

From: GROW B2
Sent: 10 November 2015 10:11
To:
Subject: RE: Your request for access to documents - GESTDEM 2015/5559 - notification 2011/174/I

Tracking: Recipient

Dear I

Please find attached a letter and attachments concerning your request for access to documents GESTDEM 2015/5559 – notification 2011/174/I.

Best regards,



(2015)5209496_a... (2015)5209496_a... (2015)5209496_a... (2015)5209496_a... (2015)5209496_a... annex_



European Commission

DG for Internal Market, Industry, Entrepreneurship and SMEs
B.2. Prevention of Technical Barriers

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From: [mailto:]
Sent: Monday, October 26, 2015 3:28 PM
To: e (GROW); GROW B2; GROW ACCES DOCUMENTS
Cc: I
Subject: FW: Request access to information: detailed opinions and comments on TRIS notification 2011/174/I (Italy)

Dear M

This is just to forward the email below also to the two functional mailboxes that I had incorrectly indicated in my earlier email to you:

- GROW-B2@ec.europa.eu
- GROW-ACCES-DOCUMENTS@ec.europa.eu

I apologize for the inconvenience this may cause. I hope this is useful.

Should you need any further information, please do not hesitate to contact me.

Best regards,

From:

Sent: Monday, October 26, 2015 8:03 AM

To: 'ENTR-ACCES-DOCUMENTS@ec.europa.eu'; 'ENTR-PREVENTION-TECHNICAL-REPORTERS@ec.europa.eu'

Cc:

Subject: Request access to information: detailed opinions and comments on TRIS notification 2011/174/I (Italy)

Dear M

I hope this email finds you well.

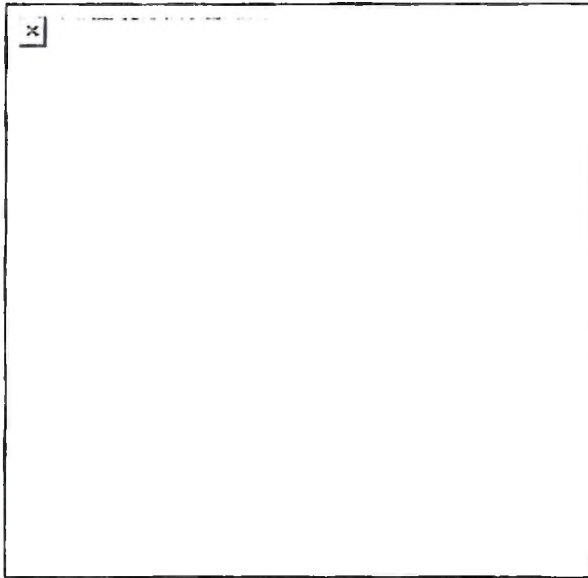
I would like to kindly request your help, in accordance with Regulation No 1049/2001 *regarding public access to European Parliament, Council and Commission documents*, to obtain copies of the detailed opinions (submitted by the Commission and the United Kingdom) and comments (submitted by the United Kingdom and Germany) on the *Draft law prohibiting the marketing of non-biodegradable shopping bags* notified by Italy on 5 April 2011. Please see the details of the notification below:

- Notification Number: 2011/174/I (Italy)
- Date received: 05/04/2011
- End of Standstill: 06/07/2011 (**06/10/2011**)

Should you require any further information in order to answer the above request please let me know.

Any help you could provide would be much appreciated. Thank you, in advance, for your assistance.

Best regards



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EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Single Market Policy, Regulation and Implementation
Director

09 NOV. 2015

Brussels,

GROW/B2/SCQ/KS/SS/ivd (2015)5209496

Email: !

Subject: Your request for access to documents – GESTDEM 2015/5559 - Notification 2011/174/I

Dear ,

Thank you for your email of 26 October 2015 wherein you request access to the detailed opinion issued by the Commission, the comments issued by Germany, as well as the comments and the detailed opinion issued by the United Kingdom in the framework of notification 2011/174/I.

Having analysed your request in the light of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, you will find enclosed a copy of the requested documents.

Please be informed that the comments issued by Germany and the comments and the detailed opinion issued by the United Kingdom are in the public domain, as they were fully disclosed on 22 April 2013. Please note that these documents are disclosed for information only and cannot be reused without the agreement of the originator, who holds copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

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Yours sincerely,

Kerstin JÜRNA

Enclosures: 4

¹ See the Decision of the Commission of 12 December 2011 (2011/833/EU), OJ L 330/39 of 14 December 2011 for details; this Decision does not apply to documents for which third parties hold the copyrights. Article 2 (2) (b)

Message 315

Communication from the Commission - SG(2011) D/51608

Directive 98/34/EC

Notification: 2011/0174/I

Detailed opinion from the Commission (article 9, paragraph 2, second indent of Directive 98/34/EC).
This detailed opinion extends the standstill period until 06-10-2011.

