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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	16723/23
Subject:	Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC - Letter to the Chair of the European Parliament ENVI Committee

Following the Permanent Representatives Committee meeting of 22 December 2023 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament ENVI Committee.



Council of the
European Union

SGS 23 / 005711

Brussels, 22 December 2023

Mr Pascal CANFIN
Chair of ENVI Committee
European Parliament
Rue Wiertz 60
BE – 1047 Brussels

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC (doc. 7854/22 + ADD1)

Dear Mr Canfin,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council, I also wish to thank you for your close cooperation, which should enable us to reach agreement on this file at first reading.

Yours faithfully,



Raúl FUENTES MILANI
Chair of the
Permanent Representatives Committee
(Part 1)

Copy: Mr Virginijus SINKEVIČIUS - Commissioner for Environment, Oceans and Fisheries
Mr Thierry BRETON - Commissioner for the Internal Market
Ms Kadri SIMSON – Commissioner for Energy
Ms Alessandra MORETTI - Rapporteur of the ENVI Committee of the European Parliament
Mr David CORMAND - Rapporteur of the IMCO Committee of the European Parliament
Ms Maria SPYRAKI - Rapporteur of the ITRE Committee of the European Parliament

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2022/0095 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing a framework for setting ecodesign requirements for sustainable products,
amending Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C „, p. .

- (1) The European Green Deal¹ is Europe's sustainable growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, competitive, climate-neutral and circular economy **and toxic-free environment**. It sets the ambitious objective of ensuring that the Union becomes the first climate neutral continent by 2050. It recognises the advantages of investing in the Union's competitive sustainability by building a fairer, greener and more digital Europe. Products have a pivotal role to play in this green transition. Underlining that current production processes and consumption patterns remain too linear and dependent on a throughput of new materials extracted, traded and processed **into goods that are** finally disposed of as waste or emissions, the European Green Deal emphasises the urgent need to transition to a circular economy model and stresses the significant progress that remains to be made. It also identifies energy efficiency as a priority for the decarbonisation of the energy sector and for reaching the climate objectives in 2030 and 2050.

- (2) To accelerate the transition to a circular economy model, the Commission designed a future-oriented agenda in its Circular Economy Action Plan for a cleaner and more competitive Europe¹ (CEAP), with the objective of making the regulatory framework fit for a sustainable future. **The plan underlines that, for citizens, the circular economy will provide high-quality, functional and safe products, which are efficient and affordable, last longer and are designed for reuse, repair, and high-quality recycling.** As set out in **that** plan, there is currently no comprehensive set of requirements to ensure that all products placed on the Union market become increasingly sustainable and stand the test of circularity. In particular, product design does not sufficiently promote sustainability over the whole life cycle. As a result, products are being replaced frequently, involving significant energy and resource use in order to produce and distribute new products and dispose of old ones. It is still too difficult for economic operators and citizens to make sustainable choices in relation to products given that relevant information and affordable options to do so are lacking. This leads to missed opportunities for sustainability and for value-retaining operations, limited demand for secondary materials and obstacles to the adoption of circular business models.

(2a) A fully functioning internal market for sustainable products is a pre-requisite for the establishment of a circular economy in the Union. Common ecodesign requirements at Union level would enable the development, deployment and scale-up of new circular economy business models throughout the internal market. Such measures would also alleviate burden on companies and provide industry and consumers with access to reliable and clear data, thereby allowing for more sustainable choices to be made.

(3) The European Industrial Strategy¹ sets out the Union’s overarching ambition to foster a ‘twin transition’ to climate neutrality and digital leadership. It echoes the European Green Deal in pointing to the leading role that Europe’s industry must play in *that*, by reducing its carbon and material footprint and embedding circularity across the economy, and underlines the need to move away from traditional models, and revolutionise the way we design, make, use and dispose of products, *as well as the need for a secure supply of raw materials. Recycling and the use of secondary raw materials will help reduce the Union's dependency.* The 2021 Update to the Industrial Strategy² reinforces the main messages of the 2020 Strategy and focuses on the lessons from the COVID-19 crisis, including the need to foster resilience.

(3a) delete

¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions A New Industrial Strategy for Europe COM(2020)102 final.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery COM(2021)350 final

- (4) In the absence of legislation at Union level, diverging national approaches to improving the environmental sustainability of products have already emerged, ranging from information requirements on the duration of software compatibility of electronic devices to reporting obligations on handling unsold durable goods. This is an indication that further national efforts to achieve the aims pursued by this Regulation will likely lead to further fragmentation of the internal market. Therefore, in order to **contribute to** the functioning of the internal market while ensuring a high level of environmental protection, **an ambitious** regulatory framework to progressively introduce ecodesign requirements for products **is needed**. This Regulation will **establish such a framework**, by making the ecodesign approach initially set out in Directive 2009/125/EC of the European Parliament and of the Council¹ applicable to the broadest possible range of products.
- (5) This Regulation will **support production and consumption patterns that are aligned with the Union's overall sustainability targets, including climate, environmental, energy, resource-use and biodiversity, while staying within planetary boundaries, by establishing a legislative framework which contributes to enabling** products fit for a climate-neutral, resource-efficient and circular economy, reducing waste and ensuring that the performance of frontrunners in sustainability progressively becomes the norm. It should provide for the setting of new ecodesign requirements to improve product durability, reusability, upgradability, **recyclability**, and reparability, improve possibilities for refurbishment and maintenance, address the presence of hazardous chemicals in products, increase their energy and resource efficiency, **including with regard to strategic and critical raw materials**, reduce their expected generation of waste ■ and increase recycled content in products, while ensuring their performance and safety, enabling remanufacturing and high-quality recycling and reducing carbon and environmental footprints.
- (5a) **Ecodesign requirements should also address practices associated with premature obsolescence. Such practices have an overall negative impact on the environment in the form of increased waste and use of energy and materials which can be reduced through ecodesign requirements while contributing to sustainable consumption.**

- (6) The European Parliament, in its Resolution of 25 November 2020 ‘Towards a more sustainable single market for business and consumers’¹, welcomed promoting durable products which are easier to repair, re-use and recycle. In its report on the New Circular Economy Action Plan adopted on 16 February 2021², the European Parliament ***underlined that sustainable, circular, safe and non-toxic products and materials should become the norm in the Union market and not the exception and should be seen as the default choice, which is attractive, affordable and accessible for all consumers. The European Parliament also called for Union binding targets to significantly reduce Union material and consumption footprints.*** It considered that the transition to a circular economy can provide solutions to address the current environmental challenges and the economic crisis brought on by the COVID-19 pandemic. The Council, in its conclusions on ‘Making the Recovery Circular and Green’ adopted on 11 December 2020³, also welcomed the Commission’s intention to submit legislative proposals as part of a comprehensive and integrated sustainable product policy framework that promotes climate neutrality, energy and resource efficiency and a non-toxic circular economy, ***that*** protects public health and biodiversity, and empowers and protects consumers and public buyers.

