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### Legal memorandum assessing the incompatibility with EU Law of Article 17 of the French Law on Circular Economy and its Draft Implementing Decree on the Requirement to Feature the Triman Logo and Additional Sorting Instructions

Submitted by *EUROPEN* and *FoodDrinkEurope*

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## Memorandum

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| To:           | Directorate-General for<br>Internal Market, Industry,<br>Entrepreneurship and SMEs<br>DG GROW/B/2 – N105 4/66 | European Commission        |
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### Incompatibility with EU Law of Article 17 of the French Law on Circular Economy and its Draft Implementing Decree on the Requirement to Feature the Triman Logo and Additional Sorting Instructions (notification number 2020/410/F)

On 30 June 2020, France notified to the European Commission (the **Commission**) a draft measure through the European Union (**EU**) Technical Regulations Information System (**TRIS**) consultation procedure, pursuant to Directive 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (**TRIS Directive**).<sup>1</sup>

The measure notified to the Commission is a Draft implementing Decree on consumer information symbols regarding the sorting rule for waste resulting from products subject to the principle of extended producer responsibility (*Décret relatif à la signalétique d'information des consommateurs sur la règle de tri des déchets issus des produits soumis au principe de responsabilité élargie du producteur*) (the **Draft Implementing Decree**).

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<sup>1</sup> This notification is available on the TRIS platform of the European Commission: <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=410>

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The Draft Implementing Decree implements Article 17 of the Law 2020-105 of 10 February 2020 on Waste Prevention and the Circular Economy (*Loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire*) (the **Law on Circular Economy**).

We were requested by the European Organization for Packaging and the Environment (EUROPEN) and FoodDrinkEurope to explain why these measures are incompatible with EU law. We believe that Article 17 of the Law on Circular Economy and its Draft Implementing Decree create unjustified obstacles to trade between Member States of the EU. This conclusion rests on the following steps and reasoning:

- First, an analysis of the objectives and content of Article 17 of the Law on Circular Economy and its Draft Implementing Decree (section 1);
- Second, the finding that the issues tackled by Article 17 of the Law on Circular Economy and its Draft Implementing Decree would be best dealt with at the EU level (section 2);
- Third, the lack of compliance of Article 17 of the Law on Circular Economy and its Draft Implementing Decree with existing EU legislation on packaging and waste (section 3);
- Fourth, the incompatibility of Article 17 of the Law on Circular Economy with the EU Internal Market rules (section 4); and
- Fifth, Article 17 of the Law on Circular Economy should also have been notified to the Commission using the TRIS notification system (section 5).

A brief conclusion summarising these findings and a list of measures requested from the Commission are contained in section 6.

### 1. DESCRIPTION OF ARTICLE 17 OF THE LAW ON CIRCULAR ECONOMY AND OF ITS DRAFT IMPLEMENTING DECREE

#### 1.1 Article 17 of the Law on Circular Economy

Article 17 of the Law on Circular Economy<sup>2</sup> inserts a new Article L541-9-3 in the French Environmental Code. In short, this new provision sets out that any product subject to an extended producer responsibility (**EPR**) scheme, with the exception of household glass beverage packaging, must feature a common sorting symbol. This sorting symbol must “*be accompanied*” by information specifying the methods for sorting or recovering

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<sup>2</sup> Article 17 of the Law on Circular Economy reads as follows: “*Tout produit mis sur le marché à destination des ménages soumis au I de l'article L. 541-10, à l'exclusion des emballages ménagers de boissons en verre, fait l'objet d'une signalétique informant le consommateur que ce produit fait l'objet de règles de tri. Cette signalétique est accompagnée d'une information précisant les modalités de tri ou d'apport du déchet issu du produit. Si plusieurs éléments du produit ou des déchets issus du produit font l'objet de modalités de tri différentes, ces modalités sont détaillées élément par élément. Ces informations figurent sur le produit, son emballage ou, à défaut, dans les autres documents fournis avec le produit, sans préjudice des symboles apposés en application d'autres dispositions. L'ensemble de cette signalétique est regroupé de manière dématérialisée et est disponible en ligne pour en faciliter l'assimilation et en expliciter les modalités et le sens. L'éco-organisme chargé de cette signalétique veille à ce que l'information inscrite sur les emballages ménagers et précisant les modalités de tri ou d'apport du déchet issu du produit évolue vers une uniformisation dès lors que plus de 50 % de la population est couverte par un dispositif harmonisé. Les conditions d'application du présent article sont précisées par décret en Conseil d'Etat.*”

waste resulting from the product (the **Sorting Instructions**). If several components of the product or of the waste resulting from the product are subject to different sorting rules, these rules should be detailed item by item.

Article 17 of the Law on Circular Economy provides that this information (*i.e.*, the sorting symbol and the Sorting Instructions) must appear “*on the product, on its packaging or, failing this, in the other documents supplied with the product, without prejudice to the symbols affixed in application of other provisions*”.<sup>3</sup> It must also be available online “*to make it easier to learn and to explain its methods and meaning*”.

Article 17 of the Law on Circular Economy cannot be applied without an implementing decree and expressly provides that its conditions of application “*are specified by a decree in Council of State*”.<sup>4</sup>

## **1.2 The Draft Implementing Decree**

The Draft Implementing Decree specifies that the sorting symbol referred to in Article 17 of the Law on Circular Economy is the Triman logo. However, the Draft Implementing Decree also goes beyond the requirements of Article 17 of the Law on Circular Economy:

- First, the Sorting Instructions must be affixed to the Triman logo, not just accompany it: this requirement to attach both items to each other does not appear at all in Article 17 of the Law on Circular Economy.
- Second, packaging falling under the scope of EPR is subject to stricter rules than other goods: the Triman logo must appear on the packaging subject to EPR, whereas for other products subject to EPR, producers have a choice to apply the logo on the product itself, its packaging or any document accompanying the product (such as the instructions of use, warranty documents, etc.). Since the Triman logo must be attached to the Sorting Instructions (see, first bullet point), this means that packaging subject to EPR must necessarily feature both the logo and the Sorting Instructions – there is no other option offered to producers of packaging (such as, for instance, place the Triman logo and the Sorting Instructions on the documents accompanying the product wrapped in the packaging, where the Triman logo and Sorting Instruction concerning the product itself may appear).

