



## VERBAND DER DEUTSCHEN MÖBELINDUSTRIE E.V.

Flutgraben 2, 53604 Bad Honnef, Germany

**To: European Commission, TRIS website and to the attention of DG GROW B/2, DG GROW B/1, DG GROW C/2**

**Subject: VDM comments to the Decree on the labelling of furniture products regarding their emissions of volatile pollutants notified to the EU under Directive (EU) 2015/1535**

### **Notification 2017/0022/F**

**Décret à l'étiquetage des produits d'ameublement vis-à-vis de leurs émissions en polluants volatils**

*And the correspondant*

### **Notification 2017/0023/F**

**Arrêté à l'étiquetage des produits d'ameublement vis-à-vis de leurs émissions en polluants volatils**

### **About VDM**

More than 84,000 employees in around 500 factories in the German furniture industry with 50 and more employees generated sales of € 18 billion in 2016. According to CSIL Milano, with a share of 20.5 percent the German furniture production is the largest one within the EU. The sector is predominantly small and medium-sized companies. The average turnover per business is around € 36 million, the average operating size is around 170 employees. The industry-wide export rate is 32 percent. With an export value of € 1.3 billion France is the most important market for exporting furniture producers from Germany.

### **The Notification**

With the notified legislation France wants to setup a mandatory labelling of the VOC-Emissions from furniture into indoor air – especially Formaldehyde – by a classification system based on threshold values for each of the four classes for products to be put on the French market. Producers and importers shall declare the emission classification of the product based on emission testing of furniture containing wood and wood-based panels.

### **Executive Summary of VDM's detailed comments**

The French Decree represents a violation of the Treaty of the Functioning of the European Union (TFEU), especially of Article 34 and 36, since it is hampering the free movement of goods by setting up protectionist provisions for furniture to be sold on the French market.

### **The Decree is**

- **not justified,**
- **not proportionate,**
- **not suitable, nor effective,**
- **incomplete**

**by that creating massive barriers to trade and hampering access to the French market as it does not respect the principles of the TFEU.**



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### Reasons:

- Creation of a barrier to trade to the French market, mainly due to the disproportionate, ineffective and not suitable requirements establishing obligations for testing and labelling under the notified French decree and order.
- Disproportionate as the estimated cost for emission testing per single product would lead to unbearable costs for the predominantly small and medium sized enterprises as thousands of products to be sold on the French market and differing in products' specificities would have to be tested.
- Not suitable as the expected amount of furniture to be tested does not correspond to the testing capacities available. As a side effect this would create indirect subventions for test labs and emission chamber producers.
- Not suitable and unclear as the products shall "bear a label giving details of the precautions to be taken due to their emissions of volatile pollutants", but in the corresponding order it is already stipulated that the text shall read as "(\*) Information sur le niveau d'émission de formaldéhyde dans l'air intérieur, présentant un risque de toxicité par inhalation, sur une échelle allant de A+ (très faibles émissions) à C (fortes émissions)" [(\*) Information on the level of formaldehyde emissions in indoor air posing a risk of toxicity by inhalation, on a scale from A+ (very low emissions) to C (high emissions).]" which is not allowing to give other or more information, that the producer seems to be of interest for the consumer
- Not suitable as using the same labels as construction products but with different thresholds for the classes will mislead the consumer.
- Not effective as the consumer is mislead by buying several products of the best class with a possible sum of emissions worse than in another class.
- Disproportionate discrimination of products made of wood and wood-based materials, since the legislation applies to them only with the potential to result in massive market distortions
- Unjustified for setting up emissions classes with a different approach and with extremely low values compared to other EU Member States. In particular, Austria, Czech Republic, Denmark, Germany, Greece, Italy, the Netherlands and Sweden - have already approved a National regulations generally imposing a maximum formaldehyde emission level of E1 (according to EN 13986) with a threshold of 0.1 ppm (equivalent to 124 µg/m<sup>3</sup>) for wood-based panels and products there made of.
- Disproportionate as it is conflicting with the emission requirements of building products in France itself and the recently published EU Ecolabel for furniture
- Ineffective by setting up disproportionate and technically not reproducible emission limits based on a measurement methodology that is not technically robust for the purpose.
- Realistic potential to follow the same long-termed route of uncertainties for the industry as current process of trying to find a solution for a harmonized European classification system for emissions from building products that are falling under the Construction Products Regulation (CPR) in the light of four notified Member States Regulations in France, Belgium, Lithuania and Germany (see Decision of the European Court of Justice C-100/13)
- Incomplete legislation package as decisive parameters are neither defined in the decree or in the order and the technical guide mentioned in the order is not available yet and it does not provide any information on the targeted substance.



