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Subject: Notifications 2023/477-481/FR

Decree of the Council of State on the durability index for electrical and electronic equipment;

Order on display procedures, signage and general parameters for calculating the durability index for electrical and electronic equipment;

Order regarding the criteria, sub-criteria and scoring system for calculating and displaying the sustainability index of multifunctional mobile phones;

Order on criteria, sub-criteria and scoring system for calculating and displaying the durability index for household washing machines;

Decree on criteria, sub-criteria and scoring system for calculating and displaying the sustainability index of televisions.

Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015.

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015.

Madam,

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535¹, the French authorities notified to the Commission on 2 August 2023 the

¹ 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, OJ L 241, 17.9.2015, p. 1.

following drafts “Decree of the Council of State on the durability index for electrical and electronic equipment” (2023/477/FR) Order on display procedures, signage and general parameters for calculating the durability index for electrical and electronic equipment”(2023/478/FR); “Order on criteria, sub-criteria and scoring system for calculating and displaying the durability index for multifunctional mobile phones”(2023/479/FR); “Order on criteria, sub-criteria and scoring system for calculating and displaying the durability index for household washing machines”(2023/480/FR); and “Decree on criteria, sub-criteria and scoring system for calculating and displaying the sustainability index of televisions” (2023/481/FR), hereinafter, ‘the notified drafts’.

According to the notification messages, the notified drafts aim to define a sustainability index intended to be displayed at the time of purchase to inform consumers of the lifetime of electrical and electronic products. This index will replace the existing French reparability index by taking into account product reliability and upgradability criteria.

The examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.

1. Detailed Opinion

The notified draft introduces a sustainability index, which falls in the scope of harmonized requirements that have been introduced through 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.

Regulation (EU) 2023/1669, in force since 20 September 2023, introduces an EU energy label for smartphones and tablets. In particular, from 20 June 2025 onwards, smartphones placed on the EU market will have to display information on their energy efficiency, battery longevity, protection from dust and water and resistance to accidental drops. For the first time, the label will also feature a reparability index calculated in accordance with the criteria set out in Annex IV part 5 to that Regulation.

The notified draft introduces a sustainability index which consists of a score out of ten to be displayed at the time of the purchase for the purpose of informing the consumer of the durability of smartphones. This sustainability index is calculated according to three criteria (and different sub-criteria) set out in the Annexes of the notified draft:

- Annex II, Criteria Family A- Repairability.
- Annex III, Criteria Family B – Reliability.
- Annex IV, Criteria Family C- Improvement.

The Commission notes that the methodology developed by the French authorities, although similar in many aspects to that defined in Annex IV part 5 of Regulation (EU) 2023/1669, diverges on the scope and on some of the parameters used for the calculation of the reparability index. Such an approach will lead to divergent indices, depending on the market for which the product is intended, which may not only be constrictive for economic operators but also lead to confusion as regards the information provided to consumers.

In particular, the sub-criteria set out in Annex II of the notified draft for the calculation of the reparability criterion (that forms part of the sustainability index) are very similar in

scope to the sub-criteria used for the calculation of the repairability index introduced by Regulation (EU) 2023/1669. However, the calculation methods and parameters used under Annex II to the notified draft and Annex IV part 5 of Regulation (EU) 2023/1669 differ significantly. Moreover, one of the parameters used for the calculation of the reliability criterion under the notified draft, falls under the repairability index under Regulation (EU) 2023/1669, namely, sub-criterion 2.1 (b) of Annex III of the notified draft corresponding to S_{SU} - 'Software Updates (duration)' score under Annex IV part 5 of Regulation (EU) 2023/1669. This sub criterion is also calculated differently under the notified draft than under Regulation (EU) 2023/1669.

Hence, while covering similar aspects, both pieces of legislation would lead to different results regarding the repairability score of the product. As a consequence, consumers will be presented with two different indicators of the repairability and of smartphones that take into account similar parameters but calculate them differently.

Additionally, some of the sub-criteria used for the calculation of the reliability criterion under Annex III of the notified act will be displayed independently in the energy label pursuant to Regulation (EU) 2023/1669. This is the case of the sub-criteria 1.1 (a) and (b) and 1.2 (a) and (b) of Annex III to the notified draft that correspond to: the repeated free fall reliability classes of smartphones and slate tablets; ingress protection rating; battery endurance in cycles; and energy efficiency class included in Annex III to Regulation (EU) 2023/1669. This means that, if the notified draft was adopted, the same information would have to be presented differently under the French legal framework and under the harmonized one.

