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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Competition in the Circular Economy – Note by France**

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This document reproduces a written contribution from France submitted for Item 7 of the 140th OECD Competition Committee meeting on 14-16 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/competition-in-the-circular-economy.htm>

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## *France*

1. The concept of "circular economy" was defined in the French Energy Transition for Green Growth Law of 18 August 2015<sup>1</sup> as an approach calling for "*the restrained and responsible consumption of natural resources and primary raw materials as well as, in order of priority, the prevention of waste production, in particular through the reuse of products, and, according to the hierarchy of waste treatment methods, the reuse, recycling or, failing that, recovery of waste.*" The same law recognised the transition to a circular economy as a national goal and one of the pillars of sustainable development.

2. In the wake of the European Green Deal<sup>2</sup>, which commits the European Union to the ecological transition, on 11 March 2020 the European Commission presented an action plan for the circular economy<sup>3</sup> presenting several areas to promote sustainable product design and circularity in production processes and identifying key sectors, such as those related to packaging and plastics.

3. Although, at first glance, competition policy does not appear to be at the forefront of sustainability and circular economy issues, the competition authorities have a role to play in supporting the necessary transformations of the economy and promoting the principles of competition, which aim to ensure that markets operate efficiently and encourage innovation.

4. As part of its 2023-2024 roadmap, the *Autorité* reiterated its commitment to continue and expand its actions in support of the ecological transition, in every aspect of its intervention, both litigious and advisory<sup>4</sup>.

5. With regard to the circular economy, in 2010 the *Autorité* issued a decision making the commitments proposed by eco-organisations mandatory in order to boost competition in the take-back and recovery of household plastic packaging waste sector<sup>5</sup>.

6. The *Autorité* has also been active in its role as advisor to the public authorities, assessing the competitive impact of draft regulations drawn up by the government on waste management and treatment. In particular :

- in 2010, on the framework for the management and treatment of infectious risk healthcare waste<sup>6</sup>;

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<sup>1</sup> Law 2015-992 of 17 August 2015 on Energy Transition for Green Growth.

<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6691](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6691)

<sup>3</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_420](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_420)

<sup>4</sup> [Roadmap 2023-2024](#), *Autorité de la concurrence*, 3 March 2023.

<sup>5</sup> Decision 10-D-29 of September 27, 2010 Decision 10-D-29 of 27 September 2010 on practices implemented by the Eco-Emballages and Valorplast companies in the sector of the take-back and recovery of household plastic packaging waste.

<sup>6</sup> Opinion 10-A-21 of 19 November 2010 on the management of perforating waste from healthcare activities with infectious risks produced by self-treated patients.

- in 2012, on the activities of eco-organisations in the waste collection, sorting and treatment market<sup>7</sup>;
- in 2016, on the opening up of the household waste treatment sector to new eco-organisations<sup>8</sup>.

7. In addition, in merger control, the *Autorité* authorised the merger of two eco-organisations, subject to conditions, in order to provide potential competitors with the information they need to apply for approval and, once approved, to enable them to offer fully effective services to local authorities<sup>9</sup>.

8. This sustained activity in the field of the circular economy continued in 2022 with the publication of a new opinion on the reorganisation of the household plastic packaging sector<sup>10</sup>.

9. This contribution will first outline the legal regime applicable to the management of household packaging waste in France (1), before presenting the latest opinion issued by the *Autorité* in this sector (2).

## 1. The legal regime applicable to the management of household packaging waste

10. In the area of household packaging, European and national legislation has initiated a gradual transition to a circular economy model that involves the development of actions to promote waste management and recycling (1.a). The organisation of the sector in France has recently undergone changes to enable it to achieve its objectives (1.b).

### 1.1. The European and national normative framework

11. At the European level, the household packaging management sector is governed by Directive (EU) 2018/851 on waste and Directive (EU) 2018/852 on packaging and packaging waste. On the one hand, these texts reinforce the principle of a hierarchy of waste treatment methods, giving priority to prevention, preparation for reuse and recycling, in decreasing order of priority, and, on the other hand, set new targets: by 31 December 2025, 65 % of packaging waste and 50% of plastic packaging waste must be recycled; by 31 December 2030, these rates must rise to 70 % and 55 % respectively.

12. In addition, as part of the European plastics strategy, Directive (EU) 2019/904 of 5 June 2019 on the reduction of the impact of certain plastic products on the environment sets additional, binding collection targets. Member States must ensure the separate collection of single-use plastic bottles placed on the market with a view to recycling 77% of their weight by 2025 and 90% by 2029, as well as the incorporation of 25% by 2025 and 30 % by 2030 of recycled raw materials into these plastic bottles.

