

**POSITION OF THE CNC
ON INFORMING CONSUMERS
ABOUT THE PRESENCE OF NANOMATERIALS
IN CONSUMER PRODUCTS**

Introduction

The growing importance of nanotechnologies in industrial development has made them a key engine for economic development and a source of innovation. Examples of domains where nanomaterials are providing benefits include: health (improving performance for detection and treatment of certain pathologies), environmental protection (improving air quality, reducing CO₂ emissions, controlling energy needs), hygiene (self-cleaning materials, antibacterial coatings), comfort and well-being (lighter and/or stronger materials, improved durability).

In view of their core position in innovation, nanotechnologies could also represent a crucial path toward sustainable economic development.

However, the distinctive properties of nanomaterials also encourage us to pay special attention to the undesirable effects that they may engender in the contexts of society, health or the environment, throughout their lifecycle. The assessment of nanomaterials requires tools and methods capable of characterising them.

As with any new technology, the potential benefits and risks for consumers must be well understood before products are marketed, and must be regularly updated in step with technological progress and new trends in usage.

The CNC considers it important to attain the proper balance between controlling risks (in particular, informing consumers and ensuring their safety) and developing strong, innovative national and European industries in the nanotechnology sector.

Based on its discussions with stakeholders and preliminary work, and in the wake of public debate and the summary of its results presented by the National Public Debate Commission (CNDP), the CNC is now publishing this position paper in order to provide clear and expeditious information to support decision making by public authorities. Due to the tight schedule, the CNC has given priority to themes related to informing consumers and public authorities, and to governance. The CNC emphasises that it intends to continue its work on these issues, which are fundamental to economic development and consumer confidence.

I – Information principles

- 1) For purposes of this position paper, the CNC considers a nanomaterial to be an insoluble material, manufactured at nanoscale, with physical and/or chemical properties differing from those of the same material on a macroscale.
- 2) The CNC specifies that the scope of this position paper is limited to substances, mixtures or items (these three elements meet the definition of a "product") that, during their lifecycle, under use conditions that are normal and can be reasonably expected, are liable to expose the consumer or his environment to a nanomaterial as defined in the previous paragraph. Nanoemulsions fall outside the scope of this paper. This is because the nanoscale aspect, essential for the stability of the emulsion, is not meant to remain within the product to provide it with specific properties. This aspect disappears once the product is applied.
- 3) The CNC considers that "consumer products" means all products that are marketed to consumers, individuals who are engaged in tasks that are not connected with their professional activity, whether or not for valuable consideration, and regardless of the sector and distribution mode.
- 4) The CNC considers it indispensable for public authorities to have access to reliable data, notably about the presence of nanomaterials in products available to consumers.
- 5) The CNC also considers it indispensable that means be deployed to provide consumers with access to understandable and objective information.
- 6) The CNC considers it essential that efforts be made in terms of characterisation, metrology and methods for monitoring nanomaterials, and that public authorities at both national and Community level make a resolute commitment to undertake and support these efforts. The same applies to efforts to be maintained with regard to research and training in toxicology and eco-toxicology. The CNC emphasises the need for coordination among these various lines of research.
- 7) One of the following economic operators is responsible for providing information about nanomaterials:
 - the manufacturer, if it is established in France,
 - the manufacturer's representative, if the manufacturer is not established in France,
 - otherwise, the party that markets the product, according to the Community definition.

The CNC requests that the access of consumers and public authorities to the party responsible for this information be organised, developed and enhanced in all Community legislation.

- 8) The CNC's recommendations herein are to be applied in compliance with legislative and regulatory provisions on protection of confidential information which may apply to the product containing nanomaterials, notably in terms of trade secrets and intellectual property rights.
- 9) The CNC considers it indispensable for public authorities to take initiatives to provide support to SMEs and micro-businesses utilising nanomaterials for the implementation of the recommendations herein (pooling of resources, initiatives by chambers of commerce and industry).

II – Informing consumers

- 10) The CNC reiterates that the general obligations in terms of information, conformity and safety, stated respectively in Articles L 111-1, R 112-7, L 121-1, L 212-1 et seq., and L 221-1 et seq. of the French Consumer Code, apply to "consumer products" containing nanomaterials.
- 11) In particular, concerning how consumers are informed about consumer products containing nanomaterials, the CNC considers that the use of the phrase "contains/does not contain nanomaterials" or an icon to that effect should be ruled out, as it does not respond to consumers' needs for information, and also to avoid any form of promotion or denigration.

Therefore, the CNC considers that the presence of one or more nanomaterials in a consumer product must be brought to the attention of the consumer, e.g. by providing the name(s) of the nanomaterial(s) on the packaging.

This disclosure would be part of the list of ingredients, when such a list is mandatory on the packaging. For example, it could be in the format "name-of-the-ingredient [nano]", as in Regulation (EC) No 1223/2009 on cosmetic products.