(7) This Regulation should contribute to achieving the Union’s climate and energy objectives. In line with the goals set out in the Paris Agreement, ratified by the Union in 2016¹, Regulation (EU) 2021/1119 of the European Parliament and of the Council, the ‘European Climate Law’² establishes a binding Union domestic reduction commitment of net greenhouse gas emissions of at least 55 % by 2030 and enshrines in legislation the target of economy-wide climate neutrality by 2050. In 2021 the Commission adopted the Fit for 55 Package³ to make the Union’s climate and energy policies fit for achieving these objectives. To do so, in line with the energy efficiency first principle enshrined in Directive (EU) 2018/2002 of the European Parliament and of the Council⁴, energy efficiency improvements need to be significantly stepped up, to around 36% in terms of final energy consumption by 2030⁵. Product requirements established under this Regulation should play a significant role towards this target by substantially decreasing products’ energy footprint. These energy efficiency requirements will also reduce consumer vulnerability to energy price increases. As recognised by the Paris Agreement improving the sustainability of consumption and production will also play an important role in addressing climate change.

¹ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) (OJ L 243, 9.7.2021, p. 1).
³ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3541

⁴ Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OJ L 328, 21.12.2018, p. 210).

⁵ According to the impact assessment accompanying the Climate Target Plan (Stepping up Europe’s 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people, COM/2020/562 final) and to the [Energy Efficiency Directive proposal]

- (8) This Regulation should also contribute to achieving the Union’s wider environmental objectives. The 8th Environmental Action Programme¹ enshrines in a legal framework the Union’s objective of staying within the planetary boundaries and identifies enabling conditions to achieve priority objectives, which include the transition to a non-toxic circular economy. The European Green Deal also calls for the Union to better monitor, report, prevent and remedy air, water, soil and consumer products pollution. This means that chemicals, materials and products have to be ■ safe and sustainable ■ by design and during their life cycle, leading to non-toxic material cycles². In addition, both the European Green Deal and the CEAP recognise that the Union internal market provides a critical mass that is able to influence global standards on product sustainability and product design. This Regulation should therefore play a significant role towards achieving several targets established under the Sustainable Development Goals of the *United Nations* 2030 Agenda for Sustainable Development ‘Responsible consumption and production’³, both inside and outside the Union.
- (9) Directive 2009/125/EC establishes a framework for the setting of ecodesign requirements for energy-related products. *Together* with Regulation (EU) 2017/1369 of the European Parliament and of the Council¹, *it has* significantly reduced EU primary energy demand for products and it is estimated these savings will continue to increase. Implementing measures adopted under Directive 2009/125/EC have also included requirements on circularity aspects, such as durability, reparability and recyclability. At the same time, instruments such as the EU Ecolabel, introduced by Regulation (EC) No 66/2010 of the European Parliament and of the Council² or the EU green public procurement criteria³ are broader in scope but have a reduced impact due to the limitations of voluntary approaches.

- (10) Directive 2009/125/EC has been generally successful in fostering the energy efficiency and some circularity aspects of energy-related products, and its *ecodesign* approach has the potential to progressively address the sustainability of all products. To deliver on Green Deal commitments, this approach should be extended to other product groups and systematically address key aspects for increasing the environmental sustainability of products with binding requirements. By ensuring that only products that meet those requirements are placed on the Union market, this Regulation should not only improve the free movement of such products by avoiding national disparities, but also reduce the negative life cycle environmental impacts of products for which such requirements are set.

- (11) In order to create an effective and future-proof **harmonised** regulatory framework, it is necessary to allow for the setting of ecodesign requirements on all physical goods placed on the market or put into service, including components **such as tyres** and intermediate products. **Digital content that is an integral part of a physical product should also be included in the scope.** This should allow the Commissions to take into account the broadest range of products possible when prioritising the **setting** of ecodesign requirements and thereby maximise their effectiveness. Where needed, specific exemptions should be made when setting ecodesign requirements, **in particular where ecodesign requirements are not necessary to contribute to the environmental sustainability of specific products parameters, or** for example for products with a particular **use or** purpose that could not be fulfilled when complying with **ecodesign** requirements, **products produced in very small quantities, or taking into account the specificity and size of the product's market.** In addition, **exclusions** should be made at the level of the framework for those products for which it is already clear that ecodesign requirements would not be suitable or where other frameworks provide for the setting of such requirements. This should be the case for food and feed as defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council **■** , medicinal products for human use as defined in Directive 2001/83/EC of the European Parliament and of the Council **■** , veterinary medicinal products as defined in Regulation (EU) 2019/6 of the European Parliament and of the **Council**³, living plants, animals and micro-organisms, products of human origin, and products of plants and animals relating directly to their future reproduction **and vehicles as referred to in Article 2(1) of Regulation (EU) 2018/858, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013, for those product requirements set for these vehicles under Union law. These vehicles are subject to several product-specific requirements and different harmonised type-approval systems under legal Union acts, such as Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles, Directive 2005/64/EC of the European Parliament and of the Council on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability, and Regulation (EU) 2018/858 of the European Parliament and of the Council on the approval and market surveillance of motor vehicles. Additional harmonised requirements for vehicles should be limited to aspects that are not currently addressed for example environmental requirements for tyres. E-bikes and e-scooters are not concerned by this exclusion from the scope.**

