

Orgalim Position Paper on the draft French Decree on consumer information on the environmental qualities and characteristics of waste-generating products

Executive summary

Orgalim, representing Europe's technology industries, fully supports the [comments](#) submitted by our French member FIEEC on the new [draft French Decree](#) on consumer information concerning the environmental qualities and characteristics of waste-generating products.

We do not support the provisions of this proposed new draft French Decree because they will restrict the free movement of goods in the European Union Internal Market. To secure the functioning of the EU Internal Market – one of the EU's success stories and major achievements that has improved prosperity and opportunities for European citizens and businesses – it is crucial to have a harmonised approach throughout the EU to the various measures to inform consumers on the environmental qualities and characteristics of products. In addition, requirements must be workable, proportionate and of added value to consumers.

We call on:

- **France** not to set up national requirements but to support the development of the upcoming European Directive on empowering consumers for the green transition, the Sustainable Products Initiative and the proposal on substantiating green claims that will be adopted and published next year in the context of the new Circular Economy Action Plan under the EU Green Deal.
- **France** to exclude batteries from the draft French Decree due to the upcoming new EU Batteries Regulation that will define the mandatory environmental information and characteristics to be communicated according to the battery categories.
- **France** to postpone the entry into force to 1st January 2024.
- **The European Commission** to closely examine the notified measures and to present a detailed opinion.
- **EU Member States** to raise concerns about the specific French measures that will restrict access to the French market.

1. Introduction

Europe's technology industries are fully committed to accelerating the transition to a circular economy which would be economically sustainable and of proven benefit to the environment. Our Position Paper and recommendations on the circular economy can be found [here](#).

Reliable and comprehensible product information, encompassing relevant environmental impacts, can help consumers and public authorities to make well-informed and environmentally responsible purchasing decisions and exercise caution in the use of the product. Our industries are committed to helping consumers to make better purchase choices and to meeting legitimate expectations for better product information.

We question the relevance of providing so much information to consumers, compared to the costs and the tremendous effort for companies to put these requirements into place only at the French level – given that the European Commission is currently preparing legislative initiatives on empowering consumers for the green transition, the Sustainable Products Initiative with a Digital Product Passport, and the proposal on substantiating green claims that will be all adopted next year in the context of the new Circular Economy Action Plan under the EU Green Deal.

The draft Decree, as currently notified under the [TRIS procedure](#), constitutes a significant threat to the functioning of the Internal Market and a restriction of the free movement of goods within the EU. This is why the draft Decree needs substantial adaptations to prevent economic actors from finding themselves, on 1st January 2022, in a situation of not being able to comply with their new obligations due to application procedures and deadlines that ignore their constraints. We highlight the need to have a Decree that takes into account the possibilities of the companies as well as the constraints imposed on them in order to fully meet these new obligations.

2. Critical issues identified in the draft French Decree

2.1 Functioning of the EU Internal Market and restriction of free movement of goods in the EU

We call on the French government not to set up national requirements, but to support the development of the upcoming European Directive on empowering consumers for the green transition, the Sustainable Products Initiative with a Digital Product Passport and the proposal on substantiating green claims that will be all adopted next year in the context of the new Circular Economy Action Plan under the EU Green Deal.

Coherence at EU level is essential for the following reasons:

- **To preserve the coherence of eco-design for products addressing the European market:** definitions specific to France would not allow producers to define clear and effective product eco-design at the level of the European market. On the contrary, a fragmented approach to these subjects would create inconsistencies for producers due to the different national markets.
- **To ensure the consistency of environmental information at European level:** electrical and electronic products are designed and marketed to address the European market as a whole. The ease with which consumers can buy products on websites located in other EU Member States reinforces the need for European harmonisation of definitions of environmental characteristics so that a given criterion reflects the same realities in France or elsewhere in Europe. For example, different recyclability criteria in France and in another Member State would not make sense, given that the end-of-life treatment obligations (pollution control, limitation of hazardous substances) and the recycling objectives are the same for all countries, having been fixed by European Directives.