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<sup>7</sup> Opinion 12-A-17 of 13 July 2012 concerning the waste management sector covered by the principle of extended producer responsibility.

<sup>8</sup> Opinion No. 16-A-27 of 28 December 2016 concerning the opening up of the household packaging processing sector to several eco-organisations.

<sup>9</sup> Decision 17-DCC-42 of 03 April 2017 on the merger of Ecofolio into Eco-emballages.

<sup>10</sup> Opinion no. 22-A-05 of 16 June 2022 on the balancing mechanism provided for in the draft amending order on the approval procedure and specifications for eco-organisations in the household packaging sector.

13. At the national level, the roadmap for the circular economy<sup>11</sup>, published by the Government, anticipates reaching 100 % recyclable waste collection by 2025. This objective was reaffirmed in 2020 by the law against waste and for a circular economy<sup>12</sup>, which transposes the obligations set by the aforementioned European regulation and provides for the end of single-use plastic packaging on the market by 2040.

14. In the same vein, the Law of 22 August 2021 combating climate change and strengthening resilience to its effects prescribes a ban on plastics for which no viable recycling solution has been developed by 2030<sup>13</sup>.

## 1.2. The organisation of the EPR sector in France

15. The management of household plastic packaging waste covers collection, sorting, re-sorting, recovery, recycling, trading and brokering, which are governed by specific rules included in the French Environmental Code and set out in the specifications for accreditation of the sector.

16. Once collected separately by local and regional public authorities, plastic waste is transported to sorting centres to be sorted, or even re-sorted, depending on the plastic material concerned, with a view to recycling. The recycled raw materials are then taken to be sold on the market to the plastics industry.

17. The management of household waste in France is based on the principle of extended producer responsibility (hereinafter "EPR") defined in Article L. 541-10 of the French Environmental Code as the "*obligation for any physical or legal person that develops, manufactures, handles, processes, sells or imports waste-generating products or the components and materials used in their manufacture [...] to be able to or to help to prevent and manage the waste that comes from such products [...]*".

18. The EPR is therefore a way of applying the "polluter pays" principle, which involves making the producer of waste-generating products, also known as the "marketer", responsible for managing this waste, with this responsibility being proportionate with the quantity of waste produced.

19. Marketers are free to choose how to exercise their responsibility and can either assume their obligations individually or opt for a collective system by joining an eco-organisation. In the latter case, producers transfer their EPR obligation to approved eco-organisations, which they govern and to which they pay a financial contribution, also called an "eco-contribution".

20. Originally<sup>14</sup>, the EPR system was essentially "financial", as the local and regional public authorities, which were responsible for organising the separate collection, sorting and treatment of waste, were financed by the eco-organisations to carry out or commission their public service waste management missions. As "financers", the eco-organisations were responsible for contractually organising, on the one hand, the terms of payment of

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<sup>11</sup> Roadmap for the circular economy, 23 April 2018.

<sup>12</sup> Law 2020-105 of 10 February 2020 against waste and for a circular economy, Articles 7, 9 and 66.

<sup>13</sup> Law 2021-1104 of 22 August 2021 combating climate change and strengthening resilience to its effects, Article 11, paragraph III.

<sup>14</sup> Decree 92-377 of 1 April 1992 applying, for waste resulting from the abandonment of packaging, Law 75-633 of 15 July 1975, amended, on the elimination of waste and the recovery of materials.

financial support for separate collection and sorting activities and, on the other hand, the take-back terms for waste leaving the sorting centres by recycling operators.

21. The organisation of the sector has been significantly modified by two recent amendments to the specifications applicable to eco-organisations :