## **1.3 Changes brought about by Article 17 of the Law on Circular Economy and its Draft Implementing Decree compared to existing French legislation**

The Triman logo is not new: it was introduced in French law in 2014. However, Article 17 of the Law on Circular Economy and its Draft Implementing Decree considerably strengthen the existing rules.

- First, while some categories of EPR products are currently exempted from the requirement to use the Triman logo (*i.e.*, electrical and electronic equipment, batteries and diffuse waste specific to households), Article 17 of the Law on Circular Economy will extend the scope of application of the

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<sup>3</sup> Free translation of the original text in French.

<sup>4</sup> Free translation of the original text in French.

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Triman logo to all products subject to EPR, which are listed in the new version of Article L541-10-1 of the French Environmental Code.

The range of products subject to EPR is very broad and includes (i) all types of packaging for products consumed or used by households, outside or inside of the home; (ii) all types of packaging of products consumed or used by professionals as of 1 January 2025 (except for restaurants, which will already be covered from 1 January 2021).<sup>5</sup>

- Second, it is currently sufficient to make the Triman logo appear on the producers' websites. However, once the Draft Implementing Decree is adopted and enters into force, Article 17 of the Law on Circular Economy will oblige producers to display the Triman logo (and the Sorting Instructions – see, third bullet point below) on a physical support and online, not just online. Pursuant to Article 17 of the Law on Circular Economy, the Triman logo and the Sorting Instruction must appear on either the product itself, its packaging or other documents supplied with the product. As noted above, the new rules are even stricter for packaging subject to EPR, as in that case the Triman logo and the Sorting Instructions must be affixed to the packaging itself (there is no other option).
- Third, Article 17 of the Law on Circular Economy and the Draft Implementing Decree require that the Triman logo be accompanied by Sorting Instructions. This requirement to add Sorting Instructions does not appear in the legislation currently in force and its exact scope is still unknown as no further implementing decree has been adopted so far to determine the exact type of information to be provided.
- Fourth, the Draft Implementing Decree provides that the Sorting Instructions must be affixed to the Triman logo and that, for packaging subject to EPR, they must be on the packaging itself (not on accompanying documents, for instance). Again, this requirement to add information does not appear in the current legislation.

## 2. THE OBJECTIVES PURSUED BY THE FRENCH LAW CAN ONLY BE ADEQUATELY SERVED AT THE EU LEVEL

Article 5 of the Treaty on the European Union (*TEU*) provides that “[u]nder the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional

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<sup>5</sup> Original French text of Article L541-10-1, 1° and 2°: « 1° Les emballages servant à commercialiser les produits consommés ou utilisés par les ménages, y compris ceux consommés hors foyer ;  
2° Les emballages servant à commercialiser les produits consommés ou utilisés par les professionnels et qui ne sont pas déjà couverts par le 1° du présent article, à compter du 1er janvier 2025, à l'exception de ceux qui sont consommés ou utilisés par les professionnels ayant une activité de restauration, pour lesquels ces dispositions s'appliquent à compter du 1er janvier 2021. Un organisme qui remplit les obligations de responsabilité élargie du producteur pour le secteur de l'agrofourmiture conformément à un accord conclu avec le ministre chargé de l'environnement avant le 31 décembre 2019 n'est pas soumis à agrément tant que cet accord est renouvelé. Les clauses de cet accord valent cahier des charges au sens du II de l'article L. 541-10. Les autres dispositions de la présente sous-section applicables à l'organisme sont précisées dans l'accord, sous réserve des articles L. 541-10-13 à L. 541-10-16, qui lui sont applicables de plein droit ».

*and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”*

In accordance with the principle of subsidiarity, the objectives pursued by Article 17 of the Law on Circular Economy and its Draft Implementing Decree, *i.e.*, “*clarify consumer information on the sorting rules for waste resulting from products offered for sale in order to harmonise the information available, promote understanding and facilitate citizen action*”<sup>6</sup> can only be adequately served at the EU level.

First, as explained below (section 4), any labelling requirement imposed at the level of a Member State will inevitably restrict trade between Member States as producers based in other Member States will have to incur substantial costs and disruption to adjust their production to the requirements of the Member State concerned. To require producers to offer specific information without significantly encroaching on the fundamental freedom of movement of goods, which is a cornerstone of EU law, such an initiative should be addressed at Union level.

Second, both the protection of the internal market and the protection of the environment feature among the objectives pursued by the EU under Article 3(3) TEU<sup>7</sup> and several directives were adopted to regulate and reduce waste in order to foster the environment (see, below, section 3).

Third, the Commission is, in fact, considering adopting labelling that has the same purpose as the Triman logo. In its Circular Economy Action Plan of 11 March 2020, the European Commission indicated that:

*“[a]s part of the initiative to harmonise separate collection systems [...], the Commission will assess the feasibility of EU-wide labelling that facilitates the correct separation of packaging waste at source”*<sup>8</sup>

It is problematic that France should expand its legislation on sorting logos precisely at a time when the European Commission considers doing the same. On the one hand, it would add confusion rather than offering clarity to users. On the other hand, it creates regulatory hurdles for producers wishing to benefit from the freedom of movement of goods.

It is doubtful that these parallel initiatives comply with the principle of sincere cooperation. Under Article 4(3) TEU:

*“the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*

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<sup>6</sup> See, point 9 of the TRIS notification of the Draft Implementing Decree (“*Brief Statement of Grounds*”) available on the following website: <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=410>.

<sup>7</sup> Article 3(3) TEU: “*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*”

<sup>8</sup> European Commission Communication, “*A New Circular Economy Action Plan for a cleaner and more competitive Europe*”, 11.03.2020, COM(2020) 98 final, section 3.3., p. 9.

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*The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.*

*The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives."*

Read together, Article 3(3) TEU and Article 4(3) TEU should lead a Member State to refrain from adopting regulations to address an issue (lack of straightforward sorting information to consumers) which can only be adequately resolved at EU level and in a field which the EU intends to harmonise.

