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## Orgalim comments on the draft French Decree on the minimum proportion of reused packaging

### 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 the minimum proportion of reused packaging to be placed on the market annually.

We do not support the provisions of this proposed new draft French Decree because they will restrict the free movement of goods in the EU 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 ensure a harmonised approach throughout the EU to the various circular economy measures. In addition, there are no proven environmental benefits of the proposed new requirements. It is essential that the new requirements will be workable, proportionate, and will contribute to the circular economy

#### We call on:

- **The European Commission** to closely examine the notified measures and to present a detailed opinion.
- **France** to delay the adoption of this draft Decree until a proper assessment of the environmental impact of the reuse system per product category has taken place.
- **EU Member States** to raise concerns regarding the specific French measures that will restrict access to the French market and negatively impact the environment.

## 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](#).

When defining new measures, it is very important to pay particular attention to the risk of pollution transfer. Therefore, the introduction of reuse requirements needs to be supported by a solid environmental analysis and introduced in a harmonised way at a minimum of EU level, given that the industry is organised at international level with long supply chains. Impact assessment studies must also be conducted to guarantee a well-functioning single market and ensure that the implementation of the new requirements will be workable, proportionate and will contribute to the circular economy. There must be proven environmental benefits that exceed the costs to industry.

The draft French Decree, as currently notified under the [TRIS procedure](#), constitutes a significant restriction of the free movement of goods within the EU which has not been accompanied by adequate justification on grounds of environmental protection. The proposed reuse quotas are discriminatory, not suitable for the legitimate goal, excessive, and as such disproportionate.

## 2. Critical issues identified in the draft French Decree

### 2.1. Restriction of free movement of goods in the EU Internal Market

Article 34 of the Treaty on the Functioning of the European Union provides that "*quantitative restrictions on imports, as well as all measures having equivalent effect, are prohibited between Member States*".

The Court of Justice of the European Communities has clarified the scope of Article 34, stressing that this provision aims to prohibit measures having an effect equivalent to quantitative restrictions and in particular:

«[...] *in the absence of harmonisation of national legislation, obstacles to the free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods constitute measures of equivalent effect to quantitative restrictions even if those rules apply to all products alike*» (CJEU, February 10, 2009, C-110/05, §35).

The European Court of Justice has ruled that a provision requiring changes to the packaging or the labelling of imported products constitutes a measure having equivalent effect to a quantitative restriction prohibited by the above-mentioned Article 34 and that such a provision cannot be qualified as simple terms of sale (CJEC, October 14, 2004, n° C-143/03).

More generally, any measure "[...] *which hinders access of products originating in other Member States to the market of a Member State*" is deemed to be contrary to Article 34 (CJEU, February 10, 2009, C-110/05, §37).

In order to access the French market and sell their products, producers will have to demonstrate that they comply with the minimum proportion of reused packaging. Therefore, they will have to change the original packaging to have 1.5% of reused packaging for their products in 2022 and up to 10% in 2027. If a producer is not able to fulfil the minimum proportion because no reused packaging conforming to the definition is available, this producer will not be able to enter the French market.

National regulations on mandatory reused packaging, in the absence of an EU legal framework, therefore infringe the EU principle of the free movement of goods.

### 2.2. A minimum proportion of reused packaging to be placed on the market annually discriminates against manufacturers with factories outside France

Foreign manufacturers will incur high costs of reverse logistic to organise and transport the empty packaging from the point of collection to their factories. This constitutes a significant barrier for competitive market access.

### 2.3. A minimum proportion of reused packaging is not suitable to achieve the pursued environmental goals

Environmental protection can, under specific conditions, be a legitimate justification for restricting the EU movement of goods. However, restrictive measures must be suitable to achieve the pursued goals.

Reusable packaging can achieve optimal environmental performances only under specific circumstances (i.e. short transport routes, reaching certain circulation repetitions, etc.).

Reusable packaging will in many cases encourage a greater use of material to make packaging more resistant, and will result in more transportation with truck rotations from collection points to factories. The overall environmental impact will often be greater than in the case of single-use packaging.

So far, the French Government has not provided any proof that this is the case, nor produced a life cycle analysis that proves that reusable packaging is a preferable option.

The use of reusable packaging must be compared with alternative approaches (i.e. optimisation of the choice of materials, use of recycled materials in order to define through a life cycle analysis methodology where reusable packaging turns out to be the best option).

Article 67 of French law on the fight against waste and the circular economy provides that the minimum proportions *“may be different for each flow of packaging and product categories in order to take into account the margins for progress existing in each sector, the need to respect the environment and the requirements of consumer hygiene or safety”*.

The draft French Decree does not implement this possibility and postpones it to the conclusions of the observatory in the Article 1.IV. – *« The observatory of reuse and recovery is carrying out a study by 1 December 2022 to characterise the existing margins of progression of different packaging flows and product categories. The targets set out in I may be revised accordingly. »*

This shows why the minimum proportions of reused packaging have been established without any preliminary study, which should have assessed the suitability of reuse solutions from an environmental and economic point of view.

Therefore, the proposed mandatory reuse proportions are not substantiated and cannot be considered suitable to achieve the desired environmental goal.

## 2.4. The objectives pursued can only be adequately served at EU level

The Commission will initiate a revision of the Packaging and Packaging Waste Regulation. Such a measure on reusable packaging can only be treated at the European level and must be tailored to specific sectors and packaging types where the environmental impact can be reduced with a proportionate economic impact.

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 €2,126 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.

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