A comparative table showing these conceptual similarities yet significant differences in the quantitative assessment of the parameters is included in the annex to this notification. These inconsistencies and the consequences they will have for consumers and for economic operators, entail that the notified draft is incompatible with EU harmonised rules.

For these reasons, the Commission delivers a detailed opinion in accordance with Article 6(2) of Directive (EU) 2015/1535, to the effect that the notified draft would be in contradiction with the above-mentioned provisions of Commission 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.

The Commission would remind the French Government that under the terms of Article 6(2) of Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State that has drawn up the draft technical regulation concerned, to postpone its adoption for six months from the date of its notification.

This standstill period therefore comes to an end on 3 February 2024.

The Commission also draws the attention of the French Government to the fact that under the above-mentioned provision the Member State that is the addressee of a detailed opinion is obliged to inform the Commission of the action that it proposes to take on the detailed opinion.

Should the French Government not comply with the obligations provided in Directive (EU) 2015/1535 or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections, or be

otherwise in breach of EU law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

2. Comments

For other products considered in the notified drafts for which no harmonised rules on reparability index apply at the moment, the Commission observes that, while the notified drafts could be considered in line with the Commission's policies in the context of the green transition, further considerations would be needed to assess whether such obligations would have the effect of hindering access of such products to the French market in a manner potentially contrary to Article 34 TFEU.

The Commission takes this chance to remind that obstacles to the fundamental principle of the free movement of goods must be justified under one of the exemptions referred to in Article 36 TFEU or on the basis of mandatory requirements developed in the case law of the Court of Justice. For a national measure to be justified under Article 36 TFEU or on the basis of one of the mandatory requirements established in the case law of the Court of Justice, it must comply with the principle of proportionality (Judgment C-390/99 Canal Satélite Digital). The measure in question must be necessary in order to achieve the desired aim and the aim must not be able to be achieved by less extensive bans or restrictions or those with a lesser impact on intra-Community trade. In other words, the means chosen by Member States must be confined to what is actually necessary to achieve the aim, and they must be proportional to the aim thus pursued (Judgment in Case C-319/05 Commission v Germany).

The Commission would also like to indicate that these observations do not prejudice assessment of the notified drafts as regards their compatibility with the future Union regulatory framework applicable in this area. As a consequence, the French authorities should be ready to align national measures with EU requirements when they are defined and come into force in the frame of the upcoming Ecodesign for sustainability product framework.

The Commission asks the French authorities to take the above observations into consideration.

The Commission also reminds the French authorities that once the final text is adopted, they must communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

For the Commission

Thierry Breton
Member of the Commission

Annex

Comparative table

	Notified Draft	Energy Labelling Regulation 2023/1669	Comment
Reparability	Sub-criterion 1.1. Commitment of the producer regarding the availability period of technical documentation	S _{RI} - 'Repair Information' score	The two sub-criteria are quite different (in the notified draft it depends on the number of years and of the specific items of information disclosed; the EU one refers to the repair information foreseen in the Ecodesign Regulation 2023/1670, and varies depending on free/with cost and public/for professionals only)
	Sub-criterion 1.2. - Consumer support for diagnosis and repair	S _{RI} - 'Repair Information' score	The two sub-criteria are different, though they both cover (partly) the parameter of the cost at which the information is made available
	Sub-criterion 2.1. Ease of disassembling the parts	S _{DD} 'Disassembly Depth' score	Both sub-criteria are conceptually similar/cover the same aspect (disassembly steps), though with different quantitative criteria. Moreover, 'disassembly step' are defined differently between Energy Labelling Regulation 2023/1669 and the FR framework decree ² .
	Sub-criterion 2.2. Tools required to disassemble the parts	S _T - 'Tools (type)' score.	Both sub-criteria are conceptually similar/cover the same aspect (tools) but apply significantly different quantitative criteria.
	Sub-criterion 2.3. Characteristics of the fasteners	S _F - 'Fasteners (type)' score	Both sub-criteria are conceptually similar/cover the same aspect (fasteners) but apply different quantitative criteria.
	Sub-criterion 3.1. Undertaking by the producer over the period of availability of List 2 parts		The number of years of spare parts availability is not considered within the Energy Labelling Regulation 2023/1669, as it is regulated (7 years as of the end of placement on the market of a product model) under the Ecodesign Regulation 2023/1670
	Sub-criterion 3.2. Undertaking by the producer over the period of availability of List 1 parts		
	Sub-criterion 3.3. Delivery time for list 2 parts		The delivery time of spare parts is not considered within the Energy Labelling Regulation 2023/1669, as it is regulated under the Ecodesign Regulation 2023/1670
	Sub-criterion 3.4. Delivery time for list		