Fourth, there are already logos whose use is imposed at the EU level. The crossed-out wheeled bin logo must be applied on electrical and electronic equipment pursuant to Directive 2012/19/EU of 4 July 2012 on waste electrical and electronic equipment (WEEE).<sup>9</sup> The crossed-out wheeled bin logo was imposed with a view to "minimising the disposal of WEEE as unsorted municipal waste and to facilitating its separate collection".<sup>10</sup> Therefore, it pursues the same objectives as the Triman logo, *i.e.*, it informs consumers that the waste resulting from the product should be sorted.

Fifth, any measure adopted at the national level to harmonise sorting information and increase their understanding is likely to be ineffective. Due to the freedom of movement of EU citizens and businesses within the EU, many EU citizens live in another Member State than their Member State of origin or frequently move to other Member States. These foreigners, travelers and tourists represent a sizable proportion of the population. They are unlikely to be aware of the meaning of a national logo such as the Triman logo.

Therefore, France (or any other Member State considered individually) is not adequately placed to adopt consistent and straightforward labelling requirements which would improve consumer information without creating undue barriers to trade between Member States or a disproportionate burden on producers. This matter should be dealt with at the EU level.

### 3. BREACH OF EU HARMONISED LEGISLATION

The Law on Circular Economy and the Draft Implementing Decree are in breach of several provisions of Directive 94/62/EC of the European Parliament and Council of 20 December 1994 on packaging and packaging waste (**Packaging and Packaging Waste Directive**) and of the Directive 2008/98 of the European Parliament and of the Council of 19 November 2008 on waste (**Waste Framework Directive**).

#### 3.1 The Packaging and Packaging Waste Directive

The Packaging and Packaging Waste Directive regulates waste resulting from packaging. Annex II of the Packaging and Packaging Waste Directive lays down the essential requirements which all packaging placed

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<sup>9</sup> Article 14(4) of the WEEE Directive.

<sup>10</sup> Article 14(4) of the WEEE Directive.

on the market must comply with. These requirements relate to the manufacturing and composition of packaging, as well as the reusable, recoverable and recyclable nature of packaging.

The first requirement set out in Annex II is that “*packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer*”. However, as explained above, not only does Article 17 of the Law on Circular Economy require that the sorting symbol and Sorting Instructions appear on a physical support but also the Draft Implementing Decree provides that, for packaging subject to EPR, both the Triman logo and the Sorting Instructions must feature on the packaging itself. It is no longer possible only to provide this information online.

This means that, depending on (i) the size of the object inside the packaging; and (ii) the amount of Sorting Instructions that must be provided to the consumer (which is still unknown), the size of small packaging may have to be increased to ensure that all the information is available in readable fashion for users. In other words, the Draft Implementing Decree will in fact oblige producers to increase packaging to have enough space for both the Triman logo and the Sorting Instructions.

Therefore, Article 17 of the Law on Circular Economy and its Implementing Draft Decree run counter to the objective of keeping the packaging “*to the minimum adequate amount to maintain the necessary level of safety*”, as required under Annex II of the Packaging and Packaging Waste Directive.

Finally, Article 18 of the Packaging and Packaging Waste Directive provides that, even if Member States are allowed to go beyond the requirements laid down in its provisions, they “*shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive*”. However, as is explained below in section 4, Article 17 of the Law on Circular Economy and its Draft Implementing Decree introduce provisions which restrict the free movement of goods and thus violate Article 18 of the Packaging and Packaging Waste Directive in addition to the EU internal market rules.

### **3.2 The Waste Framework Directive**

Article 17 of the Law on Circular Economy and its Draft Implementing Decree do not comply with Article 8a(1)(d) of the Waste Framework Directive which states that if Member States establish extended producer responsibility schemes, they must “*ensure equal treatment of producers*”.

Article 17 of the Law on Circular Economy and its Draft Implementing Decree do not ensure equal treatment of producers. On the contrary, they discriminate illegitimately between producers in two different ways.

- First, as explained in section 1.2, the Draft Implementing Decree requires that, for packaging subject to EPR, the Triman logo must be affixed to the packaging and that it must be stuck together with the Sorting Instructions so that for those products, both the Triman logo and the Sorting Instructions must appear on the packaging itself. On the other hand, for products which are not packaging, and which are subject to EPR, the Triman logo and the Sorting Instructions may appear on the product, on the packaging or on other documents supplied with the product. Hence, for packaging subject to EPR, the



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Draft Implementing Decree removes the possibility to make the Triman logo and the Sorting Instructions appear on the documents supplied with the product.

- Second, as explained below (section 4.2.1), Article 17 of the Law on Circular Economy and its Draft Implementing Decree make the Triman logo and the Sorting Instructions mandatory on all types of goods and packaging subject to EPR except for household glass beverage packaging. This difference of treatment is not based on any objective justification.

In addition, Article 8a(1)(d) of the Waste Framework Directive prevents Member States from “*placing a disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products*”. Article 17 of the Law on Circular Economy and the Draft Implementing Decree also breach this obligation.

- First, as mentioned above, producers of products subject to EPR are now bound to affix the Triman logo and the Sorting Instructions on a physical support while they were previously allowed to do so online. This will entail significant difficulties for products and packaging of small size which will now have to contain all the Sorting Instructions. Producers will often have no choice but to create larger packaging to ensure compliance with their obligations. They will also have to invest resources in translations and in creating packaging for products placed on the French market that are distinct from packaging for products placed elsewhere in the EU. For producers who chose to label the product itself with the Triman logo and the Sorting Instructions (for instance if it is impossible to put this information on the packaging), they will have to create products that are specifically designed to be placed on the French market, in compliance with French legislation. These examples show the significant burden that Article 17 of the Law on Circular Economy and the Draft Implementing Decree will create on producers.
- Second, neither Article 17 of the Law on Circular Economy nor its Draft Implementing Decree takes any account of the size of the producers targeted by these measures or the quantities of products that they sell. As a result, the strict labelling requirements at issue saddle small producers bent on entering the French market with a disproportionate burden as they will have to accept significant regulatory costs upfront without any guarantee of recouping these expenses. The regulatory burden imposed by Article 17 of the Law on Circular Economy and its Draft Implementing Decree is therefore disproportionate.

Finally, and similarly to what is provided for in Article 18 of the Packaging and Packaging Waste Directive, Article 8(3) of the Waste Framework Directive provides that when applying extended producer responsibility, Member States must respect “*the need to ensure the proper functioning of the internal market*”. However, Article 17 of the Law on Circular Economy and its Draft Implementing Decree violate this provision, as will be explained in section 4 below.