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### **Explanatory statement with detailed comments**

#### **Disproportionate, ineffective and not suitable requirements establishing obligations for testing and labelling to be set up by an incomplete legislation package of France with the obvious tendency to be misleading for consumers**

Safety and health of the users of furniture as well as the public concerning imissions by production plants and for the workers during the production processes are particularly important to German Furniture Industry.

Therefore the French general intention to reduce formaldehyde emissions is to be seen as a step into the right direction. But the opinionated way France is intending to take it is not comprehensible especially in the light of the Treaty on the Functioning of the European Union (TFEU) establishing the right of free movement of goods within the Single Market.

#### **Legislation**

The legislative approach of France is not taking into consideration existing legal regulations in other EU Member States with proven success to reduce Formaldehyde Emissions into indoor air. Furthermore these laws in Austria, Czech Republic, Denmark, Germany, Greece, Italy, the Netherlands and Sweden follow the same common approach that France is ignoring. The already approved National regulations are generally imposing a maximum formaldehyde emission level of E1 (according to EN 13986) with a threshold of 0.1 ppm (equivalent to 124 µg/m<sup>3</sup>) for wood-based panels and products there made of.

This should be the base for a harmonized European approach for establishing the E1 level as mandatory in EU-27.

In Germany this is regarded as safe according to the Gefahrstoffverordnung since 1986 that is replaced since 1993 by the Chemikalien-Verbotsverordnung – ChemVerbotsV. Besides there are strict regulations in force for the protection of workers as well as for imissions of production plants.

#### **Standardization**

The German Furniture Industry is involved in all areas of furniture standardization and related topics at national, European and international level. Furthermore, VDM also supports the legal establishment and anchoring of the E1-formaldehyde-standard for wood-based panels (EN 13986). As mentioned above this standard, with a formaldehyde limit of 0.1 ppm, has contributed significantly to the reduction of formaldehyde emissions into interior air for decades and thus to the health of the residents. We therefore consider sufficient compliance with the E1 standard for wood-based panels and products there made of to be sold on the European market which includes production inside the EU as well as imports.

#### ***Implication of disproportionate extensive costs for the industry, especially SMEs that the furniture sector is dominated by***

The German as well as the European furniture producers sector is dominated by SMEs, mostly being situated in rural areas. That is a major difference compared to the automotive industry for example. With an export value of € 1.3 billion France is the most important market for exporting furniture producers from Germany.



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As far as VDM understands the French legislation package, product testing has to be performed for each product to be put in the French market. In the Annex of the Arrêté few reference furniture are mentioned rudimentarily. Decisive parameters and further explanations are missing. Taking into consideration the expected costs for testing, the sum will be tremendous and exceed companies' capabilities.

The following examples will give a more detailed understanding.

The German furniture producers' sector is predominantly small and medium-sized Companies. The average turnover per company is around € 36 million, the average operating size is around 170 employees.

Typical producers of domestic, non-domestic and kitchen storage units, worktops and others have a huge product range with a lot of variations in their product lines/brands/series. To fulfil the markets' needs it is common and expected by consumers to be offered a great variety of core-board covering such as foil, melamine, wood veneer, lacquer-, oil-, powder- and other coatings, high-gloss-, matt- or in between finishings and many more and in combinations for different sizes in width, height and depth, wall-hanging or floor-standing and also with combination of other materials like glass, stone, plastics, metal, solid wood, concrete and others. This has to be done to respect the markets' needs of individuality in a series production with lot size one.

Typical producers for bedding, upholstered furniture, chairs, tables and other furniture also have an average for several hundreds of product variations by design, construction, materials used, colors, finishings, different fabrics, leathers, artificial leathers, table tops etc. These differ from order to order.

If the legislation requires that product testing has to be performed for each possible combination - with expected costs of 2.000 to 3.000 Euros or more depending on the size of the emission chamber (which is not clear if others than 30 m<sup>3</sup> size are allowed), the estimated sum of costs will by far exceed companies' capabilities. By that most will decide not to deliver into the French market anymore.

Further unnecessary burden is created by the fact that already existing documentation and test results from suppliers cannot be used, so that all furniture manufacturers do not have to repeat tests.

### ***Disruption of the French furniture market and distortion of the European Internal Market***

Besides the estimated cost explosion and the withdrawal from the French market of lots of companies another effect would lead to a serious distortion or even a disruption of the European Internal Market. In furniture market with a high pressure of prices, customers would not accept an increase of prices needed for additional testing of furniture.

For this reason, many SMEs might also decide not to deliver into the French market anymore. As a possible scenario, at first this would lead to a disruption of the French furniture market. Negative effects would occur in parallel in the exporting countries, their companies and employees, especially in Germany, and in total this would distort the European Internal Market.

So the functioning of the EU internal market will be questioned seriously by the French notified legislation.