- (12) The proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)¹¹ requires Member States to set minimum energy performance requirements for building elements that form part of the building envelope and system requirements in respect to overall energy performance, the proper installation and the appropriate dimensioning, adjustment and control of technical building systems installed in new or existing buildings. It is consistent with the objectives of this Regulation that these minimum energy performance requirements may in certain circumstances limit the installation of energy-related products which comply with this Regulation and its delegated acts, provided that such requirements do not constitute an unjustifiable market barrier.
- (13) In order to improve the environmental sustainability of products and to ensure the free movement of products in the internal market, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by setting out ecodesign requirements. Those ecodesign requirements should in principle apply to specific product groups, such as washing machines or washing machines and washer dryers. In order to maximise the effectiveness of ecodesign requirements and to efficiently improve environmental sustainability of products, it should also be possible to set out one or more horizontal ecodesign requirements for a wider range of products groups, such as electronic appliances or textiles. Horizontal ecodesign requirements should be established where the technical similarities of product groups allow their environmental sustainability to be improved based on the same requirements. ***It is important that horizontal requirements be developed in particular on durability and repairability.***
- (14) ***Ecodesign requirements should***, as appropriate, include performance and information requirements. Those requirements should be used to improve product aspects relevant for environmental sustainability, such as ***durability, reusability, reparability***, energy efficiency, ***possibility of recycling***, and carbon and environmental footprints. Ecodesign requirements should be transparent, objective, proportionate and in compliance with international trade rules.

¹¹ COM (2021) 802 final.

- (14a) The second-hand sector plays an important role in promoting sustainable production and consumption, including in the development of new circular business models, and contributes to prolonging the lifetime of a product and avoiding it becoming waste. Second-hand products, in particular products that undergo refurbishment or repair, originating from within the Union are not new products and they can circulate within the internal market without needing to comply with ecodesign requirements. However, products that are remanufactured are considered as new products and they are subject to ecodesign requirements if they fall within the scope of a delegated act.***
- (15) Once a delegated act setting ecodesign requirements is adopted by the Commission for a given product group, Member States should, in order to ensure the functioning of the internal market, no longer be allowed to set national performance requirements based on product parameters covered by such performance requirements laid down in that delegated act, and no longer be allowed to set national information requirements based on product parameters covered by such information requirements laid down in that delegated act. In order to ***improve the environmental sustainability of products and to ensure their free movement within*** the internal market, the Commission should be empowered to establish that no ecodesign requirements in the form of performance requirements and/or in the form of information requirements are necessary in relation to a specific product parameter ***if a requirement related to that specific product parameter would have a negative impact on the ecodesign requirements considered for the product group.***

- (16) When **setting** ecodesign requirements the Commission should take into account the nature and purpose of the products concerned as well as the characteristics of the relevant markets. For example, defence equipment has to be able to operate under specific and sometimes harsh conditions, which needs to be considered when setting ecodesign requirements. Certain information on defence equipment should not be disclosed and should be protected. ***Ecodesign requirements should thus not be set on products with the sole purpose of serving defence or national security. It is important that for other*** military or sensitive equipment ecodesign requirements ■ take into account the security needs and the characteristics of the defence market, as defined in Directive 2009/81/EC of the European Parliament and of the Council¹². Similarly, the space industry is strategic for Europe and for its technological non-dependence. As space technologies operate in extreme conditions, any ecodesign requirements for space products should balance sustainability considerations with resilience and expected performance. Further, for medical devices as defined in Article 2(1) of Regulation (EU) 2017/745 on medical devices¹³ and ***in vitro*** diagnostic medical devices as defined in Article 2(2) of Regulation (EU) 2017/746 on ***in vitro*** diagnostic medical devices¹⁴, the Commission should take into account of the need to not negatively affect health and safety of patients and users. ***The Commission should furthermore, when assessing the characteristics of the market and preparing ecodesign requirements, strive to consider national characteristics, such as the different climate conditions in Member States and practices and technologies used in Member States with proven beneficial environmental effects.***

¹² Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

¹³ Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117 5.5.2017, p. 1).

¹⁴ Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176).

(17) To avoid **■** regulatory burden, consistency should be ensured between this Regulation and requirements set in or pursuant to other Union legislation, especially products, chemicals, *packaging* and waste legislation¹⁵. However, the existence of empowerments under other Union legislation to set requirements with the same or similar effects as requirements under this Regulation does not limit the empowerments included in this Regulation, unless specified in this Regulation.

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(17b) When preparing ecodesign requirements, the Commission should take into account a number of elements, namely Union priorities, relevant Union and national legislation, relevant international agreements as well as self-regulation measures and relevant standards. The Commission should take into account the priorities for climate, the environment, energy efficiency, resource efficiency and security, including non-toxic circular economy, and other related Union priorities and targets. It is important to pay attention to the objectives of the 8th Environment Action Programme set out in Decision (EU) 2022/591 of the European Parliament and of the Council¹⁶, including that by 2050 at the latest people live well, within the planetary boundaries in a well-being economy, the do no harm principle and the waste hierarchy, as well as the Union's commitments to protect and restore biodiversity as expressed also in the EU Biodiversity Strategy for 2030 and the Kunming-Montreal Global Biodiversity Framework.

¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the circular economy package - options to address the interface between chemical, product and waste legislation (COM(2018) 32 final).

¹⁶ *Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 (OJ L 114, 12.4.2022, p. 22).*

- (18) Delegated acts *setting out* ecodesign requirements should, as was the case *for implementing measures* under Directive 2009/125/EC, undergo a dedicated impact assessment and stakeholder consultation, and should be drawn up in line with the Commission’s Better Regulation guidelines, and include an assessment of the international dimension and impacts on third countries. When *drawing up the impact assessment*, the Commission should take due consideration of all aspects of the life cycle of the product and base its impact assessment on best available evidence. When preparing ecodesign requirements the Commission should use a scientific approach and also take into consideration relevant technical information in particular coming from Regulation (EC) No 66/2010 of the European Parliament and of the Council¹, Directive 2010/75/EU of the European Parliament and of the Council², technical screening criteria adopted pursuant to Regulation (EU) 2020/852 of the European Parliament and of the Council³ and green public procurement criteria⁴.