The Commission received this detailed opinion on the 06-07-2011.

1. MSG 315 IND 2011 0174 I EN 06-10-2011 06-07-2011 COM 9.2(2) 06-10-2011

2. Commission

3. DG ENTR/C/3 - BREY 08/94

4. 2011/0174/I - S10E

5. article 9, paragraph 2, second indent of Directive 98/34/EC

6. On 5 April 2011 the Italian authorities notified a draft Law prohibiting the marketing of non-biodegradable shopping bags. According to the notification message the notified draft better defines the scope of the ban on the marketing of non-biodegradable shopping bags introduced into Italian legislation by Article 1.1130 of Law 296 of 27 December 2006, as amended by Article 23.21-nonies of Decree Law 78 of 1 July 2009, as converted and amended by Law 102 of 3 August 2009.

As a preliminary remark the Commission would like to observe that Article 1.1130 of Law 296 of 27 December 2006, as amended by Article 23.21-nonies of Decree Law 78 of 1 July 2009, as converted and amended by Law 102 of 3 August 2009 has not been notified under Directive 98/34/EC and does not seem to have been repealed nor suspended.

Having examined the notified text, the Commission issues the following detailed opinion:

Article 1 (1) of the notified draft provides that for the purpose of compliance with the ban provided for in Article 1.1130 of Law 296 of 26 December 2006, as amended by Article 23.21-novies of Decree Law 78 of 1 July 2009, as converted and amended by Law 102 of 3 August 2009, in force since 1 January 2011, marketable shopping bags must comply with harmonised standard UNI EN 13432:2002, as accredited by a certificate issued by an accredited body.

Standard EN UNI EN 13432: 2002 contains requirements for packaging recoverable through composting and biodegradation, as well as the Test scheme and evaluation criteria for the final acceptance of packaging. The Commission understands Article 1 (1) of the notified draft in the sense that shopping bags can only be placed on market in Italy when they are recoverable through composting and biodegradation and when they comply with the specific requirements laid down in Standard EN UNI EN 13432: 2002. Shopping bags having a thickness of greater than 400 microns, handle attachments and closing devices, as well as technical and build characteristics that make them

suitable for long-term use and give them a separate economic value are exempted from these requirements as laid down in Article 1 (2) of the notified draft. In consequence, shopping bags that are not recoverable through composting or biodegrading or which do not fulfil the requirements on standard EN UNI EN 13432: 2002 and which are not exempted by Article 1 (2) cannot be placed on the market in Italy. Article 3(1) of Directive 94/62/EC on packaging and packaging waste defines the notion of "packaging" and is accompanied by a reference to a non-exhaustive list of illustrative examples provided in Annex I of the Directive. Plastic carrier bags, if designed and intended to be filled at the point of sale are listed in Annex I as "packaging". Shopping bags made out of plastic covered by the notified draft fall therefore into the scope of Directive 94/62/EC. Article 18 of Directive 94/62/EC provides that "Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive". This means that as far as a packaging complies with the provisions of Directive 94/62/EC, including the essential requirements laid down in Annex II, its placing on the market must be allowed by all Member States on their territory. In the light of above, the notified draft law by requiring that shopping bags have to fulfil the specific requirements laid down in Standard EN UNI EN 13432: 2002 and by hereby banning the distribution to the final consumer of shopping bags (except those which are excluded by Article 1 (2) of the notified text) which meet the essential requirements of Directive 94/62/EC contravenes Article 18 of the Directive. In this context, the Commission would like to draw the attention of the Italian authorities to the fact that Article 15 of Directive 94/62/EC allows Member States to adopt economic measures to implement the objectives of this Directive, in the absence of such measures adopted by the Council. Of course such measures would need to be necessary and proportionate to achieve the objective pursued, and not constitute disguised restrictions to trade or arbitrary discrimination. Such measures may also not be contrary to Article 18 of Directive 94/62/EC. The Commission would like to seize this opportunity to inform the Italian authorities that it has launched a public consultation on how best to reduce the use of plastic carrier bags. The public consultation is accessible on the internet (http://ec.europa.eu/yourvoice/consultations/index_en.htm) and is still ongoing until 9 August 2011. Following the outcome of this consultation, the Commission will decide if action at EU level would be necessary and whether Directive 94/62/EC should be amended.

