

Full title This is a GRS (unofficial non-binding) translation of a blog from Haas Avocats dated June 28, 2023: Traçabilité des produits: quelles obligations pour les professionnels?

<https://info.haas-avocats.com/droit-digital/tracabilite-des-produits-queelles-obligations-pour-les-professionnels>

Title of section

All sections

Product traceability: what are the obligations for industry?

To be the first climate-neutral continent by 2050: this is the challenge of the European Commission.

Frans Timmermans, Vice-President of the Commission, elucidates on this point: "It is time to put an end to the "take, transform, damage and throw away", model, which is so harmful to our planet, our health and our economy. The time has come to move towards a circular economy: "recycle, repair, reuse".

At local and European level, a legal corpus exists. It must be mobilised today as a positive mechanism aimed at transforming our societies.

At the heart of the transition system that has been undertaken, therefore, is the question of product traceability. This ambitious objective is aimed both at consumers and industry, producers of waste-generating products.

Removing the distractions of "greenwashing", building a fair and transparent debate focusing front and centre on environmental issues, all are gradually becoming essential. The dynamic has been grasped and is supported by regulations in the process of being rolled out.

In this context, consumer information remains the central point of industry obligations. In addition to the penalties provided for by the applicable regulations, every professional must now anticipate the choices of consumers who may decide to avoid a product if they think that the environmental information is insufficient or doesn't appeal to them.

Is this the perfect ideal, the utopia, of the transformation of "consumers as zombies" into "consumer as activists" or is it reality in the making? The question remains open. We only observe in this instance that the law is developing in anticipation. It provides relevant leverage to enable everyone to act well with regard to the environment. This needs to be understood, both from the perspective of the consumer and that of the professional.

The opportunity is to come back to the various obligations applicable to the latter with regard to the difficult issue of traceability.

The obligation to provide information relating to environmental qualities and characteristics.

At the local level, [the law](#) against waste and the circular economy, known as the "AGEC law", contributes to this transition from a linear to a circular economy.

Indeed, it [requires professionals](#) subject to Extended Producer Responsibility (EPR) to provide consumers with a set of information on the environmental qualities and characteristics of products.

The information to be provided will be different depending on the category of the product concerned. In any case, this information must be accessible and visible at the time of purchase.

According to [article L541-9-1](#) of the Environmental Code, this information concerns:

- The incorporation of recycled material;
- The use of renewable resources;
- Durability;
- Compostability;
- Reparability;
- Reuse possibilities;
- Recyclability and the presence of hazardous substances, precious metals or rare earths, consistent with European Union law;

	<ul style="list-style-type: none"> Geographical traceability of the main stages of product manufacturing. <p>These qualities and characteristics are established by prioritising analysis of the entire product life cycle.</p> <p>By providing this information, professionals thereby participate in the traceability of products, a crucial step for the development of a circular economy.</p>
The obligation to take back used products free of charge	<p>Pursuant to article L.541-10-8 of the Environmental Code, distributors¹ of waste-generating products that the end user discards may be required to take back free of charge or to have the products taken back free of charge on their behalf, within the limit of the quantity and type of product sold or the products it replaces.</p> <p>This obligation only concerns certain types of products such as furnishing components, upholstered seat or bedding products, electrical and electronic equipment.</p> <p>In the context of a distance sale, the collection takes place at the point of delivery, at a local collection point, by providing a take-back solution free of charge.</p> <p>There are two types of returns:</p> <ul style="list-style-type: none"> The so-called “1 for 1” take-back: distributors take back used products of the same type free of charge when they sell a new product, within the limit of the number of products sold. Depending on the type of product, this form of take-back may or may not be subject to certain sales turnover and/ or surface threshold criteria, as provided for furniture items. Conversely, there are no criteria to be met for distributors of electrical and electronic equipment. “1 for 0” take-back: within the limits of products of equivalent type and size that they offer for sale, distributors are bound by an obligation to take back, free of charge, waste from products of the same type as those they market, with no obligation to (replacement) purchase. <p>The professional must inform the consumer effectively of the take-back conditions made available to him/ her, in a visible, legible and easily accessible manner.</p> <p>The take-back requirement is the responsibility of the seller of the products. Within the framework of a marketplace model, if the referenced seller does not respect take-back obligations, these will be the responsibility of the marketplace operator.</p> <p>Once collected as part of the return, products can be reused, recycled or recovered/ refurbished.</p>
Towards the digital product passport (DPP): a traceability tool	<p>To achieve this circular economy objective, the European Commission has launched the Digital Product Passport initiative.</p> <p>It describes the terms in its proposal for a regulation establishing a framework for setting eco-design requirements applicable to sustainable products, published on March 30, 2022.</p> <p>In concrete terms, the establishment of a digital product passport will enable product information to be recorded, processed and shared electronically between companies in the supply chain, authorities and consumers.</p> <p>It is at this stage envisaged in the draft regulation that products can only be placed on the market or put into service if a product passport is available.</p>
What will this digital product passport contain?	<p>This digital passport will take the form of an electronic product sheet that will bring together key information about the product, such as its origin, its composition, as well as the repair and dismantling options available. In addition, information on how the various components</p>

¹ In accordance with article R.541-158 of the Environmental Code, "Considered to be a distributor is any natural or legal person who, regardless of the distribution technique used, including by remote communication, provides the end user on a commercial basis with products covered by the extended producer responsibility regime and subject to the take-back obligation pursuant to article L.541-10-8 of the Environmental Code".

	<p>of the product can be recycled will also be detailed.</p> <p>This new document will gather and centralise this information in a way that is clear, structured and easily accessible to all stakeholders in the product's value chain, whether producers, importers, repairers, recyclers or consumers.</p>
What products will be affected?	<p>The regulation will apply to any physical good, including components and intermediate products, placed on the market in the European Union. It should be noted that electrical and electronic products, batteries and textile products are given priority in the application of this text.</p>
What are the benefits for industry behind the implementation of this passport?	<p>First of all, this document will reinforce the visibility and credibility of the companies concerning their commitments relating to sustainable products. Thanks to this digital identity sheet, consumers will be able to know the environmental impacts of their purchases, which will help them make informed choices.</p> <p>In addition, this digital passport will promote transparency for both companies in the supply chain and consumers, thus improving the efficiency of information transfer. It will be a privileged channel of communication between sellers and customers, thus strengthening consumer confidence in companies.</p> <p>In addition, it can serve as a certificate of authenticity and ownership for sellers, thus helping to reduce the risk of counterfeiting and promoting the sale of second-hand products.</p> <p>This digital passport will also allow companies to easily prove their compliance with the various regulations in force. At the same time, it will allow public authorities to verify the information provided and to guarantee compliance with European standards, once again reinforcing confidence in products and companies.</p>
On what technological option will this digital product passport be based?	<p>Different paths may be considered at this stage.</p> <p>On the one hand, it might be possible to opt for centralised data management, where product-related information would be stored in a database managed by a third party.</p> <p>On the other hand, decentralized data management, based on a passport validated by a blockchain, could be a strategic choice. Indeed, the attributes inherent to the public blockchain - such as transparency or its unchanging nature - would guarantee the integrity and security of the digital passport.</p> <p>Either way, this digital passport will represent a major step forward in the transition to a circular economy, which will provide professionals with greater visibility, credibility and transparency in terms of sustainability.</p> <p>All sectors of activity will be impacted, in particular furniture, toys, textiles, watches/ clocks, etc.</p> <p>It is already necessary to prepare for these new legal requirements and to identify existing technological solutions.</p>