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### ***Hampering access to the French market due to non-availability of capacities***

The associated logistical component, due to the minimal availability of emission test chambers required in Annex 1 of the Arrêté in relation to the number of furniture to be placed on the market in France annually, would additionally have made it impossible for furniture manufacturers to place any further furniture into the French market. Testing several thousands of products with a test duration of 28 days would last decades.

### ***Indirect subventions for test-labs and test chamber producers***

Much more this legislation indirectly will be a special stimulus program for test houses and test chamber manufacturers as neither the French nor the European capacity of test chambers is sufficient for the estimated amount of products that would need to be tested.

### ***Discrimination of products made of wood and wood-based materials***

Article 5 of the Arrêté is directly discriminating furniture containing wood-based panels according to other products since it reads as follows: 'Furniture containing wood-based panels (particleboard, fiberboard, plywood, etc.) may emit pollutants into indoor air. It is therefore recommended that, after placing the furniture in a home, the room be frequently ventilated for at least four weeks in order to reduce exposure to the pollutants emitted by the furniture.' This puts furniture made of wood-based panels under general suspicion. Other materials do not have to comply. Furthermore this article raises the question how residents are going to be controlled by French authorities if they assure the room to be frequently ventilated for at least four weeks after setting up new furniture.

### ***Negation of the Paris Agreement and climate goals***

By discriminating furniture containing wood-based panels the French legislation negates the goal of a change to a biobased economy and the carbon storage effects of wood and wood-based products.

### ***Misleading the consumer***

Consumers usually are not aware of the details behind such a new regulation or a new label put on products nor have they the expertise in this special field. But in France the situation is different. The notified legislation foresees using the same labels as for construction products that is on the market since 2013. Contradictory to the building products for furniture different thresholds for the same emission classes shall apply. The lowest emitting construction products class is the same as the high emitting furniture class. This at first can mislead the consumer. At second the consumer can be misled by buying several products of the best class with a possible sum of emissions worse than one single in another class.

Moreover, it has to be taken into consideration that indoor environment emissions depends on different factors (e.g. size of the product, number of pieces, other elements in the room, room temperature, relative humidity, air exchange rate). The emission classes for a single product are not ensuring a lower level of emission in a specific indoor environment.

Therefore the approach of France is neither suitable nor effective.

### Disproportionate and technically not reproducible emission classes and limits

The French decree for emissions into indoor air deriving from construction products in force since September 1<sup>st</sup>, 2013 is contradicted by the notified legislation for furniture emissions. Within the construction products the best emission class A+ has a limit value of  $< 10 \mu\text{g}/\text{m}^3$  that is the threshold for the being categorized into the worst class C in the system for furniture. Comparison as follows:

Compound and Use	CAS no.	Classe C [ $\mu\text{g}/\text{m}^3$ ]	Classe B [ $\mu\text{g}/\text{m}^3$ ]	Classe A [ $\mu\text{g}/\text{m}^3$ ]	Classe A+ [ $\mu\text{g}/\text{m}^3$ ]
France: Formaldéhyde Construction	50-00-0	$> 120$	$< 120$	$< 60$	$< 10$
France: Formaldéhyde furniture	50-00-0	$> 10$	$< 10$	$< 5$	$< 3$
EU Ecolabel for furniture: Formaldéhyde	50-00-0	Particle Board $< 62$ (50% E1) MDF Board $< 81$ (65% E1) EU Ecolabel claims (20% of the best products available on the market)			

For this reason, however, it is not comprehensible why, for furniture such strict limit values are foreseen in the French classification system for furniture. In particular, the values for the classes A + ( $< 3 \mu\text{g}/\text{m}^3$ ) and A ( $< 5 \mu\text{g}/\text{m}^3$ ) lie within the range of detection and determination limits as well as the test chamber blind-value.

### Questionable robustness of testing in such low and small ranges

An accurate and reproducible proof of compliance with the limit values as well as the comparability of measurement results at this extremely low level is therefore in principle to be questioned. Even with the limit values of classes C ( $< 10 \mu\text{g}/\text{m}^3$ ) considerable and costly actions must be taken in order to achieve the necessary test conditions. The measurement inaccuracies inherent in the test chamber method in combination with the blind-values of the test chambers and unavoidable contamination are this relevant that even in the level around  $10 \mu\text{g}/\text{m}^3$ , a measurement result would mean the assignment into a better, sometimes into a poorer class.

The reason is that the proposed test method is different than the standard method approved for classifying wood based panels as E1 (EN717-1) that is recognised since decades. France mainly requires testing according to ISO 16000. The differences between both test methods are the measuring conditions. The robustness of ISO 16000 is much lower as it gives a higher variability than EN717 because of the tolerances in the test parameters, e.g. temperature/relative humidity for EN 717-1 ( $23 \pm 0.5 \text{ }^\circ\text{C}$  /  $45 \pm 3 \%$ ) and ISO 16000-9 ( $23 \pm 2 \text{ }^\circ\text{C}$  /  $50 \pm 5 \%$ ). As the emission behaviour strongly relies on these two parameters, EN 717-1 can be seen as the most stringent and reliable, also according to comparability of results, especially in the light of measuring inconsistencies.





