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| FRENCH REPUBLIC | | |
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| Ministry for the Ecological Transition | | |
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Decree No 2022-... of...

on carbon offsetting and claims of carbon neutrality in advertising

NOR: […]

*Target audience: Advertisers*

*Subject: application of Article 12 of Law No 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects.*

*Entry into force: the text shall enter into force on the day after its publication, with the exception of Articles 2 and 3 which come into force on 1 January 2023.*

*Notice: This Decree lays down the procedures for implementing the communication, by advertisers, of the information provided for in Article 12 of the aforementioned Law No 2021-1104. It applies to all advertisements broadcast after the text enters into force.*

*References: the provisions of the Decree are adopted for the application of Article 12 of Law No 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects. This law and decree can be found on the Légifrance website (http://www.legifrance.gouv.fr).*

The Prime Minister,

On the basis of the report by the Minister for the Ecological Transition,

Having regard to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codified text), and in particular notification No...;

Having regard to the Environmental Code;

Having regard to Law No 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects, and in particular Articles 12 and 147 thereof;

Having regard to Decree No 97-1198 of 19 December 1997 implementing the first paragraph of Article 2 of Decree No 97-34 of 15 January 1997 on the deconcentration of individual administrative decisions to the ministers responsible for ecological and solidarity transition, territorial cohesion and relations with local and regional authorities;

Having regard to Decree No 2020-457 of 21 April 2020 on national carbon budgets and the national low-carbon strategy;

Having regard to the observations made during the public consultation carried out between ... and ..., pursuant to Article L. 123-19-1 of the Environmental Code;

Having heard the Council of State,

Decrees:

Article 1

In Chapter IX of Title II of Book II of the Environment Code, Section 7 is inserted as follows:

‘Section 7: Emission reductions from greenhouse gas offset projects

Article R. 229-103.- The principles set out in Article L. 229-55 must comply with the following implementing procedures:

Measurable character: the greenhouse gas emissions avoided or sequestered through projects are quantified on the basis of a transparent, publicly available methodology. The quantification method is based on the latest scientific and technical knowledge. Measurement data are clearly documented and can be verified. The methodology to which the compensation project refers defines a baseline scenario from which the emission reductions generated by the project are calculated. The baseline scenario must be project-wide and must reflect a recent trend in greenhouse gas emissions and the application of existing best practices.

Verifiable character: the avoided or sequestered greenhouse gas emissions shall be verified by an auditor who is independent of the project sponsor. Based on documentary checks or in situ controls, the auditor validates the greenhouse gas emission reduction that can be achieved by the actions implemented during the life of the project.

Permanent character: the greenhouse gas emissions avoided or sequestered through compensation projects are permanently avoided. Where appropriate, the risk of non-permanence shall be taken into account by the quantification method.

Additional character: the compensation projects could not have been implemented without dedicated funding, taking into account existing economic incentives, good practices and the applicable obligations.

Article R. 229-104.- Compensation projects shall respect the principle of transparency. The methodology to which the compensation project refers and the descriptive elements of the project, in particular in terms of the identification, location and accounting of greenhouse gas emission reductions, shall be publicly available and easily accessible.’

Article 2

Chapter IX of Title II of Book II of the Environment Code is supplemented by Section 9 as follows:

*‘Section 9*

*‘Environmental claims’*

Article D. 229-105.- An advertiser who asserts in an advertisement that a product or service is carbon neutral or uses any wording of equivalent meaning or scope shall comply with the provisions of this section.

This section shall apply to advertising correspondence aimed at individuals, advertising printed matter distributed to the public, advertising posters, advertisements in press publications, advertisements broadcast in cinemas, advertisements issued by television or broadcasting services and by means of communication services to the public online, as well as to claims affixed to the packaging of goods.

Article D. 229-106.- An advertiser referred to in Article D. 229-105 shall produce a greenhouse gas emissions balance sheet for the product or service concerned covering its entire life cycle. This balance sheet shall be updated annually.

This balance sheet shall be worked out in accordance with the requirements of standard NF EN ISO 14067, or any other standard consistent with the requirements of that standard. An order of the Minister responsible for the environment may supplement these requirements in order to bring the methodology of the emissions balance sheet in line with that of the environmental signage provided for in Article L. 541-9-11 of this Code.

