



OXO-BIODEGRADABLE PLASTICS ASSOCIATION

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ITALIAN PLASTICS LAW

Having failed to ban oxo-biodegradable plastics in the whole of the EU, Novamont is determined to shut British oxo-biodegradable plastics out of the Italian market, and has sued a small Italian distributor of these plastics for making a statement which it had never made.¹ Novamont is a large Italian company which receives Italian government funding, and had already in 2012 persuaded the Italian Government to pass a law to ban lightweight plastic carrier bags except those which are tested biodegradable according to EN13432 (ie the type produced by Novamont).

The Oxo-biodegradable Plastics Association made a formal complaint to the EU Commission about this law on 23rd April 2013, to which the Commission replied on 9th September 2013 that they had opened Infringement Proceedings (2013/4195 and 2011/4030) against Italy. We had a meeting with the official concerned (Mr. Ion Codescu of ENV D. 2) on 9th November 2013 and were informed that the Commission would not be taking further action in the matter pending the decision of the EU legislators on the Commission's proposal of 4th November 2013 to reduce plastic shopping bags.

A decision has now been reached by the Council and Parliament on this Proposal, though it has not yet been officially promulgated.

The relevant effect of this new EU legislation will be to amend the Packaging Waste Directive 94/62/EC to allow member States to impose marketing restrictions in derogation from Article 18 of the Directive, provided that any such restrictions are proportionate and non-discriminatory. However, for the following reasons the Italian legislation is both disproportionate and discriminatory, and is still not permitted by EU law. Nor would the Italian legislation further the purposes of the Commission's 4th November 2013 Proposal, which was to reduce the number of lightweight plastic shopping bags – it would simply make them Novamont products.

Also, we consider that the Italian legislation 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, and cannot be justified under Article 36. It constitutes a means of arbitrary discrimination and a disguised restriction on trade between Member States.

The Oxo-biodegradable Plastics Association therefore requests that the EU Commission proceeds with their infringement proceedings against Italy. This fact should also be publicised, as Novamont are telling everyone that they will be prosecuted if they use conventional or oxo bags.

¹<http://www.biodeg.org/OPA%20Ridicules%20Italian%20court%20ruling%20on%20marketing%20of%20oxo-bio%20plastic.pdf> The judge who found in favour of Novamont was later murdered in his own court by an enraged litigant in another case.

WRONG STANDARD

The justification for banning conventional and oxo-biodegradable bags is said by the EU Commission to be the pollution of the environment caused by discarded bags. However, EN13432, is a standard which tests for biodegradation in the special conditions found in industrial composting, and says specifically² that "it does not take into account packaging waste which may end up in the environment through uncontrolled means, ie as litter."

The argument put forward for Novamont's type of plastic is the need to put waste-food to use by taking it in their bags to a municipal biogas facility (if one exists in the locality). We all need to avoid food waste, but it is not desirable to use land and water resources to grow crops to make plastic bags. The UN, the EU, and the UK have all discouraged the use of land and water resources for producing bio-fuels (and the same reasoning applies to bio-plastics).³

Bin-liners suitable for transporting food-waste to an industrial biogas unit are already available in the supermarkets, and are given free by some local authorities to their residents, and there is no need to promote bio-based plastic shopping bags. Industrial composters of green waste are reluctant to accept plastic bags of any kind except as part of a dedicated municipal scheme.

ILLEGAL

In 2011 the UK and German Governments sent a Detailed Opinion to the EU Commission objecting to the proposed Italian legislation. These objections are still valid. The UK said⁴ that the Italian decree requires certain carrier bags to be biodegradable and meet a certain standard of biodegradability, effectively banning 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 out 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."

The UK continued "As a consequence of this prohibition, Italian retailers would be required to purchase biodegradable 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 being unable to supply this market. Moreover the Italian agricultural industry would potentially benefit from the decree, as there would be increased demand for the plant-derived ingredients of the biodegradable 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."

"The 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."

² para 1.

³ See <http://www.biodeg.org/biobased.html>

⁴ 2011/0174/I

Germany objected on similar grounds. They said “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 must meet the criteria of proportionality.”

Not only would the Italian legislation be contrary to EU law, and would expose Italian taxpayers to massive claims for damages from companies whose business has been damaged, but for the reasons indicated below it would be the wrong choice for Italy and the EU.