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- (19) In order to take into account the diversity of products, the Commission should select the methods to assess the setting of the ecodesign requirements and, as appropriate, develop them further. ***Such methods are to be*** based on the nature of the product, its most relevant aspects and its impacts over its life cycle. In doing so, the Commission should take account of its experience in assessing the setting of requirements under Directive 2009/125/EC and the continuing efforts to develop and improve science-based assessment tools, ***including*** the update of the methodology for ecodesign of energy-related products, and the Product Environmental Footprint method set out in Commission Recommendation (EU) 2021/2279¹, including as regards temporary storage of carbon, as well as the development of standards by international and European standardisation organisations, including on the material efficiency of energy-related products. Building on these tools and using dedicated studies when needed, the Commission should further reinforce circularity aspects (such as durability, reparability including reparability scoring, ***recyclability, reusability,*** identification of chemicals hindering re-use and recycling) in the assessment of products, ***in accordance with a lifecycle approach with a view to*** the preparation of ecodesign requirements, and should develop new methods or tools where appropriate ***Information related to environmental life cycle indicators, like carbon footprint, should be calculated taking into consideration existing and internationally established methods as well as already implemented in European legislations and scientific methods recommended by international and European standardisation organisations. In particular, when it comes to the modelling of the energy used in manufacturing processes, particular consideration should be given to modelling of the energy mix that would also take into account issues like Power Purchase Agreements, guarantees of origin and own electricity production.*** New approaches may also be needed for the preparation of mandatory public procurement criteria and for bans on the destruction of unsold consumer products.

- (20) Performance requirements should relate to a selected product parameter relevant to the targeted product aspect for which potential for improving environmental sustainability has been identified. Such requirements may include minimum or maximum levels of performance in relation to the product parameter, non-quantitative requirements that aim to improve performance in relation to the product parameter, or requirements related to a product's functional performance to ensure that the selected performance requirements do not negatively impact the ability of the product to perform the function for which it was designed and marketed. Regarding minimum or maximum levels, they may for example take the form of a limit on energy consumption in the use phase or on the quantities of a given material incorporated in the product, a requirement for minimum quantities of recycled content, or a limit on a specific environmental impact category or on an aggregation of all relevant environmental impacts. An example of a non-quantitative requirement is the prohibition of a specific technical solution that is detrimental to product reparability. Performance requirements will be used to ensure the removal of the worst performing products from the market ***and to gradually move to the best performing products*** where this is necessary to contribute to the environmental sustainability objectives of the Regulation. ***Performance requirements could also concern resource use, including requirements related to usage of renewable resources or materials with bio-based content in the product and address the release of nano- and micro-plastics.*** ***When the Commission envisages a combination of requirements, it should assess them as a whole and identify the combination of requirements that delivers the highest environmental sustainability benefits.***

- (21) In order to ensure consistency, performance requirements should complement the implementation of Union legislation on waste. While requirements for placing on the market packaging as a final product are laid down under European Parliament and Council Directive 94/62/EC¹⁷, this Regulation may complement that Directive by setting product-based requirements focussing on the packaging of specific products when placed on the market. Where relevant, such complementary requirements should contribute in particular to minimising the amount of packaging used, in turn contributing to the prevention of waste generation in the Union.

¹⁷ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

(22) Chemical safety is a recognised element of product sustainability. It is based on chemicals' intrinsic hazards to health or the environment in combination with specific or generic exposure, and is addressed by chemicals legislation, such as Regulation (EC) No 1935/2004 of the European Parliament and of the Council¹, Regulation (EC) No 1907/2006 of the European Parliament and of the Council², **Regulation (EC) No 1272/2008**³, Regulation (EC) No 1223/2009 of the European Parliament and of the Council⁴, Regulation (EU) 2017/745 of the European Parliament and of the Council⁵, **Regulation (EU) 2019/1021 of the European Parliament and of the Council**⁶, and Directive 2009/48/EC of the European Parliament and of the Council⁷. This Regulation should not enable the restriction of substances based *primarily* on chemical safety, as done under other Union legislation. *Union legislation on chemicals already provides for restrictions of substances or mixtures related to safety or risk, where needed. However, the establishment of performance requirements should also, where appropriate, reduce significant risks to human health or the environment. Requirements on informing on the presence of substances of concern, will also contribute to reducing the exposure to chemicals, adding to the risk management measures provided by other Union legislation.* Similarly, this Regulation should not enable the restriction of substances for reasons related to food safety. Union law on chemicals and food, however, does not allow addressing, through restrictions on certain substances, impacts on sustainability that are unrelated to chemical safety or food safety. To overcome this limitation, this Regulation should allow, under certain conditions, for the restriction, of substances present in products or used in their manufacturing processes which negatively affect products' sustainability. This Regulation ■ should **complement, where necessary, but** not result in the duplication or replacement of restrictions of substances covered by Directive 2011/65/EU of the European Parliament and of the Council⁸, which has as its objective the protection of human health and the environment, including the environmentally sound recovery and disposal of waste from electrical and electronic equipment. **1. Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4).** **2. Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission**

Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1). 3. Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 4. Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59). 5. Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176). 6. Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45–77) 7. Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1). 8. Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88).

(22a) The Commission, when setting performance requirements, should be able to introduce requirements to prevent certain substances from being included in a product. The identification of such substances should be part of the Commission's assessment prior to the setting of ecodesign requirements for a specific product group and the Commission should in this assessment, for instance, take into account whether a substance makes the re-use or recycling of a product more complicated or negatively affects the properties of the recycled material, for example through its colour or smell. Where a substance has already been established as being a substance that hinders circularity for another product group, this can be an indication that it also hinders circularity for other product groups. The identification, and possible restriction, of a substance should also trigger an information requirement.