Article D. 229-107. – The advertiser referred to in Article D. 229-105 shall publish on its online public communication site or, failing that, on its mobile application, a summary report describing the carbon footprint of the product or service advertised and the means by which these greenhouse gas emissions are primarily avoided, then reduced, and finally compensated for. This report shall contain three annexes detailing its contents and presented in the following order:

(1) an annex setting out the results of the balance sheet provided for in Article D. 229-106 and a summary of the methodology use for drawing up that balance sheet. That summary shall specify in particular the scope used for the definition of the product or service concerned, the functional or declared units used, the boundaries of the system in question, the method of processing the end-of-life stage, the emission data taken into account for electricity or gas consumed from the networks. It shall specify the country(ies) or geographical area(s) in which emissions and emissions from international transport take place, to the extent that such data are available;

(2) an annex setting out the target trajectory for reducing greenhouse gas emissions associated with the product or service advertised, with quantified annual progress targets, covering at least the ten years following the publication of the report;

(3) an annex detailing the procedures for offsetting residual emissions, specifying in particular the nature and description of the compensation projects. This Annex may also voluntarily present information on their cost (total, and per tonne of CO2). This Annex demonstrates that the volume of emissions avoided or reduced through this compensation corresponds to the residual emissions of all the products or services sold and affected by the advertising. This annex also specifies the means implemented by the advertiser in order to ensure that it does not double count the compensation enabled by these projects. In particular, it sets out the methods for removing emission reductions from the market when offsetting credits are used. Finally, this annex details the efforts made to ensure the best possible coherence between the geographical areas where the projects are carried out and where the emissions take place.

This publication shall be updated annually throughout the marketing period of the product or service. In particular, the update makes it possible to monitor the evolution of emissions associated with the product or service in comparison with the reduction path mentioned above. The advertiser will have to withdraw the claim referred to in Article D. 229-105 if it appears that unit emissions associated with the product or service before compensation have increased for two successive years.

The web link or quick response code to access this publication is indicated on the advertisement or packaging with the claim of carbon neutrality.

Article D. 229-108. – The compensation projects used by the advertiser referred to in Article D. 229-105 shall comply with the conditions of Articles R. 229-103 and R. 229-104.

Compensation projects must not be detrimental to the preservation and restoration of natural ecosystems and their functionalities.

The emissions associated with products or services consumed in France must be compensated mainly on French territory.

The emission reductions recognised under Decree No 2018-1043 of 28 November 2018 creating a ‘Low Carbon’ label are deemed to comply with Article R. 229-103.

Article R. 229-109. – Pursuant to Article L. 229-69, the Minister responsible for the environment may penalise the failure to fulfil the obligation provided for in Article L. 229-68 under the conditions laid down in this Article.

Failure to comply with the obligations laid down in Article L. 229-68 shall be established by an official authorised for that purpose by the Minister responsible for the environment.

After giving the advertiser the opportunity to submit written observations on the complaints made against it, the Minister responsible for the environment may give it formal notice to comply with that obligation within a period to be determined by the Minister. The Minister may publish this letter of formal notice.

Where the advertiser fails to comply with that notice within the specified period, the Minister responsible for the environment may order it to pay the fine provided for in Article L. 229-69 of the Environmental Code.’

Article 3

In Annex 1 to the Decree of 19 December 1997 referred to above, the heading ‘Energy and climate’ is supplemented as follows:

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| [64] | Formal notice and penalties relating to the assertion in an advertisement that a product or service is carbon neutral | Environmental Code  Article R. 229-109 | Minister for the Environment |

Article 4

This Order enters into force on the day after its publication, except for Articles 2 and 3 which come into force on 1 January 2023.

Until 31 December 2025, the financing of projects on French territory is equivalent to the allocation to the advertiser for emission reductions in accordance with the provisions of point 3 of Article D. 229-107, if the advertiser can justify by a contract the eventual recognition of the benefit of the verified emission reductions of that project. The advertiser shall ensure compliance with its emissions offsetting obligations, where appropriate by acquiring additional carbon credits corresponding to the difference between the verified emission reductions of the project and those funded.

Article 5

The French Minister for the Ecological Transition shall be responsible for the implementation of this Decree, which will be published in the *Official Journal* of the French Republic.

Done on [date].

By the Prime Minister:

The Minister for the Ecological Transition,

Barbara POMPILI