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DIGITALEUROPE contribution to TRIS notification 2020/468-473/F (French proposed repairability index for electronic equipment)

Executive Summary

In this paper, DIGITALEUROPE provides comments on the proposed French repairability index now being reviewed by the European Commission under the framework of the notification procedure.

DIGITALEUROPE's members are committed to providing sustainable products and services and support the overall ambition of the proposal to empower consumers to take part in the circular economy. Our members enable consumers to take part in the circular economy through numerous strategies, including providing transparent information on the sustainability credentials of our products and services, facilitating access to repair, and offering trade-in programmes and refurbished products.¹

However, we express several concerns about the feasibility and efficacy of the proposal. As an overall point, DIGITALEUROPE recommends that regulation to tackle digital policy issues of this nature take into account the broader EU-wide debate and leads to a harmonised approach, to avoid further fragmentation of the single market. More specifically, we highlight the following issues with the proposed French decree:

- ▶ Risk of fragmentation of the internal market by the proliferation of national scoring and labelling requirements;

¹ See previous DIGITALEUROPE position papers: [A vision for sustainable consumers: consumer information, repair and product lifetimes](#), 23 July 2020, [A comprehensive EU product policy framework](#), 24 January 2019.

- ▶ Increased regulatory, technical, financial and administrative burdens for businesses when introducing products onto the French market;
- ▶ Insufficient time for companies to implement and comply (less than two months).

Based on these concerns, DIGITALEUROPE specifically requests that the Commission:

- ▶ Request that France postpones the implementation deadline to (i) give businesses chance to adapt and (ii) take into account any further developments at EU level (e.g. the announced EU proposal on ‘empowering consumers for the green transition’);
- ▶ Assesses the proposed French Repairability Index and its compatibility with maintaining the integrity of the Single Market;
- ▶ Seek assurance from the French government that the Index will be reviewed and amended where needed, in view of the ongoing EU policy and legislative proposals;
- ▶ Request that the French government reinstates authorised repair networks in the calculation of the Index.



French Repairability Index

In 2015, France introduced its concept of circular economy (*économie circulaire*) into its domestic law and published a Circular Economy Roadmap (*FREC*), which set out key policy initiatives for advancing the transition to more circular economic models.²

In line with those policy commitments, the French government tabled a bill (*projet de loi*) entitled ‘the fight against waste and for the circular economy’ in July 2019 which was adopted in February 2020 as the Law No. 2020-105 “on the fight against waste and for the circular economy” (“CE Law”).³

Article 16 of the CE Law creates a new article L. 541-9-2, I in the French Environment Code, in the Title on Waste, within the Chapter relating to the “Prevention and Management of Waste”. This article requires that, from 1 January 2021, the manufacturers, distributors, and other entities who place certain electronic equipment on the market to communicate a “reparability index”

² French Republic (2018) [Circular Economy Roadmap](#)

³ French Republic (2020) [CE Law](#)

(*indice de réparabilité*) to the consumer. This measure is accompanied by administrative sanctions which come into force on 1 January, 2022. The method of calculation and the products covered by this “reparability index” requirement are determined by a decree and Ministerial Orders.⁴

Fragmentation of the internal market & interplay with proposed EU legislation

DIGITALEUROPE believes that regulation to tackle digital policy issues of this nature should consider the overall EU-wide debate and lead to a harmonised approach, to avoid further fragmentation of the Single Market. Specifically, given that the European Commission has already announced plans to publish legislative proposals on consumer environmental information, including on reparability, it makes little sense for Member States to unilaterally develop national schemes at this stage. It creates a clear risk of fragmentation of the Single Market and undermines the free movement of goods.

The proliferation of national labels, such as the mandatory French Repairability Index, the voluntary Austrian standard on reparability information⁵ or the announced Italian Index⁶, indicating product reparability across Europe will lead to legal uncertainty and technical and economic barriers. Additionally, multiple national schemes may also result in consumer mistrust and confusion (voluntary vs mandatory labels, different criteria used, etc.), reducing the desired influence on purchasing behaviours. Conformity with different requirements in European countries will also be a considerable burden on manufacturers’ resources, which may finally be reflected in the pricing of the products.