- (23) To improve environmental sustainability of products, information requirements should relate to a selected product parameter relevant to the product aspect, such as the product's environmental *and carbon* footprint *and* its durability. They *should* require manufacturer to make available information on the product's performance in relation to a selected product parameter or other information that may influence the way the product is handled by parties other than the manufacturer in order to improve performance in relation to such a parameter. Such information requirements should be set either in addition to, or in place of, performance requirements on the same product parameter as appropriate. ***It is important that the Commission duly justify its decision to only lay down information requirements instead of performance requirements.*** Where a delegated act includes information requirements, it should indicate the method for making the required information available *and easily accessible*, such as its inclusion on a free-access website, product passport or product label. ***Essential information relating to the health, safety and rights of end-users should always be provided to consumers by physical means and be accessible through a data carrier included on the product.*** Information requirements are necessary to lead to the behavioural change needed to ensure that the environmental sustainability objectives of this Regulation are achieved. ***Information relevant for an informed purchasing decision should be provided to the consumer prior to the purchase of the product.*** By providing a solid basis for purchasers and public authorities to compare products on the basis of their environmental sustainability, information requirements are expected to drive consumers and public authorities towards more sustainable choices. ***Information requirements should also contribute to improved collection rates by member states for relevant product groups, in particular for those for which a significant reuse and refurbishment potential exists, such as mobile phones for which the collection rate in Member states does not exceed 5% , for example by facilitating information on take-back schemes through financial incentives and deposit-refund systems, data privacy guarantees, databases of drop-off points, personalised end of life information via the product passport on the value of the product and best practices about proper disposal.***

(24) Where delegated acts include information requirements, they may in addition determine classes of performance in relation to one or more relevant product parameters, in order to facilitate comparison between products on the basis of that parameter. Classes of performance should enable differentiation of products based on their relative sustainability and could be used by both consumers and public authorities. As such, they are intended to drive the market towards more sustainable products.

(24a) Information requirements on reparability and durability play a key role in enabling consumers to engage in sustainable consumption. This Regulation should enable the establishment of reparability or durability scores for products where its establishment is deemed appropriate, in terms of providing environmental benefits and clearer information for consumers. In order to allow consumers to effectively assess and compare products, it is important that the format, content and display of such reparability and durability scores include easy-to-understand language and pictograms and that the reparability score be based on a harmonised methodology specified for the product or product group, aggregating parameters such as availability of spare parts, price of spare parts, ease of disassembly and the availability of tools into a single score.

(25) Information on the presence of substances of concern in products is a key element to identify and promote products that are sustainable. The chemical composition of products determines largely their functionalities and impacts, as well as the possibilities for their re-use or for recovery once they become waste. The Chemicals Strategy for Sustainability¹ calls for minimising the presence of substances of concern in products, and ensuring the availability of information on chemical content and safe use, by introducing information requirements and tracking the presence of substances of concern throughout the life cycle of materials and products. Regulation (EC) No 1272/2008 of the European Parliament and of the Council² and other existing chemicals legislation such as Regulation (EC) No 1223/2009 already ensure communication on hazards to health or the environment posed by certain substances of concern on their own or in a mixture. Users of substances and mixtures should also be informed about pertinent **■** information **■** . Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive **relevant** information, including information primarily related to chemicals' hazards to health or the environment. Therefore, this Regulation should allow for the setting of requirements related to the tracking and communication of sustainability information, including the presence of substances of concern in products throughout their life cycle, including with a view to their decontamination and recovery when they become waste. Such a framework should aim to progressively cover **the** substances of concern in all products listed in working plans. ***Such requirements on the tracking of substances of concern should by default be included where an information requirement is to be set under this Regulation, except when this information requirement is part of horizontal ecodesign requirements. In order to take into account the criteria to be met by ecodesign requirements, and in particular to avoid disproportionate administrative burdens on economic operators, the Commission should be able, as appropriate for the product group concerned, set thresholds on the concentration of substances in the product or relevant components triggering the tracking requirement, set differentiated application deadlines and, in duly justified cases, provide exemptions from the tracking requirement. When setting the detail of information required and thresholds, the Commission should take into consideration existing information requirements and thresholds under union law, in particular under Regulation (EU) 1272/2008 and Regulation (EU) 1907/2006, and other product sectoral legislation. An exemption based on technical feasibility may apply in cases where the***

presence of a substance in a product cannot be verified with the current available technologies.

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- (26) The information requirements set under this Regulation should include the requirement to make available a product passport. The product passport is an important tool for making information available to actors along the entire value chain and the availability of a product passport should significantly enhance *end- to-end* traceability of a product throughout its value chain. Among other things, the product passport should help *customers* make informed choices by improving their access to ■ relevant *information*, allow economic operators *and* other value chain actors, such as *professional* repairers, *independent operators, refurbishers* or recyclers to access relevant information ■ and enable competent national authorities to perform their duties, *without endangering the protection of confidential business information*. To this end, *it is important that the product passport is user-friendly and that the information contained therein is accurate, complete, and up to date*. The product passport should not replace, but complement non-digital forms of transmitting information, such as information in the product manual or *the* label. In addition, it should be possible for the product passport to be used for information on other sustainability aspects applicable to the relevant product group pursuant to other Union legislation.

(27) To take account of the nature of the product and its market, the information to be included in the product passport should be carefully examined on a case-by-case basis when preparing product-specific rules. To optimise access to the resulting information while also protecting intellectual property rights, the product passport needs to be designed and implemented allowing differentiated access to the information included in the product passport depending on the type of information and the typology of stakeholders. Similarly, to avoid costs to companies and the public that are disproportionate to the wider benefits, the product passport should be specific to the item, batch or product model, depending on for example the complexity of the value chain, the size, nature or impacts of the products considered.

The impact assessment carried out when preparing delegated act setting ecodesign requirements should analyse the costs and benefits of setting information requirements through product passports at model, batch or item level. A ‘model’ usually means a version of a product of which all units share the same technical characteristics relevant for the ecodesign requirements and the same model identifier, a ‘batch’ usually means a subset of a specific model composed of all products produced in a specific manufacturing plant at a specific moment in time and an ‘item’ usually means a single unit of a model. The impact assessment should also, to the extent that the product passport relies on standards which are not free of charge, consider whether this is suitable and how disproportionate costs for SMEs can be avoided .

(27a) Given that Union law establishes information requirements for products and sets up systems to make this information available to economic operators and customers, the Commission should consider linking information requirements under this Regulation to other existing information requirements under Union law, such as the obligation to provide safety data sheets for substances and mixtures according to Regulation (EC) No 1907/2006. When feasible, the Commission should also link the product passport to existing Union databases and tools such as EPREL or SCIP.