#### **4. BREACH OF THE EU INTERNAL MARKET RULES**

As neither the Packaging and Packaging Waste Directive nor the Waste Framework Directive provide for full harmonisation, Member States can legally adopt certain measures that go beyond what is prescribed by these directives. However, national measures cannot create unjustified restrictions of the free movement of goods within the EU.

Article 17 of the Law on Circular Economy and its Draft Implementing Decree infringe Articles 34-36 of the Treaty on the Functioning of the European Union (**TFEU**) which ensure the free movement of goods with the EU. Indeed, France restricted the freedom of movement of goods (section 4.1) in a way that cannot be justified by overriding reasons of public interest such as the protection of the environment or human health (section 4.2).

##### **4.1 Article 17 of the Law on Circular Economy and the Draft Implementing Decree create restrictions of the free movement of goods within the EU**

The requirements (i) to apply the Triman logo and the Sorting Instructions to the product, its packaging or accompanying documents (which is even stricter as regards packaging subject to EPR as there is no choice offered in that case); and (ii) to affix the Sorting Instructions to the Triman logo constitute measures having an equivalent effect to quantitative restrictions pursuant to Article 34 TFEU, *i.e.*, barriers to trade between Member States.

According to established case law, labelling requirements must be regarded as barriers to intra-EU trade in that they directly affect the product and thus trade within the EU.<sup>11</sup> This is true even if, as is the case here, the measures apply indistinctly to all producers and all products, regardless of their origin.<sup>12</sup> This is even more true as the Triman logo does not exist in other EU Member States. This means that foreign producers will have to incur extra costs to enter the French market as they will have to adapt their production and packaging.

The fact that the Draft Implementing Decree provides that producers of products subject to EPR in France may replace the Triman logo and the Sorting Instructions with “*another common symbol regulated by another Member State of the European Union, in accordance with the principle of mutual recognition*”, and “*other common information regulated by another Member State of the European Union*”, does not alter this conclusion.

- First, the Draft Implementing Decree only offers this possibility subject to specific conditions and it will be up to the French authorities to decide whether these conditions are satisfied. This prevents producers of products subject to EPR from knowing in advance whether symbols and information

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<sup>11</sup> See, for instance, judgment of 24 November 1993, *Keck and Mithouard*, Joined Cases C-267/91 and C-268/91, ECLI:EU:C:1993:905, para. 15; judgment of 5 April 2001, *Bellamy and English Shop Wholesale*, Case C-123/00, ECLI:EU:C:2001:214, para. 18; judgment of 26 October 1995, *Commission v Germany*, Case C-51/94, ECLI:EU:C:1995:352, para. 30; judgment of 16 January 2014, *Juvelta*, Case C-481/12, ECLI:EU:C:2014:11; judgment of 16 December 1980, *Fietje*, Case 27/80, ECLI:EU:C:1980:293, para. 15; judgment of 14 February 2008, *Dynamic Medien*, Case C-244/06, ECLI:EU:C:2008:85, para. 27; Case C-51/94, *Commission v Germany*, ECLI:EU:C:1995:352, para. 30.

<sup>12</sup> Judgment of 10 November 1982, *Rau v De Smedt*, Case C-261/81, ECLI:EU:C:1982:382, para. 13.

mandatory in other EU Member States may constitute adequate alternatives to the obligations set out under French law. This raises serious concerns in terms of legal certainty.

- Second, the Court of Justice of the European Union (the **CJEU**) held that national measures which provide for the recognition of symbols imposed in other Member States still constitute restrictions to the free movement of goods. It specified that the requirements imposed for the recognition of symbols from other EU Member States were likely to restrict access to the national market.<sup>13</sup>

Therefore, both Article 17 of the Law on Circular Economy and its Draft Implementing Decree include restrictions of the free movement of goods within the EU. As a result, they breach Articles 34-36 TFEU unless these restrictions can be justified, as explained below (section 4.2).

## **4.2 The restrictions of the free movement of goods cannot be justified**

Under EU internal market rules, a restriction of the free movement of goods can only be justified if the following three cumulative conditions are satisfied:

- First, the restriction pursues any of the legitimate interests mentioned in Article 36 TFEU or “*mandatory requirements*”, *i.e.*, overriding reasons of public recognized by the EU case law (section 4.2.1);
- Second, the restrictions of trade between Member States must be suitable to achieve the legitimate objective identified under the first condition (section 4.2.2); and
- Third, the restrictions of trade between Member States must be proportionate to the legitimate objective pursued and not go beyond what is necessary to achieve this objective (section 4.2.3).

### **4.2.1 The objectives pursued by Article 17 of the Law on Circular Economy and its Draft Implementing Decree are only partially legitimate**

The TRIS notification of the Draft Implementing Decree mentions, as statement of grounds, that “[t]he *diversity of the markings on products, including packaging, concerning the sorting of waste resulting from the products affects the performance of separate waste collection as well as the functioning of recycling streams. It is therefore necessary to clarify consumer information on the sorting rules for waste resulting from products offered for sale in order to harmonise the information available, promote understanding and facilitate citizen action.*”

Therefore, the main objective of the Draft Implementing Decree is to improve understanding and facilitate citizen action in relation to the sorting of waste. Although not stated explicitly, it may be inferred that France seeks to improve sorting habits of consumers and thereby strengthen the protection of the environment.

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<sup>13</sup> Judgment of 1 March 2012, *Ascafor and Asidac*, Case C-484/10, ECLI:EU:C:2012:113, paras. 54-57.