For these reasons the Commission is delivering the detailed opinion provided for in Article 9(2) of Directive 98/34/EC to the effect that the draft order in question would infringe Article 18 of Directive 94/62/EC were it to be adopted without due consideration being given to the above remarks.

The Commission would like to remind the Italian government that under the terms of Article 9(2) of the above mentioned Directive 98/34/EC, 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 therefore comes to an end on 06 October 2011.

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 text of the draft technical regulation under consideration be adopted without account being taken of the abovementioned objections, the Commission may be compelled to send a letter of formal notice pursuant to Article 258 of the TFEU. It also reserves the right to send a letter of formal notice should

it not have received the response 258 of the TFEU. It also reserves the right to send a letter of formal notice should it not have received the response of the Italian government by the time of adoption of the draft technical regulation in question. The Commission invites the Italian government to communicate to it on adoption the definitive text of the draft technical regulation concerned. Failure to communicate this text would constitute an infringement of Article 4, paragraph 3 of the TEU as well as of Article 8 (3) of Directive 98/34/EC, in respect of which the Commission reserves the right to take proceedings.

Contact point Directive 98/34

Fax: (32-2) 296 76 60

email: dir83-189-central@ec.europa.eu

Communication from the Commission - SG(2012) D/50775

Directive 98/34/EC

Notification: 2011/0174/I

Forwarding of the observations of a Member State (United Kingdom) (article 8, paragraph 2, of Directive 98/34/EC). These observations do not have the effect of extending the standstill period.

1. MSG 103 IND 2011 0174 I EN 06-10-2011 19-03-2012 COM 8.2 06-10-2011

2. United Kingdom

3A. Department for Business, Innovation and Skills

3B. Department for Business, Innovation and Skills

4. 2011/0174/I - S10E

5. article 8, paragraph 2, of Directive 98/34/EC

6. Further to the UK's Detailed Option, those of other member states and the comments of the Commission, the UK would welcome comments from the Commission on its proposed next steps regarding this measure.

Contact point Directive 98/34

Fax: (32-2) 296 76 60

email: dir83-189-central@ec.europa.eu

Communication from the Commission - SG(2011) D/51185

Directive 98/34/EC

Notification: 2011/0174/I

Forwarding of a detailed opinion received by a Member State (United Kingdom) (article 9, paragraph 2, second indent of Directive 98/34/EC). This detailed opinion extends the standstill period until 06-10-2011.

The Commission received this detailed opinion on the 18-05-2011.

1. MSG 115 IND 2011 0174 I EN 06-10-2011 18-05-2011 COM 9.2(2) 06-10-2011

2. United Kingdom

3A. Department for Business, Innovation and Skills

3B. Department for Business, Innovation and Skills

4. 2011/0174/I - S10E

5. article 9, paragraph 2, second indent of Directive 98/34/EC

6. The UK would like to make the following response.

The Italian decree requires certain single use carrier bags to be biodegradable and meet a certain standard of biodegradability set by Community legislation and technical standards agreed at EU level, effectively banning single use bags of other materials from the market. As such, the proposed legislation appears to be contrary to Article 18 of the Packaging Directive 94/62/EC, which provides that "Member States shall not impede the placing on the market (in) their territory of packaging which satisfies the provisions of this Directive." The essential requirements set in the Directive ensure that packaging meeting the requirements may be placed on the market in any member state. Accordingly, plastic carrier bags which comply with the requirements for placing on the market as set out in Articles 9 and 11 and Annex II of the Packaging Directive may not be prohibited from being placed on the Italian market.

As a consequence of this prohibition, Italian retailers will be required to purchase biodegradeable plastic bags, with the domestic manufacturers more likely to benefit from increased sales of such bags than those in other Member States. The prohibition would lead to cross European retail chains having to produce specific bags for this market, losing economies of scale or unable to supply this market. Moreover the Italian agricultural industry will potentially benefit from the decree, as there will be increased demand for the plant-derived ingredients of the biodegradeable bags. This has the effect of discriminating in favour of domestic industry contrary to the EU Treaty. Furthermore, the prohibition would amount to a quantitative restriction on imports or a measure having equivalent effect in breach of Article 34 of the Treaty on the Functioning of the European Union.

UK would also point out that the rationale provided in relation to the draft decree does not justify the imposition of the restrictions. Plastic packaging is already regulated under the Packaging Directive and accordingly the environment is protected to the extent required.

UK requests that the Italian government provide evidence justifying the proportionality of this measure as it goes beyond what is required or permitted under the Packaging Directive and appears to distort the single market.