- (28) In order to ensure interoperability, the types of permitted data carriers should be specified. For the same reason, the data carrier and the unique product identifier should be released in accordance with internationally recognised standards. The ***data should be transferable through an open interoperable data exchange network without vendor lock-in.*** The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend this Regulation by replacing or adding standards in accordance with which the data carrier and the unique identifiers may be released, in light of technical or scientific progress. This should ensure that the information contained in the product passport can be recorded and transmitted by all economic operators, as well as to guarantee the compatibility of the unique identifier with external components such as scanning devices.
- (29) In order to not unnecessarily delay the establishment of ecodesign requirements other than on the product passport or to ensure that product passports can be effectively implemented, the Commission should be allowed to exempt product groups from the product passport requirements in case technical specifications are not available in relation to the essential requirements for the technical design and operation of the product passport. Similarly, in order to prevent unnecessary administrative burden for economic ***operators***, the Commission should be allowed to exempt product groups from the product passport requirements in case other Union law already includes a system for the digital provision of product information allowing actors along the value chain to access relevant product information and facilitating the verification of product compliance by competent national authorities. These exemptions should be periodically reviewed taking into account further availability of technical specifications.

- (30) Unique identification of products is a fundamental element to enable traceability across the supply chain. Therefore, the product passport should be linked to a unique product identifier. In addition, where appropriate, the passport should allow for the tracing of the actors and manufacturing facilities related to that product. In order to ensure interoperability, the **data carrier, the** unique operator identifiers and **the** unique facility identifiers enabling traceability should be released in accordance with internationally recognised standards. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend this Regulation by replacing or adding standards in accordance with which **the data carrier, unique operator identifiers and the** unique facility identifiers may be released, in light of technical or scientific progress. ***This should ensure that the information contained in the product passport can be recorded and transmitted by all the economic operators, as well as to guarantee the compatibility of the unique identifier with external components such as scanning devices.***
- (31) Digitalised information about the product and its life cycle or, where applicable, its passport should be easily accessible by scanning a data carrier, such as a watermark or a quick response (QR) code. Where possible, the data carrier should be on the product itself to ensure the information remains accessible throughout its life cycle. However, **exemptions** are possible depending on the nature, size or use of the products concerned.
- (32) To ensure that the product passport is flexible, agile and market-driven and evolving in line with business models, markets and innovation, it should be based on a decentralised data system, set up and maintained by economic operators. However, for enforcement and monitoring purposes, it may be necessary that competent national authorities and the Commission have direct access to a record of all data carriers and unique identifiers linked to products placed on the market or put in service.

(33) To ensure the effective roll-out of the product passport, technical design, data requirements and operation of the product passport should adhere to a set of essential technical requirements. Such requirements should provide a basis for the consistent deployment of the product passport across sectors. Technical specifications should be established to ensure the effective implementation of those essential requirements, either in the form of harmonised standard referenced in the Official Journal or, as a fall-back option, common specification adopted by the Commission *via implementing acts*. The technical design should ensure that the product passport carries data in a secure way, respecting privacy rules. The digital product passport will be developed in an open dialogue with international partners, in order to take account of their views when developing technical specifications and to ensure that they help remove trade barriers for greener products *with extended lifecycles and circularity, lowering* costs for sustainable investments, marketing, *compliance, and supporting innovation*. Technical specifications and requirements related to traceability across the value chain should, in order to allow for their effective implementation, to the extent possible be developed based on a consensual approach and on the involvement, buy-in, and effective collaboration of a diverse set of actors, including standardisation bodies, industry associations, *start-ups*, consumer organisations, experts, NGOs and international partners, including developing economies.

(33a) In order to ensure uniform conditions for the implementation of this regulation, implementing powers should be conferred to the Commission to establish procedures to issue and verify the digital credentials for access to the information stored in the digital passport by economic operators and other relevant actors according to their respective rights. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by clearly defining the role and responsibilities of the different actors such as issuing agencies and service providers that will be involved in the creation, authentication, processing, storing of information, and possibly withdrawal of important elements of the digital product passport, like identifiers and data carriers. The Commission may, to that extent, carry out an impact assessment to investigate the opportunity of developing a certification scheme for digital product passport service providers.

- (34) In order to improve enforcement of ecodesign requirements, it is necessary that national authorities and the Commission have direct access to a record of all data carriers and unique identifiers linked to products placed on the market or put in service. To this end, the Commission should set up and maintain a product passport registry to store such data. Where needed to further facilitate enforcement, the Commission should, as appropriate, specify other information included in the product passport that needs to be stored in the registry.
- (34a) The Commission should set up and maintain a user-friendly and publicly available web portal where stakeholders such as customers, economic operators and other relevant actors can have access to information included in the product passports and the possibility to search and compare that information in line with their respective access rights specified in the delegated acts setting ecodesign requirements. The web portal should link to information already stored by the economic operator in its decentralised product passport.***
- (35) Any processing of personal data pursuant to this Regulation should comply with the applicable rules on the protection of personal data. Processing of personal data by the competent national authorities within Member States should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ***1 with particular attention being paid to the principles of data protection by design and by default. Any processing of personal data by the Commission in particular when setting the digital registry storing the unique identifiers under the present Regulation,*** should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the ***Council2. Personal data of customers should not be stored in the digital product passport.***

- (36) Effective enforcement in relation to products placed on the Union market, whether domestically produced or imported, is essential for achieving the aims of this Regulation. Therefore, where the Commission has set up a registry, customs authorities should have direct access to it via the EU Single Window Environment for Customs set up by Regulation (EU) .../.... The role of customs should be to ensure that the reference of a product passport is made available in the customs declaration and that ***the relevant information of the customs declaration corresponds to the information*** that is stored in the registry. This would allow the verification by customs that a product passport exists for imported products. ***Where appropriate, the Commission should lay down in its implementing act on the registry the necessary obligations for economic operators to keep the information stored in the registry up to date.***
- (37) █
- (38) The information included in the product passport can allow customs authorities to enrich and facilitate risk management and enable the better targeting of controls at the border. Therefore, customs authorities should be able to retrieve and use the information included in the product passport and the related registry for carrying out their tasks in accordance with Union legislation including for risk management in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council¹⁸.

