

Feature

Promoting the circular economy: French Anti-waste law adopted

Introduction

On 10 February 2020, law no 2020-105 on the fight against waste and for a circular economy (the “Anti-waste Law”) was officially promulgated in France. Adopted after a broad consultation with stakeholders (including companies, NGOs and local authorities) which started in 2017, this law contains around 100 new measures. These are aimed at fundamentally changing companies’ production methods and consumer behaviours – seeking to preserve natural resources and biodiversity by reducing waste, and encouraging repair and reuse of products.

This ecological transformation relies on the concept of the “circular economy” throughout a product’s lifespan. Manufacturers - and producers more broadly¹ - will have to adapt their manufacturing processes to produce “eco-friendly” products, ensure that products can be repaired easily, inform consumers appropriately about the durability of their products and ensure that products can be recycled to reduce waste.

The Anti-waste Law introduces a wide variety of new measures. These range from setting a goal of achieving zero disposable plastic across France by 2040, a prohibition on the destruction of non-food unsold products, and the possibility for medications to be sold in pharmacies by the unit (when their pharmaceutical form allows it), to the mandatory requirement for information on the length of time operating software updates for computers, mobile phones and/or tablets will support “normal” use of the device.

This article focuses on some of the Anti-waste Law’s most important measures.

Increased consumer information

Various new mandatory requirements have been introduced for producers to provide more detailed product information.

- New information on a product’s “environmental qualities and characteristics” will have to be provided to consumers by any appropriate means (marking, packaging, label etc). This should cover product information such as whether the product is made of recycled material, the use of renewable resources, the product’s reparability, reusability, recyclability, the presence of dangerous substances etc. An implementing decree should be adopted by the French government to specify the scope of this obligation and practical implications.
- Better information on sorting rules will be provided by extending the use of the “Triman” logo (pictured below). Currently, the Triman logo must be affixed on the product, its packaging and the inbox materials (provided they are recyclable). Going forwards this logo will need to be accompanied by information on the applicable sorting process for each type of product. An implementing decree should also be adopted in this regard, but this measure should come into force in 2022.

¹ Under Article L. 421-1 of French Consumer Code, the definition of “producer” is broader than the definition of “manufacturer” as it covers (a) manufacturer of the product (when it is established in the European Union) and any persons who present themselves as manufacturers by affixing their names, trademarks or other distinctive signs on the product, or any repairer of the product, (b) manufacturer’s representative (when the manufacturer is not established in the European Union) or the importer of the product (in the absence of a representative established in the European Union), and (c) any other professionals in the marketing chain, in so far as their activities may affect the safety characteristics of a product.

Fight against planned obsolescence

New reparability and durability index

A new “reparability index” will be introduced, to be replaced by a “durability index” in 2024. The reparability index will be a simple, visual tool displaying a score out of 10. Its purpose is to let consumers know how easily their electronic equipment can be repaired (if at all). This information will be communicated by producers, importers, distributors, or any other person placing electrical and electronic equipment (“EEE”) on the French market, to sellers of their products and to any other person who requests this information. Then, sellers of EEE as well as those using a website or an online distribution platform will in turn communicate the “reparability index” to consumers at the point of sale by any appropriate means (markings, labels, packaging etc.). The new measure will apply to both bricks and mortar and e-commerce sales, and will come into force on 1 January 2021. An implementing decree will be adopted specifying the criteria to be taken into account when calculating the index.

From 1 January 2024, the reparability index will be completed/replaced by the durability index, which will include new product criteria such as reliability and robustness. An implementing decree will be adopted in due course to establish the list of products and equipment covered by the durability index, as well as how it should be calculated.

Spare parts availability

Manufacturers are currently under no obligation to inform consumers if spare parts are not available for their product. However, if spare parts are available, they are subject to an obligation to inform consumers about the period during which spare parts that are absolutely necessary for the functioning of a product will remain available.

This will now change, and manufacturers will have to inform consumers at the time of purchase that spare parts are not available (should this be the case). This measure will apply to all movable goods, such as EEE and furnishings, household appliances, small computer and telecommunications equipment, screens and monitors. If spare parts are available, the period within which the spare parts must be supplied by the manufacturer to the seller or repairer will be reduced to 15 working days, instead of two months (the current limit).

A further implementing decree will also have to be adopted and these measures will come into force on 1 January 2022.

Better information on statutory conformity warranties

The billing document (receipt or invoice) delivered to the consumer at the time of product purchase will now have to indicate the existence and the duration of the statutory conformity warranty. An implementing decree will be adopted to define the list of products subject to this new obligation.

Additionally, a six-month extension to the duration of the statutory conformity warranty will be applied to any product repaired under that warranty. In other words, the warranty will be extended to two and a half years (instead of two years) where a product repair is involved. This measure will come into force on 1 January 2022.

New EPR streams

In France, on the basis of Extended Producer Responsibility (“EPR”), producers and distributors have to finance the management of their waste through a financial contribution to a Producer’s Responsibility Organisation (“PRO”), which takes charge of managing that waste on their behalf. Also known as the “Polluter Pays Principle”, it means that the more polluting a product is, the higher the end-of-life costs for the producers.

Currently, there are 14 EPR streams that organise waste prevention and management of the same categories of products (such as batteries, EEE, end-of-life vehicles and boats, household packaging, unused medicines, tyres, graphic paper, textiles and footwear, chemicals, furniture, gas bottles etc).

Extension of “polluter pays” principle

Eleven new EPR streams have been created by the Anti-waste Law. Covering categories including tobacco products, toys, sports and leisure goods, gardening products, chewing gum and sanitary textiles.

The specific timetable for application will vary between 2021 and 2023, depending on the sectors involved.

Bonus-malus system for “eco-friendly” products

Manufacturers that design products on the basis of environmental performance criteria (such as the quantity of material used, incorporation of recycled material, use of renewable resources, durability, reparability, potential for reuse, recyclability, absence of eco-toxicity or dangerous substances) will benefit from a bonus on the contribution they pay to the PRO for the management and treatment of their products’ end-of-life. Conversely, should they fail to do so, their contribution will be increased by way of a malus.

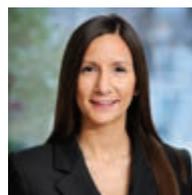
This measure, which aims to reduce over-production and over-packaging of products, as well as the need to transform entire production and consumption models, will come into force on 1 January 2021.

Comment

Through the publication of several implementing decrees, most of the new measures created by the Anti-waste Law will be applicable from 2021 onwards. Manufacturers should make the most of the intervening period to prepare in order to be ready when these obligations later come into force. In subsequent editions of IPLR we’ll be reporting on the practical implementations of these new obligations, so stay tuned!



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