Although environmental protection is not explicitly mentioned in Article 36 TFEU as a possible exception to the freedom of movement of goods, it has been recognised on several occasions as a mandatory requirement in the EU case law and therefore constitutes a legitimate objective.<sup>14</sup>

However, Article 17 of the Law on Circular Economy and its Draft Implementing Decree also seem to pursue another objective. The exclusion of household glass beverage packaging from the scope of these provisions appears to have been decided to shield French exporters from these burdensome regulatory requirements. Indeed, during the parliamentary debates leading to the adoption of the Law on Circular Economy, members of the Senate discussed whether they should delete the exclusion of household glass beverage packaging from the draft law.<sup>15</sup> The arguments in favour of the inclusion of household glass beverage packaging in the scope of the draft law were (i) to ensure consistency with other types of packaging; and (ii) to increase recycling rates for glass. However, members of the Senate objected to this amendment as it would penalise French producers that export a lot by forcing them to have two separate production lines, one for the French market and the other for foreign markets. As a result, the amendment proposing to include household glass beverage packaging in the scope of Article 17 of the Law on Circular Economy was rejected.<sup>16</sup>

While the concern that the French law would impose too heavy a regulatory burden on specific French exporters is legitimate, it should equally apply to other industries, including those that are characterised by considerable French imports. This is because firms producing goods subject to Article 17 of the Law on Circular Economy and based in other Member States of the EU which export their production to France will be faced with the same hurdle of having to distinguish between the part of their production destined for France and the part sold in the rest of the EU. In fact, the regulatory burden on these foreign producers will even be higher as they will have to comply with the rules of the Member State of production in addition to the French rules. While the French legislator was right to consider that these labelling requirements constitute too heavy a burden for French exporters, it should have reached the same conclusion for other industries. Its failure to do so, and the Senate debates that led to this decision, show that Article 17 of the Law on Circular Economy and its Draft Implementing Decree do not pursue a purely environmental objective and also have a protectionist slant.

Exempting certain sectors from a regulatory requirement in order to alleviate the burden on domestic exporters while failing to do the same for other sectors where domestic producers may not be as active is incompatible with the EU Internal Market rules and therefore does not constitute a legitimate objective.

#### 4.2.2 The restrictions are not suitable to achieve the objective of protecting the environment

As demonstrated above, one of the objectives pursued by the Draft Implementing Decree is not legitimate because it burdens many sectors while exempting a sector in which French companies are particularly active, which reveals a protectionist intent. There is therefore no need to verify whether Article 17 of the Law on Circular

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<sup>14</sup> See, for instance judgment of 1 July 2014, *Ålands Vindkraft*, Case C-573/12, EU:C:2014:2037, para. 77; judgment of 20 September 1988, *Commission v Denmark*, Case 302/86, ECLI:EU:C:1988:421, para. 9; judgment of 14 July 1998, *Aher-Waggon v Germany*, Case C-389/96, ECLI:EU:C:1998:357, para. 19.

<sup>15</sup> Amendment N° 462.

<sup>16</sup> The debates concerning Amendment N° 462 are available on the website of the French Senate: <https://www.senat.fr/seances/s201909/s20190924/s20190924013.html#section1791>.

Economy and its Draft Implementing Decree contain restrictions that are suitable to achieve this objective or are proportionate to it. Still, Article 17 of the Law on Circular Economy and its Draft Implementing Decree also have a legitimate objective in seeking to protect the environment. However, they are not suitable to achieve (and are not proportionate to) that legitimate objective.

*4.2.2.1 France has provided no evidence that the Triman logo and the Sorting Instructions are suitable to the legitimate objectives pursued*

The case law of the CJEU makes clear that Member States must provide evidence showing that the national measures adopted are adequate to achieve the legitimate aim. This explanation must be accompanied with “specific evidence substantiating [the Member State’s] arguments”.<sup>17</sup>

However, neither Article 17 of the Law on Circular Economy, nor its Draft Implementing Decree and the TRIS notification of the Draft Implementing Decree offer any explanation or proof that the Triman logo and the Sorting Instructions are suitable to achieve the objective of the protection of the environment.

On the contrary, the exclusion of household glass beverage packaging from the scope of Article 17 of the Law on Circular Economy and its Draft Implementing Decree confirms that the Triman logo and the Sorting Instructions affixed to it are not suitable to achieve satisfactory levels of recycling. Indeed, glass achieves recycling levels that Members of the French Senate have found to be “satisfactory” despite the absence of a Triman logo.<sup>18</sup>

*4.2.2.2 The Triman logo and the Sorting Instructions are likely to create more waste*

As already mentioned in section 3.1, Article 17 of the Law on Circular Economy and its Draft Implementing Decree may in fact result in more waste and thus be counterproductive to the objective of protecting the environment.

Indeed, while producers were previously allowed to display the Triman logo and the Sorting Instructions online, they are now obliged to display them on a physical support. This may have several adverse consequences:

- Producers may have to add packaging to products that were not packaged before in order to have a support to feature the required Triman logo and Sorting Instructions. This will be the case if adding this information directly on the product would damage it or reduce its appeal to customers.
- Small products may not have enough surface to include the required Triman logo and Sorting Instructions (especially since the Triman logo and the Sorting Instructions must appear next to each other). As a result, they will have to be packaged in a packaging large enough to feature this information.

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<sup>17</sup> Judgment of 26 April 2012, *ANETT*, Case C-456/10, ECLI:EU:C:2012:241, para. 50.

<sup>18</sup> The discussions concerning Amendment N° 462 are available on the website of the French Senate: <https://www.senat.fr/seances/s201909/s20190924/s20190924013.html#section1791>.

- Small products that already had a packaging may require a larger packaging in order to accommodate the Triman logo and Sorting Instructions. As the Sorting Instructions applicable to the packaging may differ from the Sorting Instructions applicable to the product itself, the packaging will need to be of a certain size. If the packaging is not wide enough to contain the logo and Sorting Instructions applicable to both the product and its packaging, the producer may even have to include, in addition to the packaging (which must feature the Triman logo and Sorting Instructions applicable to it), leaflets with the Triman logo and Sorting Instructions that apply to the product itself.

In sum, Article 17 of the Law on Circular Economy and its Draft Implementing Decree may well compel producers to (i) create packaging for products which did not have any; (ii) expand existing packaging to include the Triman logo and Sorting Instructions; and/or (iii) create or expand additional documents (which will eventually become waste) for the sole purpose of including the Triman logo and Sorting Instructions.

Article L541-1 I 1° of the French Environmental Code mentions as the first objective pursued by the French policy of waste prevention and waste management “*to prioritise the prevention and reduction of waste, by reducing by 15% the amount of household waste and similar waste*”.<sup>19</sup> Expanding the amount of packaging by requiring a large amount of information to appear on it runs counter to the objective of reducing the amount of waste.