¹⁸ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (39) To drive consumers towards **■** sustainable choices, labels should, when required by the delegated acts adopted pursuant to this Regulation, provide ***clear and easily understandable*** information allowing for the effective comparison of products, for instance by indicating classes of performance. Specifically for consumers, physical labels can be an additional source of information at the place of sale. They can provide a quick visual basis for consumers to distinguish between products based on their performance in relation to a specific product parameter or set of product parameters. They should, where appropriate, also allow for the accessing of additional information by bearing specific references like website addresses, dynamic QR codes, links to online labels or any appropriate consumer-oriented means. The Commission should set out in the relevant delegated act the most effective way of displaying such labels, including in the case of online distance selling, taking into account the implications for customers and economic operators and the characteristics of the products concerned. The Commission may also require the label to be printed on the packaging of the product.
- (40) Regulation (EU) 2017/1369 setting a framework on energy labelling applies, in parallel to this Regulation, to energy-related products. **■** Energy labels are ***a successful*** instrument providing the appropriate information to consumers for energy-related products and that classes of performance determined under this Regulation should, where appropriate, be incorporated in the label as supplementary information as provided for in Article 16 of Regulation (EU) 2017/1369. In cases where relevant information on a product's performance in relation to a product parameter cannot be included as supplementary information in the energy label established for the energy-related product pursuant to Regulation (EU) 2017/1369, the Commission should, ***if appropriate, be able to require the establishment of a label in accordance with this Regulation instead of the energy label where the relevant information on the energy label may be so incorporated.***

- (41) Consumers should be protected from misleading information that could hamper their choices for more sustainable products. For *those* reasons it should be prohibited to place on the market products bearing *or being accompanied with* a label mimicking the labels provided for in this Regulation *or if they are accompanied by other information likely to mislead or confuse customers with respect to these labels. However, the EU Ecolabel or other nationally or regionally officially recognised EN ISO 14024 type I ecolabels may continue to be provided or displayed where the criteria developed under those labels are at least as strict as the ecodesign requirements.*

(42) To deliver in the most efficient way on the European Green Deal’s objectives and to address the most impactful products first, the Commission should carry out a prioritisation of products to be regulated under this Regulation and requirements that will apply to them. Based on the process followed for prioritisation under Directive 2009/125/EC, the Commission should adopt a working plan, covering at least 3 years, laying down a list of product groups for which it plans to adopt delegated acts as well as the product aspects for which it intends to adopt delegated acts of horizontal application. The Commission should base its prioritisation on a set of criteria pertaining in particular to the delegated acts’ potential contribution to the Union climate, environmental and energy objectives and their potential for improving the product aspects selected without disproportionate costs to the public and economic operators. Considering their importance for meeting the Union’s energy objectives, the working plans should include an adequate share of actions related to energy-related products. Member States and stakeholders should also be consulted through the Ecodesign Forum. Due to the complementarities between this Regulation and Regulation (EU) 2017/1369 for energy-related products, the timelines for the working plan under this Regulation and the one provided for under Article 15 of Regulation (EU) 2017/1369 should be aligned. *When prioritising intermediate products, the Commission should also take into account the consequences on final products that are made of those intermediate product. Considering their importance for meeting the Union’s energy objectives, the working plans should include an adequate share of actions related to energy-related products. Vehicles as referred to in Article 2(1) of Regulation (EU) 2018/858, Regulation (EU) No 167/2013 and Regulation (EU) No 168/2013 are already subject to comprehensive provisions, including specific environmental requirements and should therefore not be prioritised for the establishment of ecodesign requirements. For the first working plan the Commission should prioritise iron, steel, aluminium, textiles, notably garments and footwear, furniture, including mattresses, tyres, detergents, paints, lubricants, chemicals, ICT products and other electronics and energy related products needing to be revised or newly defined. The Commission should provide an appropriate justification in case it decides to modify that list.*

- (42a) The cement industry, as one of the most energy-, material- and carbon- intensive sectors, is currently responsible for around 7% of global and 4% of EU CO₂ emissions, which makes it a key sector for alignment with the Paris climate agreement and the Union's climate objectives as quickly as possible. While construction products, including cement, are to be covered under [the forthcoming Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (2022/0094 COD)], they remain under the scope of this Regulation. To avoid a lack of product requirements urgently needed to reach our climate and environment objectives, any absence of adequate performance and information requirements for these products under [the forthcoming Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (2022/0094 COD)] the Commission, should adopt delegated act establishing ecodesign requirements on cement not earlier than 31 December 2028 and by 1 January 2030.***
- (43) In addressing construction products, this Regulation should set requirements on final products only when the obligations created by [the revised Construction Products Regulation] and its implementation are unlikely to sufficiently achieve the environmental sustainability objectives pursued by this Regulation. In addition, when formulating working plans, the Commission should take into account that, in continuation of current practice, [the revised Construction Products Regulation] will, in relation to energy-related products that are also construction products, give prevalence to sustainability requirements set under this Regulation. This should be the case for instance for heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products (excluding building-integrated photovoltaic panels). For these products, [the revised Construction Products Regulation] may intervene in a complementary manner where needed, mainly in relation to safety aspects, also taking account of other Union legislation on products such as on gas appliances, low voltage, and machinery.

(43a) In order to ensure proper consultation of all interested parties, the Commission should establish an Ecodesign Forum, composed of experts designated by Member States and other interested parties, including industry, trade unions, consumer and environmental organisations as well as researchers. Within the Ecodesign Forum, the Commission should establish a Member States Expert Group, which should contribute to preparing new ecodesign requirements, to assessing self-regulation measures, to the exchange of information and best practices between Member States on measures to enhance compliance with this Regulation, such as education and information campaigns or support to SMEs, as well as to setting priorities and to planning.

(44) In order to encourage self-regulation as a valid alternative to regulatory approaches, this Regulation should, in continuation of Directive 2009/125/EC, include the possibility for industry to submit self-regulation measures *when those products or product groups are not included in the ecodesign working plan. Self-regulation measures should be aligned with the objectives of this Regulation.* The Commission should assess the *self-regulation* measures proposed by industry, along with the information and evidence submitted by the signatories, including in light of the international trade commitments of the Union and the need to ensure coherence with Union law. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt and update an act listing the self-regulation measures *which fulfil the criteria of this Regulation.* It is also appropriate, for instance in view of relevant market or technological developments within the product group concerned, that the Commission be able to request a revised version of the self-regulation measure whenever considered necessary. Once a self-regulation measure is listed in an implementing act, there is a legitimate expectation for economic operators that the Commission will *first consider the content of such a measure before proposing* a delegated act establishing ecodesign requirements for this specific product group. However, it is not excluded that the Commission may adopt ecodesign requirements also applying to *some or all of* the products covered by a recognised self-regulation measure for the product aspects not addressed by that self-regulation measure. Where the Commission considers that a self-regulation measure no longer fulfils the criteria set in this Regulation, it should remove that self-regulation from the implementing act listing the recognised self-regulation measures. Consequently, ecodesign requirements may then be established for the product groups previously addressed by the self-regulation measure, in accordance with this Regulation.