In other cases, except for consumer product categories that may be exempted, this notice could appear in the form "contains", followed by the name of the substance [nano].

- 12) The consumer can request the following information from the party responsible for providing the information:

- the presence of nanomaterials in their various structures;
- subject to respect for trade secrets, the reason for the use and/or the benefits expected from the presence of nanomaterials;

When justified:

- precautions for use, notably under certain use conditions;
- precautions for preservation and storage.

And, when applicable:

- conditions for disposal and destruction.

To facilitate access to this information, the CNC recommends that the consumer should be able to directly obtain the contact details (e.g. website, telephone, address) of the party responsible for the information. For example, whenever practical, these contact details could appear in the same place that indicates the presence of one or more nanomaterials.

- 13) The party responsible for the information has a duty to respond to consumer requests in a timely fashion. Responses can only be made if the request cites a specific product X and brand Y. The party responsible for the information is not required to respond to requests concerning a product line or all products.
- 14) The CNC considers that non-compliance (e.g. no response, incomplete response, erroneous response) should result in appropriate penalties.
- 15) The CNC emphasises that efforts to inform consumers cannot succeed without parallel deployment of significant means and tools for continually educating and informing consumers on the subject of nanotechnologies.

III – Informing public authorities

- 16) A notification procedure, which makes monitoring easier and contributes to the traceability of nanomaterials, must be made obligatory. The notification must contain information consistent with that which is provided to consumers in response to their requests, in terms of:
- the presence of nanomaterials in their various structures;
 - subject to respect for trade secrets, the reason for the use and/or the benefits expected from the presence of nanomaterials.
- 17) The notification must concern all consumer products containing nanomaterials, without exception. The objective is to have a complete inventory of consumer products containing nanomaterials. This inventory will allow rapid and appropriate measures to be taken if a risk is subsequently discovered concerning a nanomaterial under certain use conditions.
- 18) This notification of the presence of nanomaterials in consumer products, as well as the contact information for the responsible party (manufacturer, importer, or party responsible for marketing the product), is carried out under the responsibility of the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF) or any other administrative authority designated for this purpose.
- 19) The CNC considers that any non-observance of this obligation to notify authorities should result in appropriate penalties.
- 20) In light of these notifications, public authorities will be, in particular, responsible for regularly taking stock of the situation in order to provide a snapshot, available to the public, of the level of use of nanomaterials in various economic sectors.
- 21) The CNC requests that France propose, at European level, a draft Community procedure for notifying the relevant Community authorities in a comparable way. This undertaking must also be supported at international level.

IV – Governance: a standing concertation structure within the CNC

- 22) The CNC proposes that a standing concertation structure be created under its auspices.

This structure would bring together professionals, consumers, relevant government departments and health authorities. It would:

- discuss European and international projects, and examine trends in the use of nanomaterials in consumer products (analysis of statistical data provided by the administrative authority responsible for inspecting consumer products, assessment of the veracity and quality of the information given to consumers);
- be responsible for drafting recommendations, notably on the clarity of information and communication in crisis situations.

The CNC proposes that the external specialists, proposed by consumers and professionals in equal proportions, be permanent members of this structure.

The meetings of this authority could be open to other parties or institutions concerned, depending on the items on the agenda.

- 23) The CNC proposes that the specific methods for informing consumers, as recommended in this paper, should be the subject of additional work under its auspices (see Conclusions, below).

Conclusions

The CNC considers that reflections related to nanomaterials should be carried out at Community level, and, to the extent possible, on an international scale. The CNC requests that France present the recommendations herein at European and international level. The CNC intends to contribute to the work carried out at European level, and then at international level within the ISO and the OECD.

In view of the stakes involved, the CNC reiterates that it is the primary forum for concerted regulation between professionals and consumers, under the auspices of public authorities.

The CNC wishes to be kept informed of work carried out in other fora, notably work by the AFNOR "nano responsible" working group, health authorities and all institutions concerned with risk-benefit analyses.

Depending on technical progress and identified needs, the CNC considers that it can pursue its work on related themes, in particular, but not restricted to:

- impact on privacy and protection of personal data, in particular due to the new possibilities created by increased miniaturisation and storage capacity;
- the traceability of nanomaterials for increased transparency for consumers and the consequences of lifecycle analyses of these nanomaterials;
- governance at local, national, European and international levels.

Glossary

- ❑ **Nanotechnology:** understanding and manipulation of materials and processes at nanoscale (typically, but not exclusively, below 100 nanometres in one or multiple dimensions), when the appearance of phenomena related to these dimensions generally enables new applications.
- ❑ **Nanomaterial:** insoluble material possessing distinctive properties due to its nanoscale structure.
- ❑ **Manufactured nanomaterial:** nanomaterial manufactured intentionally by man, in an industrial or research context.