



ARTICLE

CIRCULAR ECONOMY : NEW TURN OF THE SCREW IN THE FIGHT AGAINST WASTE



Real Estate and Construction Environmental Law Public Law and Public Procurement Law Private Clients
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Promulgated on February 10, 2020, the law n°2020-105 relating to the fight against waste and the circular economy (the "Law") introduces strong measures to fight against the waste of unsold non-food products, continues the ban on single-use plastic, truly installs the circular economy in the French Code of Public Procurement, reinforces environmental information for consumers and provides for the establishment of new channels of extended producer responsibility ("EPR"). About 88 of its provisions will have to be clarified by decree, which heralds an important normative activity and no doubt many questions about the interpretation and application of these new obligations.

Prohibition of destruction of unsold products and fight against food waste

Because it will have far-reaching implications, **the ban on the destruction of unsold new non-food products** and the obligation to reuse, re-use or recycle them[1] deserves particular attention from producers, importers and distributors of such products. This obligation, which has a very broad scope, may take the form of donation (which is, however, compulsory only for hygiene and childcare products). It raises many questions, ranging from the scope of the exceptions provided for to the scope of the hierarchy of methods for dealing with unsold products, the way in which contact is made with the potential recipients of donations and how this relates to the traditional concepts of waste law.

The Law extends the obligation to **donate food** to all food wholesalers whose annual turnover exceeds 50 million euros. Taxable persons must set up an agreement with authorized food aid associations[2]. In doing so, the Law is an extension of the so-called **EGalim law**[3].

It also continues the work of the so-called **Garrot law**[4] by giving, in Article L. 541-15-4 of the French Environment Code, a first legal definition of food waste, now formally constituted as soon as "any food intended for human consumption [is] at a stage of the food chain, [...] lost, thrown away or degraded". Similarly, it introduces a **national "anti-food waste" label**, which may be granted, under conditions to be specified by decree, to any legal entity contributing to the national objectives of reducing food waste[5]. Finally, the indication of a **date of minimum durability** of products may be accompanied by a statement informing consumers that the product remains edible after this date[6].

Extension and pragmatism for the ban on single-use products

While the EGalim law had prohibited the use of **plastic** for a wide range of **food-related uses** as of January 1, 2020, the Law relaxes, in extremis, this ban for some of these products (straws, cutlery, steak spikes ...) by **postponing its entry into force** until January 1, 2021 and also specifying that the ban applies to single-use plastic. It is true that, faced with the imminence of the change, some players may have experienced difficulties in obtaining supplies of substitute products.

Another measure with considerable practical implications for **catering establishments** is that, as from January 1, 2023, they will be required to serve meals and drinks consumed on the premises in **reusable containers**[7].

The entry of public procurement into the orbit of the circular economy

The Law imposes obligations on certain public purchasers (the State, local authorities and their groupings), which they may pass on in the specifications of their **public contracts**, designed to promote the circular economy: reduction of the use of single-use plastics and priority to goods that are reused or that incorporate recycled materials. As of January 1, 2021, the goods listed by decree will have to meet these requirements in proportions ranging from 20% to 100%. Public purchasers must also, unless justified exceptions, agree to purchase reused temporary buildings[8]. While public procurement law has hitherto made only limited reference to the circular economy[9], public purchasers should not be the only ones to anticipate this new regulation: economic operators will also have to ensure that they **adjust their bids**.

Better information for better consumption

The Law creates various **information obligations with an environmental objective** applicable as of January 1, 2021. Consumers will have to be informed about the environmental qualities of products that generate waste: use of renewable resources, durability, reparability or, for certain electrical equipment and furniture goods, availability of spare parts... The "**Triman**" logo, which means that waste is subject to a sorting instruction, will have to be placed on all products placed on the market for household use, except for household glass beverage containers, from January 1, 2022[10].

More EPR channels

The Law creates new EPR channels: from 2021, for tobacco products made of plastic (cigarette stubs); from 2022 for building materials (construction materials), toys, sports and leisure articles, do-it-yourself and gardening articles; and



from 2025, for fishing equipment containing plastic.

In addition, on an experimental basis, the Law establishes a mediation scheme for three years to settle disputes arising from waste management in EPR sectors.

While defending the bill in the Senate, the Secretary of State, Mrs. Brune Poirson, who ironically stated that waste is one of her passions, quoted Marcel Mauss, who believes that "*you can tell everything about a society by looking through a pile of rubbish*".

In a few years' time we will be looking through what will be left of our rubbish to find out what we have become...

[1] **New Article L. 541-15-8 of the French Environment Code.**

[2] Article L. 541-15-6 of the French Environment Code.

[3] **Law n° 2018-938 of October 30, 2018 for balanced trade relations in the agriculture and food sector and healthy, sustainable and accessible food for all.**

[4] **Law n° 2016-138 of February 11, 2016 on the fight against food waste.**

[5] **Article L. 541-15-6-1-1 of the French Environment Code.**

[6] Article L. 412-7 of the French Consumer Code, to be defined by decree.

[7] **Article L. 541-15-10 of the French Environment Code** for all measures.

[8] Article L. 2172-5 of the French Procurement Code.

[9] Only indicated in Article L. 2111-3 of the French Procurement Code.

[10] **Article L. 541-9-3 of the French Environment Code.**