The EU inception impact assessment for the sustainable products initiative (published September 2020), confirms the risk of fragmentation from the proliferation of national schemes:

“**As the proposal will consider requirements for the placing on the EU market of products, action needs to be taken at EU level. This brings clear benefits in terms of economies of scale, reducing regulatory barriers and administrative burden and improving the functioning of the internal market through provision of homogenous information and a level playing field. At the same time, the single market provides a critical mass enabling the EU to set global standards in product**

⁴ TRIS N° 2020/468/F, 2020/469/F, 2020/470/F, 2020/471/F, 2020/472/F, 2020/473/F, 2020/474/F, 2020/475/F and 2020/476/F.

⁵ ONR 192102:2014.

⁶ Italian Ministry of the Environment (2020) [Italian Green New Deal](#)

sustainability and to influence product design and value chain management worldwide.

“ **The necessity to prevent fragmentation of the internal market** when Member States would take their own initiatives, means that the initiative will be based on article 114 (internal market) of the Treaty of the Functioning of the European Union (TFEU).”

Indeed, the French government also explicitly recognised that its proposed Reparability Index measure should be taken at EU level, by declaring that it would act to support the introduction of an EU-wide index.⁷ The Commission should therefore encourage the French legislator to await the announced EU proposals rather than taking unilateral action. This would also send a clear signal to other Member States to hold off on new proposals. If multiple Member States unilaterally proceed with their own schemes it would become unworkable for manufacturers to sell cross-border in Europe.

There is a clear risk that the French Index will not be fully consistent with, or may directly contradict, the upcoming EU legislative measures on reparability and sustainability index tools.

The European Court of Justice has emphasised the need to check how the national policy fits with other EU policies, and whether the domestic measure is subject to a sunset clause and/or a review clause.⁸ France will therefore be required, at a minimum, to review and amend its reparability index to align with EU legislation once this is adopted, in view of the supremacy of EU law. This would require industry to adapt to two sets of legislation in a very short timeframe, creating unnecessary costs, administration and waste. Additionally, having two different scorings within quick succession would also create confusion for consumers and undermine the very purpose of the initiative.

Burden on companies

Most of the provisions of the CE Law underwent a cursory impact assessment, were vastly underestimated or did not undergo impact assessment at all. This is in stark contrast with the substantive impact assessments carried out by the EU and its agencies on the feasibility of rules regarding the reparability of products.⁹

⁷ Ministère de la Transition écologique et solidaire, Roadmap for the Circular Economy: “10) Mandatory display, from 1 January 2020, on electrical and electronic equipment (electrical appliances, DIY materials) of SIMPLE INFORMATION ON REPAIRABILITY. This information, to be produced based on a framework developed by ADEME in consultation with stakeholders, would take the form of a reparability index based on the energy label model. France will take this measure to the European level to make this information on the reparability of products a harmonized European Community obligation.”

⁸ Case C-333/14, paras. 57-58.

⁹ DG Environment (2016) [Study on socioeconomic impacts of increased reparability of increased reparability](#); European Environment Agency (2020) [Electronics and obsolescence in a circular economy: 2020](#)

There is no doubt that the proposed Reparability Index will lead to additional regulatory, technical, financial and administrative burdens for businesses selling EEE – which are lawfully produced or marketed in other Member States – into France. So, whilst the French reparability index will apply indistinctly to domestic and imported products, there will be a different burden in fact on imported goods as such goods will have to satisfy a dual regulatory burden (home state and host state regulation), with the additional costs that this entails.¹⁰

This was also identified as a concern for certain members of the French Parliament, who raised that the reparability index would “*create new burdens for producers and sellers, the costs of which are likely to be passed on in the selling price and thus be passed on to the consumer.*”¹¹

The Reparability Index is highly prescriptive and manufacturers will require time to fully understand the requirements and how they impact their respective organisation and products. They will need to establish internal tools and processes to calculate indices for each product class that is covered, collect the required information, document this data against the requirements, train all employees (after-sales services, sales, marketing etc.) and subcontractors (call centres, repairers), organise the provision of data to distributors, prepare for expected queries from consumers and authorities as well as having a communication strategy in place. Likewise distributors will need to implement the requirements of the Index, in particular with regard to the transmission of information to consumers.

Unrealistic deadline

Aside from possibly distorting the level playing field between (French and foreign based) business operators and fragmenting the internal market, DIGITALEUROPE is also concerned about the scheduled application date of the reparability index.

The notified reparability index will be applicable for a wide range of products (including, smartphones, laptops and TV) as from 1 January 2021.¹² This envisaged application date would give almost no transitional period to businesses to adapt, which is unacceptable given the major changes the Reparability Index requires, as well as the outstanding technical and legal uncertainties.¹³ The fact that the sanctions come into force only in 2022 is not a satisfying answer as companies are focus on compliance above all.

