



ANIE TRIS response on French draft Decree relating to the repairability index of electrical and electronic equipment

Abstract

ANIE is the **Italian federation of electronic and electrotechnical industries** and represents **1.500 companies** operating in Italy. The sector employs **500.000 people** with an aggregate turnover (at the end of 2019) of **84 billion euros**. In relation to the French [draft Decree \(TRIS Notification 2020/468/F\)](#) we express our concern and therefore ask:

- a **postponement of the implementation deadline (at least 1 year) in order to give companies an adequate time frame to adapt. Additionally the postponement could grant a better coordination with developments at EU level (e.g. the announced EU proposal on ‘empowering consumers for the green transition’)**;
- **better assessment of the proposed Repairability Index and its compatibility with the principles of the Single Market**;
- **assurance from the French government that the Index will be reviewed and amended where needed, according with any future EU policy and legislations.**

Overview

Article 16 of the Law N° 2020-105 of 10 February 2020 against waste and on the circular economy (AGEC Law) establishes a repairability index on electrical and electronic equipment intended for consumers. The index is to be displayed at the time of purchase to inform consumers on the ability to repair the product. The index should consist of a score from 1 to 10, based on five criteria (documentation provided by the manufacturer, ease of disassembly of the product, availability of spare parts, relationship between the price of the most expensive spare part and the price of the original product, usage counter (optional) or other criteria specific to the category of products concerned).

- The [draft Decree \(TRIS Notification 2020/468/F\)](#) provides the general framework for the implementation of the index and includes the dates and procedures for its entry into force: on 1st January 2021.
- An “umbrella” order shall be promulgated to specify the display methods, markings and general parameters for calculating the repairability index (notification 2020/469/F).
- For each category of electrical and electronic equipment, an order (“Arrêté”) of the Minister for the Environment and the Minister for the Economy and Finance shall specify the criteria and sub-criteria as well as the methods for calculating the index applicable to the specific product category.

A first batch of products are affected by orders of the Minister for the Environment and the Minister for the Economy and Finance: washing machines (notification 2020/470/F), smartphones (notification 2020/472/F), laptops (notification 2020/471/F), televisions (notification 2020/473/F), electric lawn mowers (notification 2020/474/F, notification 2020/475/F, notification 2020/476/F).

As the draft Decree doesn't provide any transition period for the entry into force of the index on specific product categories:

- From January 1st 2021, any economic operator placing washing machines, smartphones, laptops, televisions or electric lawn mowers on the market shall be required to calculate and display the index.
- After January 1st 2021, when an order will be published for other product category, any economic operator placing on the market these equipments shall be required to calculate and display the index the day after the publication of the order in the Official Journal.

Key Issues

We wish to stress the imperative need to guarantee respect for the single market and the free movement of goods within it. Since the obligation to calculate and affix the reparability index is accompanied with administrative sanctions from January 1st 2022, the measure could constitute an obstacle to the free movement of goods, if its necessity and proportionality cannot be demonstrated.

Our main concern regard the entry into force of the obligations. **Taking into account that the draft Decree and the orders cannot be adopted and published before November 2020, companies will have only two months to comply with the provisions!**

Companies cannot base their conformity on these unpublished texts and still subject to modification, furthermore, companies not affiliated to professional associations in France could, for the most part, to be totally ignorant of this index.

These timeframes also seem to overlook both the difficulty of applying the provisions by the scheduled dates and the operational complexity of the due diligence to be guaranteed for companies, especially if the French authorities do not provide the necessary tools to support the implementation of the decree and the respective ordinances (calculation notice, graphic charter of the reparability index, calculation grids specific to the concerned product categories). These elements retain a provisional value as long as the regulations are not published.

In addition, there are still great uncertainties about how the reparability index will be calculated and transmitted along the supply chain.

The main concern of companies derives from the legal uncertainty caused by the fact that the texts would be published with unrealistic deadlines and the absence of sanctions for the first year does not solve the objective criticality, given the potential serious repercussions in terms of reputation to which the individual brands would be exposed from January 1 - 2021, in the case of involuntary failure to comply due to lack of time for compliance.

For these reasons it is important that the decree provides for a sufficient transition period between the publication of the texts and the entry into force of the provisions. According to our analysis, this period cannot be less than 1 year.

Furthermore, the introduction of new requirements on products must first and foremost guarantee the **consumers safety**, a key element to maintain their trust and not to frustrate the efforts undertaken to support circular economy. Product repair activity requires adequate technical skills that consumers and most non-professional repairers do not possess. If an equipment is not properly repaired and tested consumer safety could be jeopardized. In order to ensure the safety and conformity of products, the

repairing of any electronic equipment must be carried out by **professional repairers**, to which consumers should have the right to turn to for proper repair.

The **networks of authorized professional repairers** were initially included in the repairability index, based on a consensus reached among stakeholders who participated in the discussions on the draft decree. However, the French authorities have deleted this reference, considering it incompatible with Article 25 of the French law on the circular economy which states: *«Tout accord ou pratique ayant pour objet de limiter l'accès d'un professionnel de la réparation aux pièces détachées, modes d'emploi, informations techniques ou à tout autre instrument, équipement ou logiciel permettant la réparation des produits est interdit.»*

These networks, created to ensure the best possible repair and to guarantee the good functioning of the product and the safety of consumers, do not restrict the access to spare parts and technical documentation by independent repairers. Taking into account that the first objective of the French repairability index is rewarding good practices, of which authorized repair networks represent an example, it seems consequential to include these networks in the calculation parameters of the repairability index. Consequently we ask the European Commission for clarification on this provision by asking the French government to include again in the index the authorized professional repair networks.

We believe also that **the draft decree should better consider the upcoming EU legislative framework on sustainable products**, in order to ensure an harmonised approach and to avoid fragmentation of the Single Market. Specifically, given that the European Commission has already announced plans to publish legislative proposals on consumer environmental information, including repairability, it makes little sense for Member States to unilaterally develop national schemes at this stage. It creates a clear risk of fragmentation of the Single Market and undermines the free movement of goods. The proliferation of national labels, will lead to legal uncertainty and technical and economic barriers. Additionally, multiple national schemes may also result in consumer mistrust and confusion (voluntary vs mandatory labels, different criteria used, etc.), reducing the desired influence on purchasing behaviours. Conformity with different requirements in European countries will also be a considerable burden on manufacturers' resources, which may finally be reflected in the pricing of the products.

The Commission should therefore encourage the French legislator to await the announced EU proposals rather than taking unilateral action. This would also send a clear signal to other Member States to hold off on new proposals. If multiple Member States unilaterally proceed with their own schemes it would become unworkable for manufacturers to sell cross-border in Europe.

There is a clear risk that the French Index will not be fully consistent, or may be contradictory, with the upcoming EU legislative measures on reparability and sustainability.

Conclusions

On the basis of the above, we urge the Commission to intervene, hoping that the French government will amend the decree as suggested. It is extremely important to ensure:

- **the respect of the Single market;**
- **the free movement of goods principles;**
- **the consumers safety;**

We therefore call on the Commission to pay the greatest attention to this matter and to take the necessary actions if the application of the index should hamper one of those key principles.

Milan, October 2020