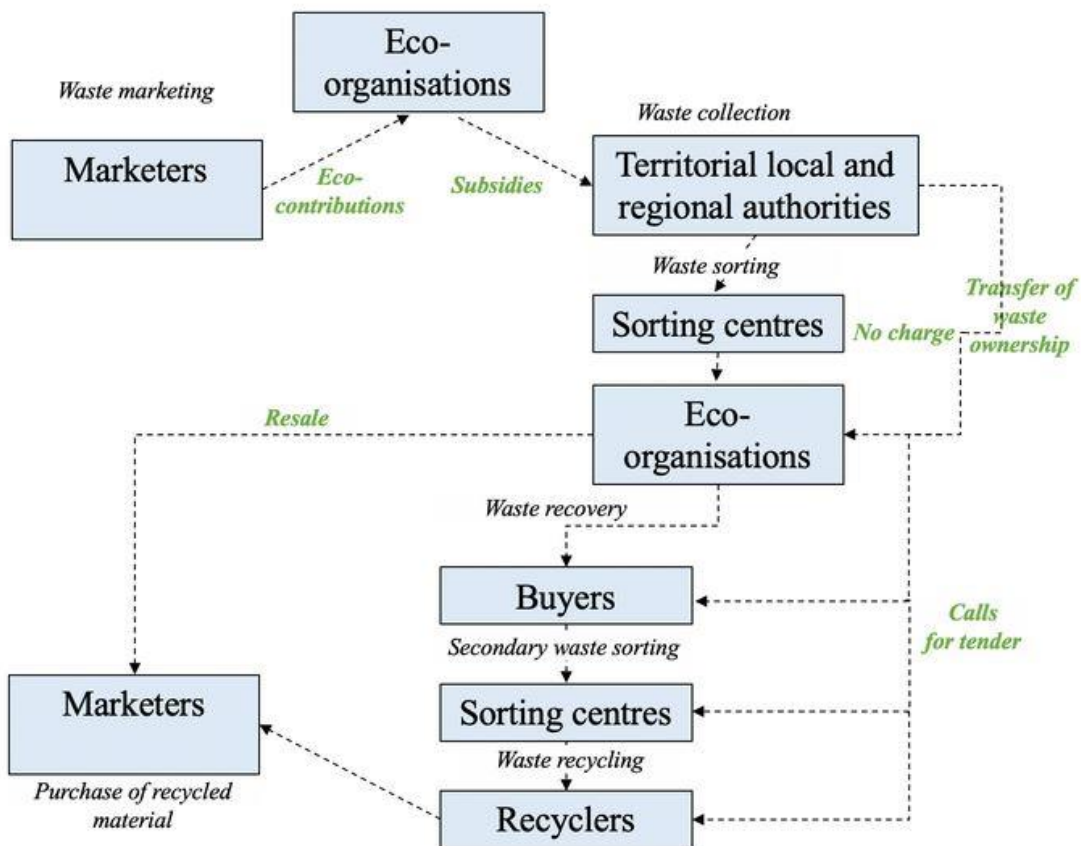
- by a decree dated 4 January 2019, the industry has structurally changed to a "mixed" organisational model, both financial and operational. Eco-organisations remain "financers" for all household plastic packaging waste, with the exception of certain mixed rigid waste<sup>15</sup>, for which they become "operational" in terms of sorting and recycling activities. In this last respect, the eco-organisations can now take back from local and regional public authorities any waste that meets the corresponding sorting models, and issue calls for tender to resorting and recycling operators, if necessary ;
- by a Decree of 15 March 2022, the operational nature of the sector was strengthened, with the eco-organisations now exclusively responsible for organising the take-back and recycling of mixed rigid and flexible waste that meets the corresponding sorting models. To ensure the operational nature of this take-back, the eco-organisations issue calls for tender, both to carry out the resorting and to guarantee recycling.

22. The organisation of the EPR sector for household plastic packaging, after the adoption of the Order of 15 March 2022, regarding specific streams, can now be presented as follows<sup>16</sup>:

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<sup>15</sup> Mixed rigid waste requires a resorting operation and corresponds to household plastic packaging waste that meets i) the "development flow" standard of the "two-standard" plastic sorting model, ii) the "simplified plastic sorting model" and iii) the transitional sorting models (one-standard model and "non-clear-PET" standard of the two-standard model).

<sup>16</sup> Overview of Autorité Opinion 22-A-05 of 16 June 2022 on the balancing mechanism envisaged for the draft amending order regarding the approval procedure and specifications for eco-organisations in the household packaging sector, § 45.



## 2. The *Autorité's* recent action in the household packaging waste sector

23. As part of its advisory role, the *Autorité* has conducted an in-depth study of the development of the EPR sector for household packaging in general<sup>17</sup>, and for household plastic packaging in particular<sup>18</sup>.

24. In its Opinion of June 2022, the *Autorité* examined the competitive impact of a draft decree that is part of the more global modification of the organisation of the EPR sector for household plastic packaging brought about by the Decree of 15 March 2022 (see above, §21). Its analysis focused first on the exclusivity granted to eco-organisations for the management of certain wastes (2.a), then on the balancing mechanism provided for by the draft decree (2.b).

<sup>17</sup> Opinion 16-A-27 of 28 December 2016 on the opening up of the household packaging processing sector to several eco-organisations.

<sup>18</sup> Opinion 22-A-05 of 16 June 2022 on the balancing mechanism envisaged for the draft amending order regarding the approval procedure and specifications for eco-organisations in the household packaging sector.

