

Completion of the transposition of the EC Directive on waste

Decree of July 11, 2011^[1] puts an end to the transposition of EC Directive 2008/98 on waste^[2] that repealed three previous Directives^[3] and sets up a legal framework to control the entire waste management process within the European Union. This Decree also completes the regulatory transposition of the so-called “Grennel 2” Law of 2010^[4] and EC Regulation 1013/2006 on shipments of waste dated June 2006^[5].

Ordinance of December 17, 2010^[6] had already transposed part of the EC Directive 2008/98 by incorporating changes to the legal provisions set forth in the French Environmental Code, Customs Code and General Code of Local Authorities. Decree of July 11, 2011 amends the regulatory provisions of the French Environmental Code.

These statutes amend existing provisions and introduce principles such as the waste treatment hierarchy (recovery should be preferred to disposal)^[7] or the possibility, for a waste, to reach the end-of-waste status and to become a product^[8]. They also provide further details on waste management plans set up at the national, regional and local levels^[9].

The Transposition of the EC Directive on waste did not require France to make radical changes in existing provisions applicable to waste. Yet, the adoption of Decree of July 11, 2011 (the “2011 Decree”) and Ordinance of December 17, 2010 (the “2010 Ordinance”) is not without consequences for companies that intervene at any stage of the waste management process.

The 2011 Decree and 2010 Ordinance introduce terminological changes, the consequence of which is to extend the scope of application of the provisions governing waste management.

The 2010 Ordinance had already specified a certain number of basic terms and concepts such as waste, waste producer, waste collection, waste recovery, etc.^[10] These specifications were necessary to ensure a consistent and efficient application of the EC Directive on waste.

The 2010 Ordinance notably set forth a very broad definition of the waste management concept: *“the collection, transport, recovery and disposal of waste, and more generally, any activity involved in the organization of waste handling, from the production of waste to their final treatment, including brokerage and trading services, as well as the overall supervision of these operations”*^[11]. Any company that intervenes at any

stage of these operations is entrusted with a responsibility in the waste management process.

The 2011 Decree introduces further terminological changes and completes existing definitions to make a clear distinction between the various types of waste. In particular, Article R.541-8 of the French Environmental Code sets up a classification of waste types: hazardous, non-hazardous, inert, household, business and bio-waste, a concept introduced by the 2011 Decree.

As a result of these terminological changes, certain business activities are now part of the waste management chain, which entails new obligations for the companies conducting such activities.

For example, tire retreading is now clearly considered as a waste treatment activity: waste treatment is indeed defined as *“any recovery or disposal operations, including preparation prior to waste recovery or disposal”*; recycling is precisely part of the recovery process. As a matter of fact, the section of the French Environmental Code that deals with used tires now applies to all management operations concerning used tires and is no longer limited to disposal operations.

Since waste treatment facilities fall under the legal regime governing classified facilities for the protection of the environment (*installations classées pour la protection de l’environnement* or ICPE)^[12], the classification of a facility as an ICPE imposes specific obligations on the operator of such facility.

The “bio-waste” category created by the 2011 Decree is defined as *“any non-hazardous biodegradable garden and park waste, non-hazardous food and kitchen waste notably from households, restaurants, caterers and retail shops, as well as any comparable waste from food production or processing plants”*^[13].

Waste consisting mainly of bio-waste is defined as waste in which the bio-waste mass accounts for more than 50% of the overall waste mass, after exclusion of the packaging waste^[14].

The creation of this new waste category entails for producers or holders of large quantities of waste consisting of bio-waste the obligation to proceed with a source separation to ensure organic recovery. Organic recovery can be achieved by the waste producer, the waste holder or entrusted to a third party^[15].

The obligation to proceed with a separation at source is also imposed on producers and holders of large quantities of cooking oil waste^[16].

Provisions on bio-waste shall gradually become effective as from 2012.

Increased traceability and transparency have the effect of strengthening the obligations on all companies involved in the waste treatment chain.

Indeed, as a general rule, any waste producer or holder must ensure the management of its waste (Article L.541-2 of the French Environmental Code).

The obligation to keep a waste tracking register now applies to all players of the waste industry^[17] and to all types of waste, without any distinction between the hazardous or non-hazardous nature of the waste^[18]. This register must be kept for a period of three years, regardless of the type of waste concerned^[19].

Similarly, the obligation to file an annual administrative declaration on the nature, quantities, treatment, destination or origin of the waste is no longer limited to facilities that produce or treat hazardous waste but now extends to all ICPEs and waste treatment facilities^[20].

The operators of water-related facilities, works and activities subject to the administrative authorization or declaration procedures as well as the operators of ICPEs that treat waste to make them reach the end-of waste status must also keep a chronological tracking register and file an annual administrative declaration^[21].

The obligation imposed on waste transporters to file a declaration with the prefecture is no longer limited to road transports but now extends to all transport activities^[22].

Given these recent changes, any industrial company likely to be part of the waste management process, whatever its role (from waste producers to operators of treatment facilities) must determine whether it is subject to the legislation on waste and identify accordingly the obligations incumbent upon it.

[1] Decree n°2011-828 of July 11, 2011 containing various provisions on the prevention and management of waste.

[2] Directive 2008/98/EC of the European Parliament and of the Council of November 19, 2008 on waste and repealing certain Directives.

[3] Council Directive 75/439/EEC of June 16, 1975 on the disposal of waste oils; Council Directive 91/689/EEC of December 12, 1991 on hazardous waste; Directive 2006/12/EC of the European Parliament and of the Council of April 5, 2006 on waste.

[4] Law n°2010-788 of July 12, 2010 on the national commitment for the environment.

[5] Regulation (EC) No 1013/2006 of the European Parliament and of the Council of June 14, 2006 on shipments of waste.

[6] Ordinance n°2010-1579 of December 17, 2010 containing various provisions for the compliance with EU legislation on waste.

[7] Article L.541-1 of the French Environmental Code.



[8] Article L.541-4-3 of the French Environmental Code.

[9] Articles L.541-11 et seq. of the French Environmental Code.

[10] Article L.541-1-1 of the French Environmental Code.

[11] Article L.541-1-1 of the French Environmental Code.

[12] Code 2791 Classifications of classified facilities for the protection of the environment: treatment of non-hazardous waste.

[13] Article R.541-8 of the French Environmental Code.

[14] Article R.543-225, I of the French Environmental Code.

[15] Article L.541-21-1 and R.543-226 of the French Environmental Code.

[16] Article R.543-226 of the French Environmental Code.

[17] Households are expressly exempted.

[18] Article R.541-43 of the French Environmental Code.

[19] Same Article.

[20] Article R.541-44 of the French Environmental Code.

[21] Article R.541-46 of the French Environmental Code.

[22] Article R.541-50 of the French Environmental Code.

SoulieR Avocats is an independent full-service law firm that offers key players in the economic, industrial and financial world comprehensive legal services.

We advise and defend our French and foreign clients on any and all legal and tax issues that may arise in connection with their day-to-day operations, specific transactions and strategic decisions.

Our clients, whatever their size, nationality and business sector, benefit from customized services that are tailored to their specific needs.

For more information, please visit us at www.soulieR-avocats.com.

This material has been prepared for informational purposes only and is not intended to be, and should not be construed as, legal advice. The addressee is solely liable for any use of the information contained herein.