#### 4.2.2.3 The Triman logo and the Sorting Instructions are not likely to improve consumer information

The impact assessment carried out in preparation for the Law on Circular Economy mentions the necessity to “*clarify consumer information on the sorting rules for waste [...] in order to harmonise the available information, increase its understanding and facilitate consumer action*”.<sup>20</sup>

However, the Triman logo and the Sorting Instructions affixed to it add, in fact, more complexity.

First, there is already a mandatory logo at the EU level for the sorting of certain products. A crossed-out wheeled bin logo must be applied on electrical and electronic equipment pursuant to Directive 2012/19/EU of 4 July 2012 on waste electrical and electronic equipment (WEEE).<sup>21</sup> The crossed-out wheeled bin logo was imposed with a view to “*minimising the disposal of WEEE as unsorted municipal waste and to facilitating its separate collection*”.<sup>22</sup> Therefore, it pursues the same objectives as the Triman logo, *i.e.*, it informs consumers that the waste resulting from the product should be sorted, only it is better known. Having several logos on a product – some with the same meaning, and others not – is a sure way to confuse consumers.

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<sup>19</sup> Original French text of Article L541-1 I 1° of the Environmental Code: “1° Donner la priorité à la prévention et à la réduction de la production de déchets, en réduisant de 15 % les quantités de déchets ménagers et assimilés produits par habitant et en réduisant de 5 % les quantités de déchets d’activités économiques par unité de valeur produite, notamment du secteur du bâtiment et des travaux publics, en 2030 par rapport à 2010. [...]”.

<sup>20</sup> See, « *Etude d’impact – Projet de loi relatif à la lutte contre le gaspillage et à l’économie circulaire* ». Free translation from the original text in French: “C’est pourquoi il est nécessaire de clarifier l’information des consommateurs sur les règles de tri des déchets issus des produits proposés à la vente afin d’harmoniser l’information disponible, de favoriser ainsi sa compréhension et de faciliter le geste du citoyen.” (p. 46).

<sup>21</sup> Article 14(4) of the WEEE Directive.

<sup>22</sup> Article 14(4) of the WEEE Directive.

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As a matter of fact, a recent EU study mentioned the Triman logo among the “[s]ources of confusion”, i.e., “labels which look similar but do not mean the same thing, and symbols providing misleading information”.<sup>23</sup>

The additional complexity brought about by these measures was also confirmed during the debates in the French Senate leading to the adoption of Article 17 of the Law on Circular Economy. One Member explained that the “extra cost resulting from placing the logo are estimated at EUR 150,000 on average by undertaking, with a complexification – it is, in fact, not about simplifying but making more complex – the logistics of these undertakings. This will effectively impact the stock management and labelling, as different labelling will be required depending on the destination market.”<sup>24</sup>

Second, the existing confusion will likely worsen as Article 17 of the Law on Circular Economy and its Draft Implementing Decree impose to apply the Triman logo even on product already subject to the crossed-out wheeled bin logo. These products used to be exempted from Triman logo precisely because they already featured a sorting logo.

As a result, there will be several logos with the same meaning on certain products and/or their packaging. It will even be possible to have a product bearing several logos, wrapped in packaging bearing its own logo(s). Some logos have the same meaning (e.g., the crossed-out wheeled bin and the Triman logo), others do not (e.g., the Triman logo and the green dot logo which means that the producer has paid an ecological fee). This is likely to confuse consumers rather than inform them.

Finally, the impact assessment mentions that the Triman logo is now compulsory for all products subject to EPR (except for household glass beverage packaging), irrespective of whether they are recyclable or not. This is because there may be a sorting action required even for products which are not recyclable.<sup>25</sup> This means that consumers who have been told that the circular background that appears on the Triman logo symbolises recycling will now be even more confused following the adoption of Article 17 of the Law on Circular Economy and the Draft Implementing Decree as they will have to grasp that even products which are not recyclable may bear the Triman logo.

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<sup>23</sup> European Commission, “Effectiveness of the Essential Requirements for Packaging and Packaging Waste and Proposals for Reinforcement, Final Report and Appendices”, February 2020, p. 170.

<sup>24</sup> Free translation of the original text in French: “ Les coûts supplémentaires engendrés par l'apposition du logo sont estimés à 150 000 euros, en moyenne, par entreprise, avec une complexification – il s'agit en fait, non pas de simplifier, mais de complexifier – de la gestion logistique de ces entreprises. Seront impactés, effectivement, la gestion des stocks et l'étiquetage, une différenciation des étiquettes étant rendue nécessaire selon les marchés de destination.” The discussions concerning Amendment N° 462 are available on the website of the French Senate: <https://www.senat.fr/seances/s201909/s20190924/s20190924013.html#section1791>.

<sup>25</sup> See, « Etude d'impact – Projet de loi relatif à la lutte contre le gaspillage et à l'économie circulaire » which states about the Triman logo that “[i]l concernerait tous les produits relevant d'une filière REP et signifierait qu'il y a un geste de tri sélectif à effectuer, y compris sur les produits non recyclables” (p. 47).

4.2.3 The restrictions are not proportionate with achieving the objective of protecting the environment

4.2.3.1 *Article 17 of the Law on Circular Economy and its Implementing Draft Decree are discriminatory and therefore not proportionate*

Article 17 of the Law on Circular Economy and its Implementing Draft Decree create two types of discrimination.

First, as explained above, Article 17 of the Law on Circular Economy excludes household glass beverage packaging in order to – rightly – protect specific French industries from a burdensome regulatory constraint but fails to do so for industries in which France may not be a strong exporter. Limiting this protection to household glass beverage packaging is discriminatory vis-à-vis producers of other types of packaging. While it is true that some Members of the French Senate referred to satisfactory recycling rates for glass as a justification for this difference of treatment, this is still discriminatory as the obligations included in Article 17 of the Law on Circular Economy have been imposed on all other products subject to EPR, regardless of their recycling rate. In other words, even assuming that the satisfactory recycling rate for glass was indeed the reason for its exclusion, the mere fact that recycling rates were examined for household glass beverage packaging and not for other products is discriminatory.

In fact, the French legislator would probably have expanded the scope of its exemption if it had looked at recycling rates for different types of packaging. This is because the recycling rates for other types of packaging such as metals, cardboard and paper are higher than that for glass.