## 2.1. On the exclusivity granted to eco-organisations for the organisation of the take-back of certain waste flows

25. The *Autorité* has sought to verify that the measure granting exclusivity to the eco-organisations for the organisation of the take-back of certain rigid and flexible waste flows was, first, justified by an objective of general interest and, second, necessary and proportionate with the achievement of the objective pursued.

26. The objective of the exclusivity was to quickly achieve significant results in terms of recycling household plastic packaging waste and modernising the industrial sector, by massifying these flows. The exclusivity granted to eco-organisations should allow the massification of a standardised plastic packaging flow in order to develop and invest in innovative recycling solutions, in particular by chemical means, and to invest in new sorting facilities. The measure was therefore intended to contribute to the development and structuring of the industrial recycling sector for all household plastic packaging waste, and in particular waste not yet recoverable under current technical and economic conditions.

27. At the end of its examination, the *Autorité* considered that the exclusivity measure appeared necessary to achieve this objective, given that the creation of such a sector implies major investments to modernise the sorting and recycling industrial tool. In this context, the eco-organisations, as "operators", have significant power to structure investments, as their ability to massify waste flows within sorting centres and recycling facilities makes it possible to meet the needs for the amortisation of investments and the security of supplies and markets.

28. Consequently, this sector modernisation did not seem useful to implement, within the same timeframe, by private stakeholders, without the intervention of the eco-organisations.

29. Furthermore, the exclusivity measure also appeared proportionate with the achievement of the objective, insofar as it only targeted flows of mixed rigid and flexible household plastic packaging waste, i.e. waste categories representing only part of the overall deposit of household plastic packaging waste currently collected in metropolitan France, and consisting essentially of plastics for which there is not, to date, sufficient modernised industrial capacity to meet their processing needs in volume.

30. The *Autorité* nevertheless expressed reservations about the exclusivity framework, in that the measure did not appear to be limited in time.

31. While the exclusive right to organise the take-back of certain household plastic packaging waste by the eco-organisations appears necessary and proportionate in view of the general interest objective pursued in the short- to medium-term, this measure must not be extended excessively beyond what is necessary for the structuring of the recovery market.

32. To limit the long-term effects, the *Autorité* recommended the inclusion of a provision on the duration of the exclusivity so that it does not extend beyond the future approval period, i.e. the end of 2029 at the latest, and, in any case, that an audit be carried out at the end of 2025 to examine the industrial capacities for sorting, resorting and recycling in the sector and analyse the appropriateness of maintaining or not maintaining the exclusivity measure

## 2.2. On the operational balancing mechanism provided for in the draft decree

33. In its Opinion of June 2022, the *Autorité* was also asked to assess, in the context of its referral, the effects on the market of introducing an "operational" balancing mechanism, the purpose of which is to ensure that the eco-organisations share out their obligations to take back and recycle the waste flows covered by the exclusivity measure, in proportion to their respective upstream market shares, calculated on the basis of the tonnages of materials making up these flows in relation to all the materials placed on the market.

34. On the one hand, it noted that this mechanism would risk strengthening the position of the dominant player on the upstream market for membership<sup>19</sup> on the downstream market for take-back and recycling, in an economic and legal context marked by the existence of particularly high barriers to entry into the markets concerned (regulatory barriers, technological barriers and information barriers).

35. On the other hand, the *Autorité* noted a risk of imbalance in favour of the above-mentioned dominant player in the implementation of the balancing mechanism resulting from the definition, through an agreement between the eco-organisations, of the implementation and operational terms of the mechanism. These imbalances would be reinforced by the extent of the contractual freedom granted to the eco-organisations to determine the take-back conditions for surplus tonnages (location of surplus volumes, methods of distributing these volumes, storage of these volumes, costs incurred by storage and transport, *etc.*), with respect only to the conditions set by the regulations (duration of storage of surplus volumes).

36. Consequently, the balancing mechanism, assuming it is necessary, does not appear proportionate with the objective pursued. To limit its potentially restrictive effects on competition, the *Autorité* recommended limiting the benefit to eco-organisations with an upstream market share of less than 50%, assessing the effects of the mechanism on the market, authorising the Agency for Environment and Energy Management to collect and make available optimal information, and, lastly, having the agreement between the eco-organisations monitored by an independent body.

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<sup>19</sup> This is the market for "the service offered to producers of packaging or waste-generating products for the purpose of meeting their obligations to contribute to or provide for the disposal of waste", as defined by the *Autorité*'s Decision 17-DCC-42 of 3 April 2017 regarding the merger of Ecofolio into Eco-emballages, paragraphs 48 et seq.