¹⁰ See, e.g., Case C-239/90, para. 15.

¹¹ *Rapport d'information n° 682 (2018-2019) fait au nom de la commission des affaires européennes, déposé le 18 juillet 2019, p. 22.*

¹² The January 2021 date will be effective for the devices that will have been the object of a specific Ministerial Order, namely, smartphones, notebook computers (which, presumably, includes tablets), washing machines, televisions and battery, wired and robot lawnmowers.

¹³ As a member of French Parliament pointed out in her report to the National Assembly, “with a deadline for the entry into force of these provisions on 1 January 2021, Article 2 does not

Since the standstill obligation under the TRIS procedure runs until 22 October 2020 (unless extended when a detailed opinion is issued), the notified regulatory measures will not formally be adopted before November 2020 at the earliest, and would become enforceable less than two months later.

This unrealistic deadline for implementing the Index is even more problematic for the many foreign (i.e. non-French) based companies which will be in scope of the Index.

The CJEU has insisted that traders be given sufficient warnings of changes in national regulation and adequate time to adapt. The Court held in *Radlberger* that the German rules regarding a deposit-and-return system were disproportionate because of the manner in which they had been introduced: they did not afford the producers and distributors a transitional period sufficient to enable them to adapt to the requirements of the new system before the new system entered into force.¹⁴ The same argument about good governance influenced the Court in *Commission v Austria* where it found that the Austrian ban on heavy lorries using the A12 in Tyrol on environmental grounds was disproportionate: a transitional period of only two months for introducing the ban was “clearly insufficient”.¹⁵

Lack of separate reference to authorised repair networks

Authorised repair networks were initially integrated into the Index, with a consensus reached with all stakeholders, after two years of discussion. Then three categories of repair actors were initially mentioned: (1) producers and authorised repair actors, (2) independent repairers and (3) consumers. Nevertheless, in the draft decrees notified to the European Commission, authorised repair networks have been moved unilaterally by the French public authorities to category 2 with the three new categories being (1) producers, (2) repairers and (3) consumers.

As the Index aims to reward producers for their practices to facilitate and encourage repair, we emphasise that authorised repairers should be included separately from independent repairers in the calculation methodology for the Index. Implementing these networks requires investments to ensure repairs are made by trained and skilful actors who carry out high quality, safe and secure repairs. In addition, some consumers prefer repair that is carried out by the manufacturer of the product, and the availability of authorised repair actors to these consumers ensures that the repair is performed, for products which could

sufficiently take into account the complexity of the industrial changes it entails. It is therefore proposed to postpone it to 1 January 2022, through an amendment to section 13 of the bill.” (Opinion presented on behalf of the Committee on Economic Affairs on the draft law on the fight against waste and the circular economy by Ms Anne-Catherine Loisier, 17 September 2019, p. 26). This was also raised by most actors of the industry who participated in the [public consultation](#) of the decree.

¹⁴ Case C-463/01, para 79 and Case C-309/02, para 81.

¹⁵ Case C-320/03, para. 90.

otherwise end up simply discarded. DIGITALEUROPE strongly believes that setting up authorised repair networks should be rewarded in the Index.

This decision to remove these networks from the Index was justified by Article 25 of the French CE law which states “*Any agreement or practice intended to limit the access of a repair professional to spare parts, instructions for use, technical information or any other instrument, equipment or software allowing the repair of the products is prohibited.*” This measure should not amount to denying the existence of authorised networks. Producer-affiliated repair networks serve to facilitate access of consumers to high-quality repairs and do not in any way restrict access of independent repairers to spare parts or technical information. Prohibiting restricting access is not the same as removing authorised networks. This interpretation should be considered in light of the regulations on selective distribution. The Commission should ask the French government to reinstate the authorised repair network.



Requests

DIGITALEUROPE requests that the European Commission:

- ▶▶ request that France postpones the implementation deadline from 1 January 2021 to a later point in order to (i) give businesses the chance to adapt and (ii) take into account any further developments at EU level,
- ▶▶ seek additional information and clarification from the French government about the concerns raised in this submission including the lack of separate reference to authorised repair networks,
- ▶▶ seek assurance from the French government that the Index will be reviewed and amended where needed, in view of the ongoing EU policy and legislative proposals.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Teknikföretagen, IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT UKRAINE

United Kingdom: techUK