

## **FIEEC comments on the draft decree on consumer information on the environmental qualities and characteristics of waste-generating products**

**Draft decree issued for the application of I of article 13 of law n°2020-105 of February 10, 2020 (known as the "AGEC law")**

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End of Standstill: 05/01/2022

Although the industries represented by FIEEC are committed to helping consumers make better purchase and to meet legitimate expectations for better product information, we highlight the need to come up with a text that takes into account both the possibilities of businesses and the constraints imposed on them in order to fully meet these new obligations. We question the relevancy to display so much information to consumer, against the costs and the tremendous efforts to put this in place, only at the French Level whereas the European Commission is currently preparing digital Product Passport at EU level).

The draft decree needs substantial adaptations, to prevent economic players from finding themselves, on January 2022, in a situation of not being able to comply with their new obligations due to application procedures and deadlines that ignore their constraints.

**First, *the date of entry into force must let sufficient time* to economic operators to fulfil with the requirements.**

Although the applicable sanctions regime has been postponed for one year (to 1<sup>st</sup> January 2023), it remains insufficient to enable companies to fully comply with the obligation to provide information on certain criteria for which a *period of 24 months will be necessary* due to the significant constraints, the number of products concerned and the necessary IT developments.

**Second concern relates to the need to respect the *SMERC principles* in the definition of the obligations: Specific, Measurable, Enforceable and Relevant and competitiveness.**

### ➤ *Specific*

The selected criteria applicable to one product category should have been defined in a life cycle perspective and these criteria needs to be based on specific definition. For example, the criteria on recyclability is defined with a definition not applicable to EEE as it is not conform to the European standards 4555x related to material efficiency in energy related products.

### ➤ *Measurability*

Some criteria do not refer to clearly determined and measurement methods, letting the companies in a high legal uncertainty and not enabling fair comparison between different products. Incorporation of recycled materials, presence of critical material and presence of rare earth, recyclability criteria need to be accurately defined using harmonized standards at EU Level.

### ➤ *Enforceability*

Some requirements such as incorporation of recycled materials, presence of critical material and presence of rare earth criteria, are not possible to verify and enforce through market surveillance. This is an open door to unfair competition and greenwashing.

*For example, for aluminum, the global industrial standard is to incorporate recycled aluminum without disclosing the quantity. Should the producer assume the quantity or start specific tracking and reporting processes?*

➤ **Relevance**

New requirements must be relevant for the environment, the users and applicable even within the specific life cycle phase(s).

Requirements must not be redundant with other legal requirements.

There must be evidence of clear and significant potential for improvement. We strongly oppose to full declaration on topics not understandable or not useful for consumers.

➤ **Competitiveness**

New requirements must not generate significant negative impact on the industry's competitiveness and the competition must be fair, especially regarding a regulation applicable only in France and not in other member states.

**Third, regarding the *functioning of the EU Internal Market*.**

We advocate French government not to set up national requirements but come to support the construction of the European legislations on the consumer empowerment and the sustainable product initiative which is part of the Circular Economy Action Plan of the Green Deal.

The coherence at EU level is essential for different reasons:

1. Preserve the *coherence of eco-design of products* addressing the European market:

Definitions specific to France would not allow producers to define clear and effective product ecodesign at the level of the European market. On the contrary, a fragmented approach to these subjects would lead producers into inconsistencies according to the different national markets.

2. Ensure *the consistency of environmental information* at European level: electrical and electronic products are designed and marketed to address the European market as a whole. The ease for consumers to buy products on websites located in other EU Member States reinforces the need for European harmonization of definitions of environmental characteristics so that a given criterion reflects the same realities in France or elsewhere in Europe. For example, a different recyclability criterion in France and in another State would not make sense knowing that the end-of-life treatment obligations (pollution control, limitation of hazardous substances) and the recycling objectives are identical for each country, since fixed by European directives.

3. *Limit the administrative burden* by avoiding transitional national measures within a tight schedule: the Sustainable Product Initiative will very soon be adopted with a set of legislation to be examined by the European Parliament and the Council and will precise some of the criteria in the french draft decree.

Imposing work to ensure compliance with the French text on topics that will very soon be obsolete or even incompatible with European law is nonsense: the French requirements will not have had time to bear fruit with consumers that they will have to be deleted or recast to align with European law.

This is particularly the case for **batteries**: the regulation that will be adopted in mid-2022 provides in Article 3 on free movement within the European Union: "Member States may not, for related reasons the sustainability, safety, marking and information requirements applicable to batteries or the management of waste batteries covered by this Regulation, prohibit, restrict or hinder their making available on the market or putting into service batteries which comply with this Regulation".

The purpose of this future European battery regulation is in particular to define the mandatory environmental information and characteristics to be communicated according to the battery categories. Consequently, *we request that batteries be totally excluded* from the French draft decree (in particular criteria III, VI, and IX).

Regarding the information on the presence of SVHC, we request to clarify in the draft decree that referring to existing tools accessible to the consumers (SCIP or other tool) is sufficient to comply.

#### 4. Preserve the *free movement of goods*:

The prohibition of the terms "biodegradable", "respective of the environment" or any other equivalent term ", without further clarification in the decree, will create a measure of equivalent effect to the restriction on intra-community trade since these terms are authorized in the other member states. Such a national initiative is not desirable as the European Commission is preparing its Initiative on substantiating green claims which will address the issue of establish jointly a coherent policy framework to ensure the environmental performance of products are reliable, comparable and verifiable across the EU.