



Remarks on the French draft Decree and Orders on the durability index of electrical and electronic equipment

(Notifications TRIS 2023/0477/FR, 2023/0478/FR, 2023/0479/FR and 2023/0481/FR)

In the framework of the notification procedure laid down in Directive (EU) 2015/1535, the French authorities notified to the European Commission on 2nd August 2023 several draft texts establishing a new national “durability index”, which intends to replace the existing French “repairability index”. According to these draft texts, the computation and display of such index should be mandatory for several electrical and electronic equipment categories sold in France from September 2024, starting with smartphones and TV sets.

The notified draft texts include:

- The **Decree of the Council of State on the sustainability index** of electrical and electronic equipment (notification TRIS 2023/0477/FR)
- The **Order on methods of display, signage and general parameters** for calculating the sustainability index of electrical and electronic equipment (notification TRIS 2023/0478/FR)
- The **Order** regarding the criteria, sub-criteria and scoring system for calculating and displaying the sustainability index of **multifunctional mobile phones** (notification TRIS 2023/0479/FR)
- The **Order** regarding the criteria, sub-criteria and scoring system for calculating and displaying the sustainability index of **televisions** (notification TRIS 2023/0481/FR)

These texts are issued for the application of Article L541-9-2 of the Environment Code, as amended by Article 16 of Law No. 2020-105 of 10 February 2020 on combating waste and the circular economy (“AGEC law”).

Our comments below are common to the four above-mentioned draft texts.

Note: The term of sustainability index as found in the official English translation of the decree and orders appears to be misleading, and should rather be read as durability index (“indice de durabilité”, in French).

Introduction

The French alliance for digital industries (AFNUM) **fully supports the objective of reducing the environmental impact of digital products, such as smartphones and TV sets, including the extension of product longevity**. Our members have already made and continue to make significant contributions to this objective, and reiterate their commitment to designing and marketing products on the EU market, that are reliable, repairable, and durable.

The French repairability index was introduced on the French market on January 1, 2021. It was made mandatory for 10 product categories, including smartphones, laptops and TV sets.

The new durability index proposed by the French authorities comes with a broader scope. Beyond repairability, it aims at introducing reliability and upgradability dimensions, that are said to contribute to the longevity of an electronic product.



However, whereas the French repairability index was adopted to be applied nationally in the absence of a similar tool at the EU level, we are in a different context today as new eco-design requirements and information tools about product durability will soon be enforced at EU level, starting with smartphones in 2025, then expanding to additional product categories.

Moreover, the obligation to disclose and publish all the parameters which have been used to compute the index pose serious legal issues regarding the protection of trade secrets.

Overlap with European regulations

The European Commission developed a new energy label for smartphones and tablets. This was published recently as Commission Delegated Regulation (EU) 2023/1669 of 16 June 2023 *supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to the energy labelling of smartphones and slate tablets*. This regulation comes with new environmental related requirements on the product design, as part of Commission Regulation (EU) 2023/1670 of 16 June 2023 *laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 2023/826*.

The EU energy label for smartphones and tablets, as well as most of the design requirements, will apply EU-wide from 20 June 2025. For the first time, **the EU energy label will include a reparability score which will apply across the European Union, as well as further durability-related information** regarding *repeated fall reliability, battery endurance, and ingress protection*. This new EU energy label will allow EU consumers to compare smartphones and tablets according to those criteria at the time of purchase.

This new EU energy label will soon apply to additional product categories (such as TV sets and computers). The European Commission recently initiated the **revision of the ecodesign and energy labelling requirements for electronic displays** (*Commission Regulation (EU) 2019/2021 and Commission Delegated Regulation (EU) 2019/2013*), where the introduction of **new requirements addressing circular economy aspects**, including the introduction of a repairability score, is listed among the aspects that will be considered in the evaluation and impact assessment. Also, the **Ecodesign for Sustainable Products Regulation** that will replace the existing Ecodesign Directive 2009/125/EC in setting the framework for the introduction of a new generation of ecodesign requirements, include **durability, reliability, reusability, upgradability and repairability** as products aspects for which requirements will be introduced.

The French authorities have embedded the criteria used in the EU energy label and eco-design requirements for smartphones within the French durability index, and that in a mostly compatible manner with the support of manufacturers, with the noticeable exception of the repairability score methodology which differs from the EU one. Furthermore, **the French durability index comprises additional criteria for which the added value for the environment is uncertain**, such as the location of the product maintenance information (on the product display or the manufacturer's web site), the separation between security and functional updates, or the ability to install an alternative operating system on the product.

Therefore, the French durability index is likely to have little impact on the customer purchase decision and on the environment, compared with the new EU energy label from the moment it will be



enforced. It will however have a **negative impact on manufacturers that will have to search, compute, display, communicate and maintain local data, that will feed into an index that is specific to the French market.** This will also force the manufacturers to publish, on a public platform, all the parameters which have been used to compute the index.

We would also like to mention to the Commission that the obligations proposed by the French authorities rely on **the date of placement on the market at national level**, which is a clear deviation of the single market, forcing manufacturers to keep track of the specific date of entry of all their products on the French market.

The French durability index will also add burden, complexity, and confusion for distributors that will have to display this index at the point of sale together with the new EU energy label, when selling the product on French territory or to French consumers.

Additionally, the combined display of overlapping and sometimes diverging information --as the French durability index is a condensed score considering additional criteria and a different repair score methodology-- will likely be a **source of confusion to the French consumer. This is likely to undermine the envisaged benefits of a harmonised EU energy label.**

Protection of trade secrets

As mentioned above, manufacturers will have to publish all the parameters which have been used to compute the index in a national database provided by the French public authorities. Whilst some of these data can be considered as public information, **information such as the results of scratch testing for smartphones and accelerated panel testing for television sets are not public.** This information can fall into one of two categories of **trade secret according to the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure**, i.e. R&D data and/or marketing data.

While we recognise that standardised testing results, such as the two cases, above are linked to the overall durability of the product, and should therefore be part of the French durability index criteria, the testing results are undisclosed information, which are to be protected, as they are linked to the manufacturer's technical investments and own strategy to extend the lifespan of its products. This right **falls within Article 39, paragraph 2 of WTO TRIPS Agreement**, which states that *"legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent [...]"*.

Conclusion

The enforcement of a national durability index, in France, or in any other Member State that would envision a similar national initiative, will significantly overlap with new European regulation seeking similar objectives and deviate from the objectives of the single market by **undermining the right to conduct a business in the EU and the free trade of goods and services within the internal market.** As discussed above, this would come **without any demonstrated added value** in the context of the upcoming enhanced information on the durability of products which will be part of the EU-wide energy



label. And **it will bring confusion to consumers**, at the time of purchase, which could undermine the credibility of the European eco-design requirements.

Moreover, the obligation for manufacturers to communicate the results of the reliability testing criteria would undermine manufacturers' right to not publicly share trade secrets, upholding the Directive (EU) 2016/943, as well as the WTO TRIPS agreement.

Therefore, AFNUM asks the European Commission to request the French authorities to properly **ensure the preservation of manufacturers' trade secrets. We also ask the Commission to help preserving the internal market by harmonising all national and European initiatives related to the durability of EEE products.**

AFNUM (Alliance Française des Industries du Numérique) represents, in France, manufacturers in the consumer electronics, IT, printing, networks, photography and connected objects sectors. The economic weight of AFNUM's member companies is 35,000 direct jobs and 130,000 indirect and induced jobs in France for a turnover of 29 billion euros. AFNUM is a member of FIEEC, MEDEF and DIGITALEUROPE.