WRONG TECHNOLOGY

“Compostable” plastic is required by EN 13432 to convert rapidly into CO₂ gas,⁵ which contributes to climate-change but does nothing for the soil, and it cannot be described as organic recycling. Nor is it “renewable.”⁶ With regard to home-composting, it is not necessary to buy plastic bags to take kitchen waste to your garden compost pile – you need only a bucket. It is difficult enough to maintain the conditions required by EN13432 in a properly managed industrial composting facility⁷, but completely impracticable in home-composting. For this reason and others ASTM is unlikely to accept a home-composting standard for plastics.

Further, it is misleading to describe this type of plastic as “compostable.” When something is described as compostable an ordinary consumer would think that it can be converted into compost, but EN13432 requires it to convert into CO₂ gas within 180 days. You cannot therefore make compost from it – only CO₂ gas.

This Italian and EU legislation is about shopping bags, but “compostable” plastic is not suitable for shopping bags because they need to be strong (even when wet) and inexpensive, and to be capable of re-use many times before final disposal. They also need to be recyclable if collected during their useful life.

In summary, bio-based “compostable” plastic:

1. cannot be recycled with ordinary plastics, so anyone who is in favour of recycling should be against it. This is not the case with oxo-biodegradable plastics.⁸
2. is too expensive for everyday use – costing up to 400% more than ordinary plastic. Even if this cost were substantially reduced in the future it is far too expensive for everyday use by ordinary people.
3. is not “renewable.” Some of these plastics comprise 30 to 70% of petroleum-based product. Even in relation to the bio-based content, consider the non-renewable fossil fuels consumed and CO₂ emitted by the machines used to clear the land, plough the land, harrow the land, sow the seed, make the fertilisers and pesticides and bring them to the farm, spray the crops, harvest

⁵ EN13432 para. A2.2

⁶ <http://www.biodeg.org/Hydro-biodegradable%20Plastic%20Production%20Process.pdf>

⁷ The Federal Trade Commission of the USA has said (<http://www.ftc.gov/os/fedreg/2012/10/greenguidesstatement.pdf>) that it is not sufficient to show that a test item had complied with ASTM D6400 [or EN13432 or the ISO equivalents] because those standards “likely do not typify compost facility operations nationwide. Rather they reflect “optimum conditions and ignore wide variations in actual facility operations. Because of these variations, the test protocols likely do not replicate typical compost facility environments. Therefore, consumers whose local composting facility [if they have one at all] operates differently than the ASTM assumptions would be deceived if the item were incapable of being composted.”

⁸ <http://www.biodeg.org/position-papers/recycling/?domain=biodeg.org>

the crops, take the crops to a polymerisation factory, and operate the autoclaves.

4. is not desirable to use land and water resources to grow crops to make plastic. Those resources should be used to produce food for the many people in the world who do not have enough to eat. By contrast ordinary plastic and oxo-biodegradable plastic is made from a by-product of oil-refining which used to be wasted.
5. Most of the bio-based plastics are not suitable for home composting
6. should not be described as “biodegradable” because they will fragment in the open environment but have only been tested according to EN13432 to biodegrade in the special conditions found in industrial composting.
7. are generally thicker and heavier, so they need more trucks to transport them, using more road space, consuming more fuel, and emitting more CO₂ and other forms of pollution to atmosphere.
8. An LCA by Intertek, published by the UK Government in 2011 and a further LCA by Intertek in 2012⁹ found that ordinary plastic and oxo-bio plastic has a better LCA than “compostable” plastic or paper bags.

In conclusion, what is the justification for legislating in favour of bio-based or “compostable” plastics if they cannot be made into compost (because they are required to convert to CO₂ gas within 180 days), if they should not be sent to landfill (because they can generate methane in anaerobic conditions), if they cannot be recycled with ordinary plastic, if they are not really renewable (because fossil fuels are used in the agricultural and polymerisation process), if they use scarce land and water resources, and if they are more expensive and less versatile?

⁹[http://www.biodeg.org/files/uploaded/Intertek_Final_Report_15.5.12\(9\).pdf](http://www.biodeg.org/files/uploaded/Intertek_Final_Report_15.5.12(9).pdf)