade (C-8/74 Dassonville). By forcing economic operators to affix the Triman symbol to their products, the instructions or the packaging, the French authorities are imposing different labelling requirements on products from other Member States, which entails additional packaging costs and restricts the marketing of those products. It is highly likely that this measure violates Article 34 TFEU.

Obstacles to the fundamental principle of the free movement of goods must be justified under one of the exemptions referred to in Article 36 TFEU or on the basis of mandatory requirements developed in the case law of the Court of Justice.

According to the message accompanying the notification of the draft Decree, the French authorities' objective is to improve the collection of separated waste and the functioning of recycling streams. While the Commission welcomes the French authorities' efforts to protect the environment in a sustainable manner, which are in line with the Commission's policies in this area, it must remind the authorities that for a national measure to be justified

under Article 36 TFEU or on the basis of one of the mandatory requirements established in the case law of the Court of Justice, it must comply with the principle of proportionality (C-390/99 Canal Satélite Digital). The measure in question must be necessary in order to achieve the desired aim, and the aim must not be able to be achieved by less extensive bans or restrictions or those with a lesser impact on intra-Community trade. In other words, the means chosen by Member States must be confined to what is actually necessary to achieve the aim, and they must be proportional to the aim thus pursued (C-319/05 Commission/Germany).

The Commission has doubts about the proportionality of making it compulsory to affix the Triman symbol and the sorting rules to the product, its instructions or its packaging; in other words, it is questioning the resulting balance between the movement of goods and environmental protection.

First, the Commission notes that only 50 % of the French population is covered by a harmonised system of sorting rules, which casts doubt on the effectiveness of the information symbol among consumers. The Commission is also unsure about the added value that the mandatory information symbol brings compared with other approaches that can lead to increased recycling, such as improved collection systems, simpler sorting and citizen engagement initiatives.

Second, the Commission notes that making it compulsory to affix the Triman symbol to the product, its instructions or its packaging rather than publishing it electronically not only entails additional costs for economic operators, but may also have counterproductive effects. This is the case for relatively small products – having to have the information symbol affixed to the packaging undermines the efforts made by industry to reduce packaging sizes and thus the quantity of waste produced. Consequently, the obligation to affix the symbol seems questionable from an environmental point of view given that there is a whole category of products that are too small for the Triman symbol.

Third, given the stated aim of encouraging and simplifying sorting, the reasons for excluding glass drinks packaging from the scope of the Triman symbol are debatable. Why should there be less need for a symbol showing the required sorting for consumers of water, soft drinks or alcoholic drinks, e.g. wine, from bottles than with other glass, plastic, paper and aluminium products for which affixing the symbol is deemed necessary and is therefore mandatory?

Lastly, and most importantly, the Commission notes that symbols which can be displayed electronically not only give consumers sufficient information, but also avoid a major obstacle to the free movement of goods.

For the reasons set out above, the Commission believes that the planned measure contains aspects that are liable to create obstacles to the free movement of goods, so it is issuing a detailed opinion within the meaning of Article 6(2) of Directive (EU) 2015/1535. The Commission would like to remind the French government that when a detailed opinion in accordance with the provisions of Article 6(2) of Directive (EU) 2015/1535 is issued, the Member State submitting the draft technical regulation must postpone its adoption by six months from the date of receipt of the communication.

Therefore, the end of the standstill period is now 4 January 2021.

Moreover, the Commission would like to draw the French government's attention to the fact that, under the above-mentioned provision, any Member State receiving a detailed opinion must report to the Commission on the action it proposes to take in response.

The Commission also calls on the French government to notify it of the final text of the draft technical regulation in question as soon as it is adopted, in accordance with Article 5(3) of Directive (EU) 2015/1535.

If the French government failed to comply with the obligations under Directive (EU) 2015/1535, or if the text of the draft technical regulation in question were adopted without considering the above objections or it violated EU law for other reasons, the Commission could initiate proceedings in accordance with Article 258 of the Treaty on the Functioning of the European Union.

Thierry Breton Member of the Commission
European Commission

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