

France's new anti-waste law

On February 10, 2020, France promulgated a new law on the fight against waste and the circular economy (Law no. 2020-105, hereafter the “Anti-Waste Law”) aiming at achieving a circular economy.

This Law is a French transposition of the European objectives of the Directives of the Circular Economy Package adopted in 2018 and completed in 2019 by the Directive on the reduction of the impact of certain plastic products on the environment and leads to making product regulations more complex.

Since 2015, the European Commission has adopted an Action Plan to accelerate Europe's transition towards a circular economy, implemented in five priority sectors to accelerate the transition along the value chain, namely plastic, food waste, critical raw materials, construction and demolition, biomass and biomaterials.

Circular economy refers to an economic model, the objective of which is to produce goods and services in a sustainable manner, limiting the consumption and waste of resources as well as the production of waste. The aim is to achieve this through several different measures, ranging from dealing with the problem of single-use plastic to the “Polluter Pays” principle, hopefully moving away from our throw-away society and turning to a much more efficient and caring system.

An end to single-use plastic?

According to the Law, one of the main concerns in France regarding waste and its effects on the environment is the gargantuan dilemma raised by plastic. France plans to address this issue by progressively putting an end to the production of plastic packaging. Pursuant to the Anti-Waste Law, the first step will be to authorise recycled plastic only, as of January 1, 2025, and then take it to a whole new level by banning single-use plastic completely as of 2040.

Transparency towards consumers: the key to circular economy?

A key link in the circular economy chain is the consumer. According to the Anti-Waste Law, producers and importers of waste-generating products must inform consumers, by marking or labelling their products in a specific way, of their environmental

qualities and characteristics, in particular the incorporation of recycled materials, the use of renewable resources and the fact that sustainability and the protection of the environment are taken into account.

Decree no. 2016-703 of May 30, 2016 from the Council of State gives a definition of circular economy, lists the categories of equipment and parts that are concerned and sets the terms according to which consumers must be informed of whether these parts and pieces of equipment meet the requirements of a circular economy.

Not only must the information be provided by the producer, it also has to be visible or, at least, accessible to the consumer at the time of purchase. This information also has to be available as open data, i.e. data that is easily accessible for everyone to use as they wish without any form of restrictions. This new transparency could encourage a change of behavior from consumers, thus creating a virtuous circle.

A new focus on spare parts

Pursuant to the Anti-Waste Law, the manufacturer or importer of all kinds of goods also has to inform the professional seller of the availability or non-availability of spare parts.

If they are available, the manufacturer or importer must also inform the professional seller of the period during which, or the date until which, such parts will be available on the market. After informing the seller of this date, the manufacturer will have 15 working days to supply the spare parts. Furthermore, the said spare parts must be produced in compliance with the circular economy.

With respect to electrical and electronic equipment and furnishing elements, spare parts are to be considered not available if no information is provided. On the other hand, for household appliances, small IT and telecommunications equipment, screens and monitors, spare parts must be available for at least five years

from the date on which the last unit of the model concerned was placed on the market.

Natural persons failing to comply with these obligations can face a fine of up to €3,000 and legal entities a fine of up to €15,000.

Consumers faced with the impact of their digital consumption

Manufacturers are not the only ones on which the Anti-Waste Law imposes an obligation to inform. Indeed, the Law also focuses on the impact of the Internet on the environment by imposing on Internet service providers and mobile operators the obligation to provide information, as of January 1, 2022, on **the amount of data consumed by customers**, as well as the equivalent in corresponding greenhouse gas emissions in order to inform each consumer on the impact of his/her digital consumption on the environment and climate, thus raising awareness regarding this ever-expanding topic.

A new battle against endocrine disrupters...

Just as importantly, manufacturers will have to disclose online, and as open data, all information related to the potential presence of endocrine disruptors in their products, the list of which is drawn up by the National Agency for Food, Environmental and Occupational Health and Safety (*Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail* – ANSES) with specific recommendations for pregnant women.

In this respect, manufacturers will now be obliged to affix a specific pictogram (e.g. ) or to use any other means of marking or labelling, to indicate the presence of endocrine disrupters in their products.

What's more, as of January 1, 2021, no packaging will be allowed to display the term “*biodegradable*” because of the absence of a scientific consensus and its impact on consumers who could think that a product stamped “*biodegradable*” is not harmful to the environment and could be disposed of anywhere.