² <https://technical-regulation-information-system.ec.europa.eu/en/notification/24324>

	1 parts		
	CRITERION No 4 - PRICE OF SPARE PARTS		
Reliability	Sub-criterion 1.1. Stress resistance - a) Resistance to shocks and falls	Repeated free fall reliability classes of smartphones and slate tablets	They are conceptually similar/cover the same aspect (free fall resistance). However, in the case of the Energy Labelling Regulation 2023/1669, this parameter is (separately) displayed in the energy label, and it is not a subscore (there is not a durability index in the EU legislation). The notified draft points to the tests/assessment of the Ecodesign Regulation 2023/1670
	Sub-criterion 1.1. Stress resistance - b) Resistance to scratches		The scratch resistance is not considered within the Energy Labelling Regulation 2023/1669, as it is regulated as minimum mandatory requirement under the Ecodesign Regulation 2023/1670
	Sub-criterion 1.1. Stress resistance - c) Resistance to dust and foreign objects and d) resistance to liquids	Ingress protection rating	They are conceptually similar/cover the same aspect (water and dust ingress resistance). However, in the case of the Energy Labelling Regulation 2023/1669, this parameter is (separately) displayed in the energy label, and it is not a subscore (there is not a durability index in the EU legislation). The notified draft decree points to the tests/assessment of the Ecodesign Regulation 2023/1670
	Sub-criterion 1.1. Stress resistance - e) Resistance to high or very low external temperatures	-	
	Sub-criterion 1.2. Wear resistance – a) The theoretical lifetime of the battery	Battery endurance in cycles	They are conceptually similar/cover the same aspect (battery cycles). However, in the case of the Energy Labelling Regulation 2023/1669, this parameter is (separately) displayed in the energy label, and it is not a subscore (there is not a durability index in the EU legislation). The notified draft decree points to the tests/assessment of the Ecodesign Regulation 2023/1670
	Sub-criterion 1.2. Wear resistance – b) The theoretical lifetime of the battery ³	energy efficiency class	They are conceptually similar/cover the same aspect (energy efficiency class). However, in the case of the Energy Labelling Regulation 2023/1669, this parameter is (separately) displayed in the energy label, and it is not a subscore (there is not a durability index in the EU

³ There seems to be a mistake in the name of this subcriterion, as it is the same of the previous one

			legislation). The notified draft decree points to the tests/assessment of the Energy Labelling Regulation 2023/1669
Sub-criterion 2.1. Maintenance - a) Accessibility of the usage meter	-		
Sub-criterion 2.1. Maintenance - b) Producer's commitment to the availability of operating system security and corrective updates	S _{SU} - 'Software Updates (duration)' score		Both sub-criteria are conceptually similar/cover the same aspect (availability of operating system updates) but apply different quantitative criteria.
Sub-criterion 2.1. Maintenance - c) Commitment on the differentiated provision of updates	-		
Sub-criterion 2.1. Maintenance - d) Removability of the battery or of each of the batteries			The battery removability is not considered directly/'uniquely' within the Energy Labelling Regulation 2023/1669, as it is: - integrated in the reparability score of the EU energy label, via the assessment on the steps, tools, fasteners needed for battery removal. - regulated as minimum mandatory requirement under the Ecodesign Regulation 2023/1670.
Sub-criterion 2.2. Servicing - a) Accessibility of information			
Sub-criterion 2.2. Servicing - b) Quality of information			
Sub-criterion 2.2. Servicing - c) Facility for the implementation of the maintenance/servicing			

	operation		
	Sub-criterion 3.1. Commercial durability guarantee	The product information sheet requires to give information on the minimum duration of the guarantee offered by the supplier	
	Sub-criterion 3.2 - Setting up a quality process		