

Ms Kerstin Jorna
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DG GROW
European Commission
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1049 Brussels

By e-mail

Brussels, 8 October 2020

TRIS N° 2020/468/F to 2020/476/F on order relating to the repairability index and display methods, marking and general parameters for calculating the repairability index of certain product groups.

Dear Ms Jorna,

I am writing to you to raise European retailers' and wholesalers' concerns at the French decree and orders implementing the law against waste and on circular economy, which have been notified under TRIS as referred to above. We believe that these could potentially disrupt the single market and undermine the overall objective of creating a single European circular economy.

Our sector is strongly committed to moving towards a more circular economy and offering more sustainable products. We very much support the work of the Commission and European Parliament on a harmonised approach for the Circular Economy. In parallel, our members are actively involved in private initiatives such as repair services and promoting new business models to help and foster appropriate consumer choice.

It is important to ensure that regulation both at EU and national levels is proportionate, and feasible, avoiding unjustified trade barriers and legal, business and reputational risks. Many aspects of the French measures are disproportionately burdensome and likely to create problems, not only for retailers but also for the whole supply chain and for the free flow of goods within the Single Market. In particular, we are concerned that the proposed measures as drafted might lead to prohibitions of, or restrictions on imports. Additionally, such measures would imply a disproportionate transfer of responsibilities to distributors in case of failure of producers to provide the required information, even though the distributors may have used their best efforts to obtain this, and therefore should not carry legal responsibility for the actions or lack of them by others.

These highlight major deficiencies in the French Impact Assessment, in particular with regards to the principles of necessity and proportionality. In their Brief Statement of Grounds, the French authorities allude to both Directive (EU) 2018/851 on waste and the European action plan for the circular economy, on the basis that the measures could have the effect of preventing waste generation and

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improving the repairability of products. But these objectives, however legitimate they may be, do not justify methods to achieve them which directly infringe European law.

We are indeed concerned that the proposed measures preempt the implementation of the EU Circular Economy Action Plan, on which the Commission is currently engaged in a series of public and stakeholder consultations. The measures are equally likely to impinge on the New Consumer Agenda and on the Sustainable Products Initiative, on which consultations are still at an early stage.

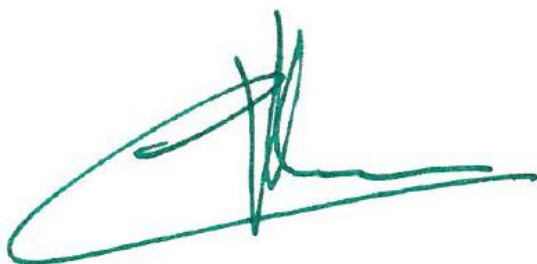
As set out in the notified draft, the national repairability index and its application orders would hamper the free movements of goods and impose additional costs to European economic operators in France, who would need to access and display such information on products solely for the French market, to the exclusion of other recognised indicators. These measures would also represent a legal precedent whereby Member States could limit the entry of electric and electronic equipment through requiring national mandatory repairability information and, thus, create barriers to cross-border trade within the EU, ahead of any EU legislation which would not create such barriers.

This is of even more concern, as the timeframe for application of the measure is particularly tight. The order is not to be expected to be finally published until November 2020 and yet, is proposed to enter into force as early as January 2021. Retailers and wholesalers, who each offer a range of many thousand products, will have almost no time to apply these new rules, nor will the rest of the European and global supply chain, from which they draw these products, be in a position to provide the required information by January 2020.

We would like to stress that we do not seek to challenge national governments' right to take measures to protect the environment. At the same time, while EU legislation is pending, it is difficult to see national measures of this kind as justified in interrupting the free movement of goods, particularly for retailers operating across borders.

I would be grateful if you and the colleagues in DG GROW and ENV, to whom I am copying this, could take account of these concerns in considering the French notification. We have of course also submitted these comments online in the usual way.

Yours sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by a series of vertical and horizontal strokes.

Christian Verschuere
Director-General

Cc: Hans Ingels, DG GROW, HoU, Free Movement of Goods
Emmanuelle Maire, DG ENV, HoU, Sustainable products, production and consumption