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The experience of different test laboratories in Europe, even within France, shows that deviations in the test results of measuring according to ISO 16000 are more likely possible though securing the same samples and the same requirements for boundary conditions.

Additionally, there is no evidence for significant differences in the effects of formaldehyde emissions attributable to furniture alone of between 3, 5 and 10  $\mu\text{g}/\text{m}^3$ . Such a strict limit value determination is unprecedented, not necessary and inappropriate. Even with voluntary labels, such as the Blue Angel or the EU Ecolabel, which are supported by consumers and also by the state, such limits cannot be found.

### ***Contradictory to the European Ecolabel for furniture products***

Especially the recently published EU Ecolabel for furniture has to be mentioned. The aim of the EU Ecolabel is to signalize to the market the requirements for the best 20% of the market.

With regard to formaldehyde emission, the new Ecolabel for furniture demands a limit value of 50% E1 (about 62  $\mu\text{g}/\text{m}^3$  for particleboards and even higher for Medium Density Fiberboards (MDF)) that are also commonly use in the furniture sector.

Taking into account the classes and limit values of the notified French regulation, even high profile products awarded with the EU ecolabel for furniture might fall under lowest classes.

### ***Incomplete legislation package with important technical details missing***

Mirroring TFEU, Recital 8 of Directive 2015/1535 clearly states: "In 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." This transparency is not given by the French notified legislation as the Technical guide is still missing so that a clear final assessment cannot be performed due to the lack of full information on the parameters for testing.

Furthermore the legislation does not provide any information on the targeted substance nor an accompanying document as required in Article 5 (1) of the Directive 2015/1535. An impact assessment accompanying this decree is missing, too.

Decisive parameters are still not defined. For example, in Annex I, Method B, fourth paragraph, reference is made to a guide on the basis of which the aforementioned calculations are to be carried out. "If the panel has a coating, the emission factor of the untreated panel may be multiplied by a factor dependent on the type of coating used, in accordance with a technical guide published on the website of the minister responsible for the environment."

This guide as a third part of the legislation package is not accessible so far. The same applies to the "Guide technique <<Protocole d'essai pour la caractérisation des émissions de polluants volatils par les produits d'ameublement>>" mentioned in Annex A, table 1 for further specification of the emission chamber measurements. We received the information that these guides will be made available only after the adoption of the law.

However, these are indispensable for final assessment and commenting on the French legislation. It is therefore all the more surprising that an incomplete multi-part legislative package was submitted to the European Commission for notification.



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***Realistic potential to follow the same long-termed route of uncertainties for the industry as current process of trying to find a solution for a harmonized European classification system for emissions from building products that are falling under the Construction Products Regulation (CPR) in the light of four notified Member States Regulations in France, Belgium, Lithuania and Germany (see Decision of the European Court of Justice C-100/13)***

In the light of the CPR for construction products it is quite realistic to estimate that there might come up other national regulations for furniture, as now done by Denmark (2017/89/DK), with the potential to end in a never ending story with a lot of uncertainties for producers, retailers and consumers.

## **Conclusion**

The Confederation of the German Furniture Industry (VDM) see a massive limitation on the German furniture industry, resulting from the French legislation that creates significant barriers to trade and misleading consumers. This is a clear violation of the freedom of the European internal market through national non-tariff trade barriers.

Generally VDM welcomes an approach aiming at a harmonized regulation for emissions of formaldehyde at a level that provides the needed safety for consumers and a degree of certainty for the industry.

Therefore the most effective approach would be regulating this issue by imposing a general requirement for wood-based panels equally applied throughout Europe. This approach has been already introduced at the national level by legislation in Austria, Czech Republic, Denmark, Germany, Greece, Italy, the Netherlands and Sweden. These EU Members States have already approved national regulations generally imposing a maximum formaldehyde emission level of E1 (according to EN 13986) with a threshold of 0.1 ppm (equivalent to 124 µg/m³) for wood-based panels and products there made of.

National initiatives – as now with the French Notifications - resulting in the multiplication of different schemes would significantly distort intra-EU trade and the functioning of the European internal market as it obviously can be seen within the construction products sector.

VDM fully supports the comments given by the European Furniture Industries Confederation (EFIC).

Consequently the French legislation has to be stopped immediately by the European Commission.

Bad Honnef, 20<sup>th</sup> April, 2017

Verband der Deutschen Möbelindustrie e.V. (VDM)

Mr. Axel Schramm, President