



## FoodDrinkEurope comments on TRIS notification 2021/644/F (France)

### Decree on consumer information on the environmental qualities and characteristics of waste-generating products

We are writing to you regarding the draft French Decree on consumer information on the environmental qualities and characteristics of waste-generating products

FoodDrinkEurope is committed to accelerating the transition to a circular economy, in line with the objectives of the EU Circular Economy Action Plan. We are therefore very supportive of initiatives aiming at improving the sustainability and circularity of products. However, to be efficient, such initiatives should always be backed by clear and harmonised rules and definitions in order to ensure the proper functioning of the EU's internal market.

It is our opinion that the French draft Decree 2021/644/F, as currently notified under the TRIS procedure, may constitute a restriction of the free movement of goods within the European Union and has the potential to create market distortions.

Please see below a list of our concerns regarding the content of this Decree.

#### 1. Many proposed measures overlap with ongoing EU legislative work, with the risk of creating unharmonized and confusing rules and definitions

The French draft Decree includes a series of provisions that are currently discussed and will soon be regulated at EU level. The text indeed includes provisions on the labelling of biodegradable/compostable packaging, the labelling of reusable packaging, and information on recycled content levels. It also defines recyclability. All those elements are currently being discussed or defined by the European Commission.

By introducing these requirements and definitions at national level, the French Decree risks to introduce divergences on key areas of packaging sustainability legislation, create barriers to the free movement of goods and hamper the stability that businesses need to invest in circular packaging solutions.

#### 2. The possibility left to the environment minister to define additional modalities of physical or dematerialized display does not provide legal certainty and could introduce severe market distortions

To remain competitive, businesses (small and large) need certainty, clarity and stability. However, this Decree leaves many uncertainties that would leave beverage companies in the dark about the rules by which they need to abide. The first consequence would be that investments and efforts in circularity of packaging would be reduced instead of being encouraged.

The draft Decree states, under Art. R. 541-222, that “Additional means of display, whether physical or paperless, that are visible at the time of the purchase, may be defined by order of the Minister responsible for the environment”.

This possibility left to the Minister of the Environment to define additional modalities of physical or dematerialized display does not allow our companies to obtain the security and legal visibility they need. Such additional arrangements could have significant consequences for our businesses.

Making it compulsory to display information on packaging rather than publishing it electronically would not only entail additional costs for economic operators but may also have counterproductive effects (increased packaging size) and introduce market distortions.

We would like to remind that the freedom of goods prohibits measures capable of hindering, directly or indirectly, actually or potentially intra-community trade. The European Commission has noted (see “Beverage packaging, deposit systems and free movement of goods” (2009/C 107/10)) that national beverage packaging systems may divide the internal market as manufacturers are required to adapt their packaging to different requirements, which leads to additional costs.

Furthermore, such a provision lacks consistency with the rest of the text, which requires for the environmental information to be communicated to consumers electronically through a dedicated web page with an application programming interface.

### 3. The decree asks to inform the consumer on SVHC substances as defined in REACH and on substance considered as similar by a French regulatory decree yet to be published.

Currently, packaging and packaging element suppliers are under the obligation to communicate to their clients (the food industry) when these SVHC are present in packaging elements, if the concentration is superior to 0.1% (the same threshold is in the French decree). However, the French decree is unclear on if the communication of the presence of these substances will have to be made:

- for each packaging element (the bottle cap, the bottle, the sleeve...). Each packaging element would be communicated on separately (the bottlecap contains XXX substance, the bottle XXX substance and the sleeve XXX substance)
- for a packaging as a whole (the bottle + its cap + its sleeve). In this situation the packaging as a whole would be communicated on (the bottle contains XXX substances)

If the solution selected by the French authorities was the second one, French companies would need to know the exact concentration of all the SVHC substance in each packaging elements to be able to calculate the average concentration of the whole packaging in SVHC substance.

However, as under REACH the packaging and packaging elements suppliers are only obligated to signal when the concentration is above 0.1% and not the exact concentration, it would be impossible to calculate the average concentration of the packaging.

Packaging and packaging elements suppliers would be under no obligation to provide French companies with exact concentrations of SVHC, and French authorities couldn't force them to do so, making this text impossible to comply with.

To be applicable, this part of the text would need a change in European regulation.

Hence this part of the text is also incompatible with current European laws

**To conclude, we would like to stress the need for the European Commission to urgently address all national initiatives disrupting the efforts made to harmonise the legislative framework to advance packaging sustainability across all Member States, and to take action when these initiatives threaten the Single Market.**

#### **About FoodDrinkEurope**

FoodDrinkEurope represents the food and drink manufacturing industry. Made up of 291,000 businesses - 99% of which are SMEs - and 4.8 million employees, the food and drink industry is Europe's largest manufacturing industry.