

ACEA position on French draft decree related to consumer information regarding product environmental qualities & characteristics

The French legislator is aiming to regulate important issues, that are currently intensely discussed on European level. Although the ACEA members support the merits of informing consumers about the environmental qualities and characteristics of waste-generating products, they have severe concerns with the current French proposal.

1. General comment:

ACEA members are aware of their responsibility and do not categorically refuse the ideas behind the French proposal. However, such requirements should be introduced on a harmonized European level in order to ensure the free movement of goods in the European market.

Not only is the timeline impossible to comply with, but more importantly, such specific requirements for the respective industries would require to provide information - which are mainly not available - for a huge number of products for the French market only.

The automotive industry would be affected not only with the vehicles they put on the market in France, but also e.g. with spare parts, accessories, additional equipment for vehicles and a considerable variety of merchandising products and packaging that are not only used for the French market but EU - if not worldwide. These new obligations would require a new contractual basis with the supply chain and could therefore only be implemented for newly developed products – only for the French market.

In addition, ACEA would like to point out that the French draft leaves the door open to yet further labelling requirements in addition to the French specific waste sorting labelling (Triman). Other countries introduced or plan to introduce national labelling requirements for packaging e.g. Italy and Portugal. Such single-market approaches in general are not compatible with the idea and goals of the European Union and are strongly rejected by the automotive industry.

2. Specific aspects

Considering the complexity of vehicles, it has to be pointed out that they have very long manufacturing chains that can include up to 7 levels of often internationally acting suppliers. The above mentioned new contractual structure would therefore be even more complex than for other products.

3. Details of the law

Regarding the date of entry into force set at 1st January 2022

While the one-year postponement of the implementation of the applicable sanctions regime, introduced by Law n°2021-1104 “portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets” (on combating climate change and strengthening resilience to its effects), is a step forward, it is not sufficient to fully meet the information obligation.

Indeed, the new obligations introduced by this decree require the development of guides (in particular for the incorporation of recycled materials) and the establishment of an internal organization and resources to collect this information from the many suppliers (French and foreign) of car manufacturers. Furthermore, the notification procedure, initiated on 4 October extends the status quo until 5th January 2022, thus preventing the publication of the decree before the date of entry into force, the definition of certain information modalities being even referred to decrees that have not yet been circulated to stakeholders.

For all these reasons, the companies of the automotive industry warn European authorities that the implementation deadline of 1st January 2022 is impossible to meet and ask for the postponement of the entry into force to 1st January 2024. The aim is to avoid a situation where economic players would be unable to comply with their new obligations on 1st January 2022

Concerning the scope of the decree

In accordance with Article 13 of Law n°2020-105 du 10 Février 2020 “relative à la lutte contre le gaspillage et à l'économie circulaire AGEC” (on the fight against waste and the circular economy), the second paragraph of article R. 541-220 specifies that only products placed on the market and intended for consumers are concerned. **This clarification shall be introduced in the body of the decree to identify the actors concerned by the provision of this information to consumers.**

We also question the relevance of having introduced these new obligations in a new sub-section of section 9 of chapter I of title IV of book V of the regulatory part of the environmental code, which concerns the national “anti-food waste” label.

Regarding the incorporation of recycled material

This information requires the development of a methodology for tracing materials as well as control tools, both of which do not exist at this stage and seem complex to

deploy within the timeframe required.

CEN is currently working on a methodological guideline to ensure a common terminology and methodology is used not only in France but also in Europe. As manufacturers' suppliers are international actors it is essential that this methodological guide will be at least endorsed by the economic players on European level to avoid confusion among consumers.

The traceability of materials in complex products such as vehicles will require at least 18 months of implementation.

Regarding recyclability

In accordance with directive 2000/53/EC on the treatment of end-of-life vehicles, vehicles are subject to approval and auditing rules on recyclability via directive 2005/64/EC and standard ISO 22628, which defines the calculation rules. This requirement, which has been in force since 2008, is linked to Directive RCE 2018/858 on the European Community type-approval of vehicles. Directive 2005/64/EC imposes a minimum recyclability rate of 85% in line with the actual recycling rates set by Directive 2000/53/EC since 2015.

The definition as proposed in the decree is not in line with the rules of vehicle approval. In particular, its 3rd paragraph cannot be applied to a complex product such as a vehicle made of a multitude of different materials.

Vehicles are already recyclable and recycled at more than 87% (see the latest report of the ADEME ELV Observatory published in 2021). The components of ELVs that present a risk to the environment are subject to a depollution phase prior to any further treatment.

Furthermore, it is important to remember that the hazardousness of a waste is not directly related to its recyclability. Some hazardous waste can be recyclable and conversely some non-hazardous waste are not (see 24 June 2020 note of French Authorities).

An exemption to the application of this 3rd paragraph must therefore be provided for the case of vehicles.

Note: 3rd paragraph *"the absence of elements or substances that will disrupt the sorting, recycling or limit the use of the recycled material"*

We also have major reservations about the notion of closed-loop recyclability, which seems to be likely to 'lose' the consumer and potentially make him 'doubt' the very definition of the recyclability of products.

Furthermore, setting a distinction on the nature of the recycling loop would restrict the potential for reincorporation of recycled materials.

Concerning the presence of precious metals and rare earths

Public information about the presence of precious metals or rare earths in a product will certainly make it a prime "target" for theft or degradation, as well as for "trafficking". This type of information will undoubtedly reinforce illegal practices, such as the theft of the internal components of the particulate filter and "leakage" of end-

of-life vehicles outside the legal recycling stream.

Given the disproportionality of this measure with respect to the expected environmental benefits, we ask that the information provided to the consumer be limited to a mention of the presence of precious metals or rare earths without specifying the quantity or the nature contained in the products.

Concerning the presence of dangerous substances

We do not understand this distinction between a "hazardous substance" and a "substance of very high concern" since the law clearly indicates that the information must concern the presence of hazardous substances and that the decree taken in application of paragraph I of article L. 541-9-1 defines the scope of the dangerous substances in question.

Moreover, the status of a hazardous substance may change over time (addition to the candidate list and to SVHC list).

To avoid the administrative burden of companies and to simplify the information intended for consumers, it seems judicious to us to restrict the consumer information to a single mention "contains a hazardous substance".

For the reasons already mentioned regarding the complexity of the composition of vehicles and their supply chain, the 18-month deadline for the provision of information on the presence of hazardous substances must absolutely be maintained in the decree.

With regard to communication methods

The obligation to have an application programming interface is not imposed by the AGECE law art 13.I. This obligation would put a very heavy additional burden on the development of such tools. Finally, we question the purpose of such an obligation.

To conclude, we would like to stress the need for the European Commission to urgently address all national initiatives disrupting the efforts made to harmonize the legislative framework and to please take action when these initiatives threaten the Single Market.



ABOUT THE EU AUTOMOBILE INDUSTRY

- 14.6 million Europeans work in the auto industry (directly and indirectly), accounting for 6.7% of all EU jobs
- 11.5% of EU manufacturing jobs – some 3.7 million – are in the automotive sector
- Motor vehicles are responsible for €398.4 billion of tax revenue for governments across key European markets
- The automobile industry generates a trade surplus of €74 billion for the European Union
- The turnover generated by the auto industry represents more than 8% of the EU's GDP
- Investing €62 billion in R&D per year, automotive is Europe's largest private contributor to innovation, accounting for 33% of the EU total

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ACEA

European Automobile
Manufacturers' Association
+32 2 732 55 50
info@acea.auto
www.acea.auto



twitter.com/ACEA_auto



linkedin.com/company/acea



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