...And another one against planned obsolescence

Another serious issue the Anti-Waste Law focuses on in the scope of this approach to limiting waste and developing circular economy is planned obsolescence. Since March 14, 2016, an entity placing a product on the market can be held liable for planned obsolescence, defined as the use of schemes to deliberately reduce the lifespan of a product in order to increase its replacement rate.

The penalty for legal entities held liable for planned obsolescence can reach an amount calculated in proportion to the benefits derived from the offense, and up to 5% of the average annual turnover of the company. Manufacturers can benefit from some exceptions for legitimate reasons, including the users' safety or

health. First manufacturers, then sellers of mobile phones and tablets, will have to provide information on the period during which software updates still allow devices to be used normally. In France, there is currently a two-year guarantee against faulty goods when a product is sold by a manufacturer. According to the new regulations in the scope of the battle against planned obsolescence, from January 1, 2020, this time period will be extended by six months each time the product is repaired during these two years.

In addition to these measures, a new reparability index for objects is going to be implemented, meaning that consumers are going to be informed of a number (out of 10), which will be affixed to the product or its packaging, corresponding to the repairable nature of the product they wish to purchase. The aim is to give the buyer an idea of whether the product is easy to repair, difficult to repair or impossible to repair. This enables consumers to become aware of the impact of their purchases as well as become more active regarding this issue. Indeed, by paying attention to the number on products when they are looking to buy one, consumers can play an active role by choosing to purchase a product with a higher reparability index rather than the one they intended to choose initially. What's more, it also encourages manufacturers to take into account the possibility to repair and reuse products as soon as they are designed. This reparability index is going to be implemented from January 1, 2021 and will be applied to washing machines, televisions, smartphones, laptops and lawnmowers.

The reparability index will detail the essential characteristics of the good or service, namely its substantial qualities, composition, accessories, origin, quantity, date of manufacture, conditions of use, fitness for use and properties, the expected results of use, as well as the results and main characteristics of tests and verifications carried out on the good or service.

The manufacturer's contractual liability can be sought by the consumer in the event of a false or inaccurate allegation regarding the reparability index.

The “Polluter Pays” principle

The Anti-Waste Law equally provides for an extension of the “*Polluter Pays*” principle, according to which the ones responsible for polluting should bear the costs of managing that pollution.

In concrete terms, this means that manufacturers producing objects within their own country as well as importers of products and distributors of their own branded products must take responsibility, in particular financially, for the sorting and subsequent recycling or treatment of the waste resulting from these products. They take responsibility collectively by paying a financial contribution to eco-organisations certified by public authorities in charge of supervising the collecting and recycling of waste.



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The result of the “Polluter Pays” principle is that new sectors should now be concerned, namely manufacturers of toys, cigarettes, sanitary textiles (household wipes, disposable nappies, cotton pads, etc.), building products and materials, or even cars, vans and two or three-wheel motorised vehicles, etc.

In addition to this, the design of products is also becoming a target of the new measures that should be implemented through the Anti-Waste Law. In accordance with the Polluter Pays principle, manufacturers must indeed draw up five-year eco-design action plans to make their products more recyclable. According to Article L. 541-10-3 of the French Environmental Code, an eco-modulation system is going to be put into place, meaning that manufacturers who design their products in an environmentally friendly way will receive a bonus for the way they manage the product once it has reached the end of its life. This bonus will be set off against the financial contribution to eco-organisations referred to above, i.e. this contribution will be less than what they usually have to pay. On the other hand, manufacturers who do not take eco-design into consideration will be subject to a penalty, as well as those who supply labelling or packaging that

could be confusing for the sorting of the waste, or the nature of the waste resulting from the product. The extent of these penalties has not yet been set and will be announced on January 1, 2022 at the latest.

Last but not least, the battle against illegal dumping

Finally, yet just as importantly, we are facing the question of how to deal with illegal dumping. The construction sector is indeed directly targeted by the ban on illegal dumping. According to the Anti-Waste Law, when waste is not collected but is abandoned, the producer can be held liable of a fine of up to €15,000 with an obligation to take the necessary measures to comply with the imposed regulations.

The new measures implemented by France’s Anti-Waste Law therefore range from strongly encouraging manufacturers to become more accountable and boost durability to improving the information of consumers, all in an attempt to stop people running amok as regards waste and the environment, before crossing the Rubicon.



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