Additionally, looking at recycling rates to decide on the scope of an exemption may not make sense as the stated purpose of Article 17 of the Law on Circular Economy is consumer information. Article 17 of the Law on Circular Economy and its Draft Implementing Decree thus apply not only to recyclable products but also to non-recyclable ones. Therefore, the criteria to take into account should have been whether burdensome labelling requirements are necessary to inform consumers and whether the burden imposed on companies is proportionate – and by exempting household glass beverage packaging from these requirements, the French legislator confirmed that there is no such proportionality.

Second, the Draft Implementing Decree imposes stricter requirements on the producers of packaging subject to EPR than on producers of other products subject to EPR. As explained in section 1.2, the Triman logo (and therefore also the Sorting Instructions which must be affixed to it) must appear on the packaging subject to EPR. At the same time, for other products subject to EPR, producers have a choice to apply the logo on the product itself, on the packaging or on any document accompanying the product. This distinction does not seem to be based on any objective justification. While, at first sight, it may make sense to apply the Triman logo and Sorting Instructions concerning packaging to the packaging itself, such an obligation in fact adds an unnecessary constraint on producers. For instance, packaging producers may not be able to add the Triman logo and Sorting Instructions regarding packaging next to the Triman logo and Sorting Instructions regarding the object inside the packaging. This is the case, for instance, if the Triman logo and Sorting Instructions concerning the object appear on accompanying documentation. As also explained above, this additional constraint may oblige producers to increase the size of their packaging, which, in addition to being counterproductive to the environmental objective, entails additional costs.



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A measure that is discriminatory may never be considered proportionate. As a result, neither Article 17 of the Law on Circular Economy nor its Implementing Draft Decree are proportionate.

### *4.2.3.2 France has failed to prove the necessity of the Triman logo and Sorting Instructions*

France has not proven that applying the Triman logo and Sorting Instructions to the product (or the packaging or accompanying documents) rather than having this information available online is necessary to inform consumers.

In addition, the Draft Implementing Decree has strengthened the restrictions of trade already included in Article 17 of the Law on Circular Economy. However, the French government did not establish that going beyond what the law provided was necessary to achieve the objective set out in that same law.

There are other, less restrictive measures which may achieve the same objective. For instance, France could inform users more thoroughly of the various types of packaging, without shifting the cost of its policies onto producers which are already heavily regulated and burdened. France could thus launch information campaigns and establish or improve centralised websites and apps containing all necessary sorting information per type of product or packaging.

Even if France wished to transfer the responsibility of implementing its policies to private firms, there are less restrictive ways to achieve its objectives. Until now, it was sufficient for private businesses to make sorting information on their products available on their website. Recycling rates have improved in France over the last years. As a result, it is questionable whether it is necessary to reinforce measures that already appear to be effective.

Also, some information may appear on products or their packaging without it being necessary to include extensive text. Consumers are unlikely to spend a lot of time deciphering logos or reading Sorting Instructions (which can be long, as, according to Article 17 of the Law on Circular Economy, they must distinguish between the components of a product if they are subject to different sorting rules). Most users have a smartphone. Including a QR code on the packaging would have allowed consumers to access a website containing all the relevant information directly. It would even be conceivable to develop an app which would recognise the product and offer all the requisite information directly.

Furthermore, as mentioned above (section 2), there are already compulsory logos offering information on sorting rules for specific products, such as the crossed-out wheeled bin for waste electrical and electronic equipment.

Finally, the Draft Implementing Decree will enter into force on 1 January 2022 (Article 3). Such a short deadline does not seem proportionate considering that (i) the Draft Implementing Decree has not yet been adopted; (ii) the exact amount of information to be included in the Sorting Instructions is not yet known; and (iii) these measures will considerably disrupt the logistics of the many companies concerned as these will have to distinguish between products sold on the French market and other products.

## **5. ARTICLE 17 OF THE LAW ON CIRCULAR ECONOMY SHOULD HAVE BEEN NOTIFIED TO THE COMMISSION**

Article 5 of the TRIS Directive provides that “*Member States shall immediately communicate to the Commission any draft technical regulation*”. Pursuant to Recital 3 of the TRIS Directive, “[i]n order to promote the smooth functioning of the internal market, as much transparency as possible should be ensured as regards national initiatives for the establishment of technical regulations”.

By notifying only the Draft Implementing Decree without notifying Article 17 of the Law on Circular Economy, France failed to comply with its obligations under the TRIS Directive and thus did not enable the Commission, other Member States and stakeholders to obtain in time sufficient and transparent information on the restrictions of the free movement of goods which it introduced.

### **5.1 Article 17 of the Law on Circular Economy is a technical regulation**

Article 17 of the Law on Circular Economy imposes labelling measures which are binding for products subject to EPR. It thus constitutes a technical regulation.

The CJEU has held that labelling requirements must be considered as technical regulations.<sup>26</sup> The CJEU made it clear that even though the exact sign that must appear on the product has not yet been specified, a national provision constitutes a technical regulation if under that provision, “*marking or labelling would in itself be compulsory*”.<sup>27</sup> It results from Article 17 of the Law on Circular Economy that labelling products subject to EPR with a sorting symbol and accompanying Sorting Instructions is compulsory (except for household glass beverage packaging). As a result, Article 17 of the Law on Circular Economy has legal effects on its own and should therefore have been notified to the Commission.<sup>28</sup>

### **5.2 The Law on Circular Economy should have been notified in its entirety**

Article 5(1) of the TRIS Directive provides that “*Member States shall simultaneously communicate the text of the basic legislative or regulatory provisions principally and directly concerned to the Commission, should knowledge of such text be necessary to assess the implications of the draft technical regulation*”. Read separately from Article 17 of the Law on Circular Economy, the Draft Implementing Decree does not allow the reader to understand the significant changes which it introduces for producers who are active in intra-EU trade and who may be affected by these provisions. This is because (i) the Draft Implementing Decree systematically makes cross references to other provisions of the French Environmental Code, which themselves have been created by the Law on Circular Economy; and (ii) the Draft Implementing Decree merely implements Article 17 of the Law on Circular Economy which already imposes obligations on producers subject to EPR. A mere reference to the Law on Circular Economy in the context of the notification of the Draft Implementing Decree is thus not sufficient to ensure transparency.

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<sup>26</sup> Judgment of 8 November 2007, *Schwibbert*, Case C-20/05, ECLI:EU:C:2007:652, para 45.

