# Sustainability: the Autorité de la concurrence publishes informal guidance on the adoption and implementation by retailers of a voluntary charter of commitments to promote products with strong sustainability performance

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## Background

The *Autorité de la concurrence* has today published informal guidance in the area of sustainability, provided under the notice adopted on 27 May 2024.

In the present case, the French environmental and energy agency (ADEME) asked the General Rapporteur for guidance on the implementation of a voluntary charter of commitments for the distribution of household electrical and electronic products sold in France, aimed at promoting the distribution of products with higher environmental and energy performance.

The General Rapporteur concluded the project was compatible with competition rules, with the exception of the prominence given to regulatory rating systems. Nevertheless, he draws the attention of the requestor and the charter signatories to the following points:

- **Retailers' freedom to define their sustainability strategy**: while participation in the charter is presented as open, voluntary and non-exclusive, the signatories must, in practice, retain the freedom to define their own individual commitments and go further than proposed in the charter.
- **The need to define individual commitments that genuinely contribute to the achievement of sustainability objectives**: the definition and tracking of

individual commitments must prevent any greenwashing.

- **Exchanges between stakeholders in the implementation of the charter**: at all stages of implementation, retailers and the ADEME must ensure that no commercially sensitive information is exchanged between competitors.
- **Taking into account the potential impact on consumers and suppliers**: when defining and implementing their commitments, retailers must remain vigilant to the possible risks: a reduction in the range of choices available to consumers, and increase in average prices and the exclusion of suppliers that offer predominantly less sustainable products.

**Lastly, the General Rapporteur noted that participants should refrain from making a collective commitment to limit the development of their own rating systems and favouring regulatory rating systems**, as such a commitment could constitute a restriction of competition.

## Origin and content of the request

The French environmental and energy agency (*Agence de l'environnement et de la maîtrise de l'énergie* –ADEME), constituted in France in the form of a public institution of an industrial and commercial nature (*établissement public à caractère industriel et commercial* – EPIC), consulted the General Rapporteur on the compatibility with competition law of a proposed voluntary charter of commitments for the distribution of certain household electrical and electronic products sold in France.

The objective of the charter, which would be signed by companies operating within the main distribution channels, is to encourage such companies to adopt voluntary commitments to give greater prominence to products that perform better in terms of environmental and energy criteria, based on regulatory rating systems, namely the European Energy Label and the French reparability or durability index.

The proposed charter is accompanied by a draft reference guide presenting model commitments by product category, intended to guide retailers in defining their commitments.

The ADEME would be the entity responsible for monitoring the charter, supporting retailers in defining and tracking their commitments.

## The General Rapporteur identifies several watch points to ensure the compatibility of the project with competition rules

The General Rapporteur examined the project with particular regard to developments in sustainability standardisation agreements, as set out in the European Commission guidelines on horizontal agreements, to which the project participants are invited to refer.

Firstly, given its open, voluntary and non-exclusive nature, the proposed charter does not appear to pose major competition issues. However, the General Rapporteur stresses that reference to standard commitments must not deter the signatories from adopting more ambitious commitments or differentiating their approach, in order to avoid any alignment of the participants' commercial strategies that could give rise to legal concerns.

Secondly, while the definition of individual commitments that go beyond prevailing trends may help to limit the risk of coordination between competitors and encourage the signatories to adopt a genuinely proactive approach to achieving the sustainability objectives set out in the charter, the General Rapporteur urges the participants to be vigilant with regard to two types of competition risks:

- on the one hand, a retailer in a dominant position in a given market must, in light of its special responsibility, define and implement its commitments in accordance with the principles of objectivity, transparency and non-discrimination;

- on the other hand, the criteria used to define the commitments, together with the exact content of those commitments, must be sufficiently robust to genuinely support the sustainability objectives set out in the charter and exclude any risk of greenwashing. In particular, retailers should be able to revise their commitments where those commitments do not deliver a genuine improvement in product sustainability. In addition, it may be useful for the ADEME to obtain feedback from third parties (such as consumer protection associations) on the charter and its outcomes, and to monitor changes in consumption patterns, including shifts towards refurbished and second-hand product markets.

Thirdly, despite the safeguards provided for in the charter (confidentiality of the commitments adopted, absence of exchanges between competitors, aggregation and anonymisation of data), the General Rapporteur invites the ADEME and the signatories to exercise particular caution in their exchanges with each other when implementing the charter, in order to ensure that no commercially sensitive information is shared between competitors, including indirectly via the ADEME.

Fourthly, while the existence of restrictive effects on consumers and suppliers appears unlikely, the information provided does not allow for an examination of each of the relevant markets of the products concerned. For the convenience of the participants, the General Rapporteur nevertheless outlines the theoretical competition risks of which the participants should be mindful when defining their individual commitments:

- a reduction in the number of products with low sustainability performance, thereby affecting the range of choice offered to consumers, which could lead to a change in quality with regard to other sustainability criteria;
- the promotion of more sustainable product ranges, often more expensive than less sustainable ranges, which could lead to an increase in average prices;
- the accumulation of individual commitments, which could lead, due to the removal of certain products with low sustainability performance, to the exclusion of suppliers specialised in that type of product.

The General Rapporteur reminds the participants that preventive measures may be adopted to limit the occurrence of such risks. He also notes that, should the risks described above occur, the participants may evaluate the legality of their behaviour, taking into account any potential collective and individual benefits associated with the implementation of the charter.

Lastly, with regard to the establishment of technical working groups as part of the implementation of the charter, the General Rapporteur considers the information provided in the request to be insufficient to assess the competition risks. However, he stresses that a working group, even if technical in nature, where such group brings together competitors, could lead to the exchange of commercially sensitive information, creating competition risks to which the participants must pay particular attention.

## The General Rapporteur notes that participants should refrain from making a collective commitment to limit the development of their own rating systems

Moreover, the General Rapporteur notes that any commitments by retailers to limit the development of their own rating systems, in order to give priority to regulatory rating systems, which are obligatory, could give rise to competition-related problems and that such commitments should not therefore be made, unless justified.

Information for undertakings

Since 2020, the *Autorité* has been committed to an "open door" policy. Players wanting to develop virtuous projects, but for which the analysis in terms of competition rules is particularly complex, can ask the *Autorité* for guidance in order to better self-assess the compatibility of their projects with competition rules.

In order to better support undertakings in their efforts, the *Autorité* published a notice on 27 May 2024, following a large public consultation. The notice is based on the chapter of the new European Commission horizontal guidelines dedicated to sustainability agreements, while taking a broader scope that covers all competition-related matters, with the exception of mergers.

**To date, the *Autorité* has issued informal guidance on five projects:**

- Informal guidance 24-DD-01 of 14 June 2024 on a standardised methodology for calculating products' environmental footprint in the animal nutrition sector.
- Informal guidance 25-DD-01 of 29 January 2025 on the creation of a system for the collective financing of the additional costs and risks associated with the agro-ecological transition.
- Informal guidance 25-DD-02 of 23 October 2025 on the creation of a platform for collecting and sharing data on suppliers' carbon footprints in the French retail sector.
- Informal guidance 26-DD-01 of 4 February 2026 on a project to deploy a standardised deposit-return scheme for food packaging in France.
- Informal guidance 26-DD-02 of 20 March 2026 on the adoption and implementation by retailers of a voluntary charter of commitments to promote products with strong sustainability performance.

**Informal guidance 26-DD-02 of 20 March 2026**
on the adoption and implementation by retailers of a voluntary charter of commitments to promote products with strong sustainability performance (in French)

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