Contact point Directive 98/34

Fax: (32-2) 296 76 60

email: dir83-189-central@ec.europa.eu

Communication from the Commission - SG(2011) D/51709

Directive 98/34/EC

Notification: 2011/0174/I

Forwarding of the observations of a Member State (Germany) (article 8, paragraph 2, of Directive 98/34/EC).

These observations do not have the effect of extending the standstill period.

1. MSG 104 IND 2011 0174 I EN 06-10-2011 15-07-2011 COM 8.2 06-10-2011

2. Germany

3A. Bundesministerium für Wirtschaft und Technologie, Referat E B 2

3B. Bundesministerium für Wirtschaft und Technologie, Referat IV B3

4. 2011/0174/I - S10E

5. article 8, paragraph 2, of Directive 98/34/EC

6. The Italian Ruling contains provisions that constitute a barrier to trade from the German perspective.

The Ruling comprises a single article including four points.

Point 1 contains a reference to standards applicable to shopping bags being placed on the market.

Point 2 governs the technical specifications of shopping bags that are exempt from the usage ban applicable in Italy as provided for in point 1. Exempt from the ban are shopping bags having a thickness of greater than 400 microns, with handle attachments and closing devices, as well as technical and build characteristics that make them suitable for long-term use and give them a separate economic value.

Point 3 states that non-observance of the ban provided for in point 1 shall be punishable by a fine of between €2,000 and €120,000.

Point 4 states that the Ministry for Environmental, Territorial and Marine Affairs shall promote initiatives to ensure that producers indicate on the shopping bags provided for in points 1 and 2 suitable information for the public regarding the correct management of the related waste cycle.

Contrary to Article 9(1) of Directive 98/34/EC, this Ruling came into force in Italy on 01 January 2011.

The fineable ban of certain shopping bags that are not biodegradable according to the given specifications will result in the complete exclusion of this packaging.

This is in contradiction to Article 18 of Directive 94/62/EC on packaging and packaging waste, which states that Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive.

The exact requirements are laid down in Article 9(1) in connection with Annex II of Directive 94/62/EC on packaging and packaging waste. According to the aforementioned, packaging other than biodegradable packaging is permissible.

The Commission response dated 4 Oct 2006 to a Parliamentary question (E-3665/06) states that Member States may not prohibit the use of non-biodegradable plastics in packaging if it is in line with the essential requirements of Directive 94/62/EC.

Measures such as the Italian Ruling must be suitable and necessary, as well as appropriate for attaining the objective pursued; they must not constitute a hidden barrier to trade nor result in random discrimination, and meet the criteria of proportionality.

It seems questionable whether the Italian Ruling is suited to effectively restrict littering from plastic shopping bags, as simply switching to biodegradable plastic shopping bags will not reduce the number of shopping bags used and discarded carelessly. In addition, the desired complete biodegradability of shopping bags made from biodegradable plastics is only possible in composting systems.

Furthermore, Italy has provided no proof that the measure is proportional to the desired goal. In this case, it can be assumed that there are suitable measures for environmental protection that are less restrictive than a complete ban on shopping bags made from non-biodegradable plastic. Likewise, the Italian government does not provide any relevant evidence for the ecological benefits of bags made from biodegradable material. Moreover, the “change in consumer behaviour” intended by the notified Ruling cannot be achieved by means of using biodegradable materials.

The Commission has initiated a public consultation on how to reduce environmental impact from plastic shopping bags, which is running until 09 August 2011. Apparently, this topic is of different relevance to Member States. An analysing assessment by the Commission may be useful for further discussion at European level. Special focus should be on examining the necessity and eco-balance evaluation of potential measures.

The Italian Ruling is apt to impede the internal market, as Italian retailers will only be referred to biodegradable plastic bags for packaging, and domestic manufacturers of the product will likely benefit from increased sales of this product. To be able to market plastic shopping bags in Italy in the future, non-Italian manufacturers of shopping bags will have to change over their production to Italian specifications in order to serve that market; due to smaller lot sizes alone, this will result in higher costs and a competitive disadvantage in direct comparison with Italian producers, who naturally manufacture larger quantities for the domestic market. This will affect primarily small and mid-sized family-owned businesses in Germany. For these companies, the forced expansion of their production profile due to the Italian Ruling might result in a loss of jobs and endanger their livelihood. Furthermore, retailers with locations across Europe will be prevented from using shopping bags in Italy that do not meet the specifications. The ban thus acts as an import barrier.

The German Federal Government is of the opinion that the notified rules constitute a violation of the provisions of the Treaty on the Functioning of the European Union to protect the free movement of goods.”

Allgemeine Kontaktinformationen Richtlinie 98/34

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