<sup>27</sup> Judgment of 6 June 2002, *Sapod Audic*, Case C-159/00, ECLI:EU:C:2002:343, paras 32-34.

<sup>28</sup> Judgment of 1 June 1994, *Commission v. Germany*, Case C-317/92, ECLI:EU:C:1994:212, paras. 25-26.

Furthermore, it results from the case law of the CJEU that if a national provision constitutes a technical regulation that should be notified to the Commission, the entire text of the draft legislation to which this technical regulation belongs should also be brought to the attention of the Commission through the TRIS procedure.<sup>29</sup> This encourages transparency and ensures that the Commission has all the relevant information to assess the national measure that was notified. Not only does Article 17 of the Law on Circular Economy itself constitute a technical regulation, but also other provisions of the Law on Circular Economy, which should have led France to notify the entire text of the Law.

For instance, Article 13 of the Law on Circular Economy requires that plastic products and packaging which can be composted in domestic or industrial composting bear the reference “*do not throw in nature*”. The CJEU has repeatedly held that to mark or label a packaging amounts to a form of technical regulation within the meaning of the TRIS Directive.<sup>30</sup> In addition, Article 77 of the Law on Circular Economy establishes a progressive ban on several single use plastic (**SUP**) products that are not covered by the SUP Directive. Article 77 thus constitutes a regulation “*prohibiting the manufacture, importation, marketing or use of a product*”, which, pursuant to Article 1(1)(f) of the TRIS Directive constitutes a technical regulation.

### **5.3 Article 17 of the Law on Circular Economy cannot be enforced against individuals**

According to established case law of the CJEU, technical regulations which were not notified to the Commission are inapplicable and thus “*unenforceable against individuals*”.<sup>31</sup> This inapplicability can be invoked in proceedings opposing individuals (including businesses) against the French authorities as well as in disputes between economic operators in relation to their contractual rights and duties.<sup>32</sup>

## **6. CONCLUSION AND REQUESTS TO THE EUROPEAN COMMISSION**

Our findings can be summarised as follows:

- Pursuant to the EU principles of subsidiarity and sincere cooperation, France should abstain from imposing a logo (such as the Triman logo) and Sorting Instructions which inevitably will create barriers to trade without being likely to achieve the objective of harmonising and clarifying the information provided to consumers. The EU is better placed to deal with this matter and is already considering doing so.
- Both Article 17 of the Law on Circular Economy and its Draft Implementing Decree infringe the Packaging and Packaging Waste Directive and the Waste Framework Directive:
  - Article 17 of the Law on Circular Economy and its Implementing Draft Decree run counter to the objective of keeping the packaging “*to the minimum adequate amount to maintain the*

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<sup>29</sup> Case C-279/94, *Commission v. Italy*, ECLI:EU:C:1996:396, paras. 38-42; Case C-145/97, *Commission v. Belgium*, ECLI:EU:C:1998:212.

<sup>30</sup> See, for instance Case C-159/00, *Sapod Audic*, ECLI:EU:C:2002:343, paras. 30 and 39 and Case C-65/05, *Commission v. Greece*, ECLI:EU:C:2006:673, para 11.

<sup>31</sup> Case C-194/94, *CIA Security International*, EU:C:1996:172, paras. 48-54, see also Case C-390/18, *Airbnb Ireland*, ECLI:EU:C:2019:1112, para. 88.

<sup>32</sup> See, Case C-159/00, *Sapod Audic*, ECLI:EU:C:2002:343, paras. 50 and 53.

*necessary level of safety*", as required under Annex II of the Packaging and Packaging Waste Directive. They also infringe Article 18 of the Packaging and Packaging Waste Directive, which provides that, even if Member States are allowed to go beyond the requirements laid down in its provisions, they "*shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive*".

- Article 17 of the Law on Circular Economy and its Draft Implementing Decree do not comply with Article 8a(1)(d) of the Waste Framework Directive which states that where Member States establish EPR schemes, they must "*ensure equal treatment of producers*". In addition, they infringe Article 8a(1)(d) of the Waste Framework Directive which prevents Member States from "*placing a disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products*". Finally, they infringe Article 8(3) of the Waste Framework Directive, which provides that when applying EPR, Member States must respect "*the need to ensure the proper functioning of the internal market*".
- Both Article 17 of the Law on Circular Economy and its Draft Implementing Decree infringe the EU Internal Market rules. On the one hand, they create obstacles to trade between Member States. On the other hand, these obstacles are not justified: although the stated objective pursued by Article 17 of the Law on Circular Economy and its Draft Implementing Decree – the protection of the environment – is legitimate, these provisions also seek to protect from this regulatory burden sectors in which the French are strong exporters. While the concern to refrain from imposing burdensome regulatory requirements is certainly legitimate, this approach should also apply to other sectors similarly affected by the regulatory requirements at issue. A failure to do so reveals a protectionist motive which runs counter to the EU Internal Market. In addition, France has not established that the measures provided for by Article 17 of the Law on Circular Economy and its Draft Implementing Decree are suitable to achieve the environmental objective. On the contrary, these measures are likely to create more waste and will probably not improve consumer information. Finally, these measures are not proportionate, not least because they are discriminatory.

Based on these findings, we submit the following requests to the Commission:

- We request the Commission to adopt a detailed opinion concluding that the notified Draft Implementing Decree may create barriers to the free movement of goods and violates EU secondary legislation. By extending the standstill period by six months following the TRIS notification in accordance with Article 6(2) of the TRIS Directive (*i.e.*, three months following the end of the three-month standstill period), this detailed opinion would provide France with the opportunity to explain how it intends to address the issues identified above.
- Additionally, considering that the Commission has announced in its Circular Economy Action Plan of 11 March 2020 its intention to harmonise the field, we request the Commission to ask France to refrain from adopting the Draft Implementing Decree for a period of twelve months following the TRIS notification, in accordance with Article 6(3) of the TRIS Directive.
- Finally, we request the Commission to inform France that Article 17 of the Law on Circular Economy is in breach of EU law and to request France to explain (i) why it did not notify the Law on Circular Economy following the TRIS procedure despite the fact that it restricts intra-EU trade; and (ii) the

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measures which it intends to take in order to make the Law on Circular Economy compatible with EU law.

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