➤ **To limit the administrative burden** by avoiding transitional national measures within a tight schedule: the Sustainable Product Initiative will very soon be adopted with a set of legislation to be examined by the European Parliament and the Council and will specify some of the criteria in the draft French Decree. Imposing further requirements to ensure compliance with the French text on topics that will very soon be obsolete or even incompatible with European law does not make sense. The French requirements will not have time to bring benefits to consumers because they will need to be deleted or reviewed to align with European law.

Regarding the **restriction of free movement of goods in the EU**:

- The proposed new EU Regulation for Batteries which is expected to be adopted around mid-2022 stipulates in its Article 3 on free movement within the EU: *"Member States may not, for reasons related to sustainability, safety, marking and information requirements applicable to batteries or the management of waste batteries covered by this Regulation, prohibit, restrict or hinder their making available on the market or putting into service batteries which comply with this Regulation"*. As the purpose of this future European Regulation on batteries is in particular to define the mandatory environmental information and characteristics to be communicated according to the battery categories, **we request that batteries should be totally excluded from the draft French Decree** (in particular criteria III, VI, and IX).
- The prohibition of the terms "biodegradable", "respective of the environment" or any other equivalent term, without further clarification in the French Decree, will create a measure of equivalent effect to the restriction on intra-community trade since these terms are authorised in the other EU Member States. Such a national initiative in France is not desirable as the Commission is preparing its initiative on substantiating green claims which will address the issue of establishing jointly a coherent policy framework to ensure the environmental performance of products is reliable, comparable and verifiable across the EU.

As to the information on the presence of Substances of Very High Concern, we request clarification in the draft French Decree that referring to existing tools accessible to the consumers – such as for example the EU database for information on Substances of Concern in articles as such or in complex objects (Products) established under the EU Waste Framework ([ECHA SCIP database](#)) – is sufficient to comply.

2.2 Requirements must be Specific, Measurable, Enforceable, Relevant and not harm the Competitiveness (SMERC principle)

We highlight the **need to respect the SMERC principle** in the definition of the obligations. New requirements must be specific, measurable, enforceable, relevant and not harm the competitiveness.

- **Specificity**
The selected criteria applicable to one product category should have been defined in a life cycle perspective and these criteria need to be based on specific definition. For example, the criteria on recyclability is defined with a definition not applicable to electrical and electronic equipment (EEE) as it does not conform to the European standard 4555x related to material efficiency in energy-related products.
- **Measurability**
Some criteria do not refer to clearly determined and measurable methods, resulting in a high level of legal uncertainty for companies and not enabling a fair comparison between different products. Incorporation of recycled materials, presence of critical material and presence of rare earth, recyclability criteria need to be accurately defined using harmonised standards at EU Level.
- **Enforceability**
Some requirements such as incorporation of recycled materials, presence of critical material and presence of rare earth criteria, are not possible to verify and to enforce through market surveillance. This is an open door to unfair competition and greenwashing.

➤ **Relevance**

New requirements must be relevant for the environment, the users, and applicable even within the specific life cycle phase(s). Requirements must also not be incompatible with other legal requirements. There must be evidence of clear and significant potential for improvement. We strongly oppose full declaration on topics which are difficult to understand or not useful for consumers.

➤ **Competitiveness**

New requirements must not generate significant negative impact on the industry's competitiveness and the competition must be fair, especially regarding requirements applicable only in France and not in other EU Member States.

2.3 Entry into force date must be postponed to 1st January 2024

The entry into force date must allow **sufficient time for economic operators to comply with the requirements**.

Although the applicable sanctions regime has been postponed by one year (to 1st January 2023), it remains insufficient to enable companies to fully comply with the obligation to provide information on certain criteria for which a **period of 24 months will be necessary** due to the significant constraints, the number of products concerned and the necessary IT developments.

Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of over €2,076 billion, manufacturing one-third of all European exports and providing 11.33 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

Orgalim aisbl
BluePoint Brussels
Boulevard A Reyers 80
B1030 | Brussels | Belgium

+32 2 206 68 83
secretariat@orgalim.eu
www.orgalim.eu
VAT BE 0414 341 438