(45) Micro, small and medium-sized enterprises (SMEs) could greatly benefit from an increase in the demand for sustainable products but could also face costs and difficulties with some of the requirements. ***The Commission should, when preparing ecodesign requirements under this Regulation, take into account the impact of the requirements on SMEs, in particular to micro enterprises, active in the relevant product sector. The*** Member States and the Commission should, in their respective areas of responsibility, provide adequate information ***including guidance***, ensure targeted and specialised training, and provide specific assistance and support, including financial, to SMEs active in the manufacturing of products for which ecodesign requirements are set. Those actions ***are particularly important for product groups where the presence of SMEs is relevant and*** should, for example, cover the calculation of the product environmental footprint and the technical implementation of the product passport. ***The Commission should provide financial support to SMEs representatives, in particular those of microenterprises, to enable their effective participation in the Ecodesign Forum. The Commission should furthermore provide easily accessible information to SMEs on available financial support and programmes.*** Member States actions should be taken in respect of applicable State aid rules. ***While developing and implementing those measures, Member States can rely on the support provided by European programmes and initiatives for SMEs.***

- (46) The destruction of unsold consumer products, such as textiles and footwear, by economic operators is becoming a widespread environmental problem across the Union, in particular due to the rapid growth of online sales. It amounts to a loss of valuable economic resources as goods are produced, transported and afterwards destroyed without ever being used for their intended purpose. It is therefore necessary, in the interest of environmental protection, that this Regulation establishes a framework to prevent the destruction of unsold products primarily intended for consumers pursuant to Directive (EU) 2019/771 of the European Parliament and of the Council¹, including products that have ***not been offered for sale or products*** returned by a consumer in view of their right of withdrawal as laid down by Directive (EU) 2011/83/EU of the European Parliament and of the Council² ***or during any longer withdrawal period provided by the trader. The concept of destruction as outlined in this Regulation should cover the last three activities on the waste hierarchy as defined in Directive 2008/98/EC: recycling, other recovery and disposal. Preparation for re-use, refurbishing and remanufacturing should not be considered destruction. Preventing destruction*** will reduce the environmental impact of those products by reducing the generation of waste and by dis-incentivising overproduction of products. In addition, given that several Member States have introduced national legislation on the destruction of unsold consumer products thereby creating market distortions, harmonised rules on the destruction of unsold consumer products are necessary to ensure that distributors, retailers and other economic operators are subject to the same rules and incentives across Member States.
- (46a) ***Economic operators should take necessary measures to prevent the need to destroy unsold consumer products.***

(47) To dis-incentivise the destruction of unsold consumer products and to further generate data on the occurrence of this practice, this Regulation should introduce a transparency obligation for economic operators holding consumer products in the Union, *with the exception of small and microenterprises*, requiring them to disclose information on the number *and weight* of unsold consumer products discarded per year *at least on an easily accessible page of their website and, where applicable, they may also include this information in their management reports pursuant to Directive 2013/34/EU. The obligation should start applying to medium-sized enterprises 6 years after the entry into force of this Regulation. The economic operator should indicate the product type or category, the reasons for their discarding and their delivery for subsequent waste treatment operations as well as measures taken to prevent the destruction of unsold consumer products.*

(47a) *The unnecessarily high production volumes and short use phase of textiles, of which clothing comprises the largest share of consumption in the EU, cause significant environmental impact as described in the Communication of the Commission “EU Strategy for Sustainable and Circular Textiles”.¹ Newly produced but unsold textiles and especially clothing are among the items reportedly being destroyed. Clothing should be valued higher, worn, and cared for more than what today’s fast fashion culture entails. From a circular economy perspective, such wasting of valuable resources is in clear contradiction to the objectives of this Regulation of improving the environmental sustainability. It is therefore justified to prohibit the destruction of unsold consumer apparel and clothing accessories as well as footwear.*

(47b) *delete*

(48) In order to ***take account of the environmental impact of*** the destruction of ***other types of unsold consumer products***, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to ***amend*** this Regulation by ***adding new product groups or categories to this prohibition***. Given the wide range of products that may potentially be destroyed without ever being sold or used, it is necessary ***that*** the Commission ***assess*** the extent to which the destruction of such products takes place in practice, taking into account the information made available by economic operators where appropriate. To ensure that this obligation is proportionate, the ***power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by setting out*** specific exemptions under which destroying unsold consumer products may still be permitted, for instance in view of health and safety concerns. To monitor the effectiveness of this prohibition and to dis-incentivise circumvention, economic operators should be required to disclose the number ***and weight*** of unsold consumer products destroyed and the reasons for their destruction under applicable exemptions. Finally, to avoid any undue administrative burden on ***small and micro enterprises***, they should be exempted from the ***from the prohibition to destroy specific products groups set in this Regulation***. The prohibition ***should start applying to medium-sized enterprises 6 years after the entry into force of this Regulation***. However, where there is reasonable evidence that ***micro and small enterprises*** may be used to circumvent ***this prohibition***, the Commission should be able to require, in ***the*** delegated acts, for some product groups, that ***the prohibition to destroy unsold consumer products or the disclosure obligation should apply to those*** enterprises.

(48aa) Member States should not be precluded from introducing or maintaining national measures as regards destruction of unsold consumer products for products which are not subject to the prohibition under this Regulation, provided that such measures are in line with the Union law.

- (48a) *Based on the information disclosed by economic operators and other available evidence, the Commission should publish, on its website, consolidated information on the destruction of unsold consumer products and should identify in the working plan the product groups for which the prohibition of destruction should be considered. Electrical and electronic equipment should be considered for inclusion in the first working plan.*
- (49) Economic operators should be responsible for products' compliance with the ecodesign requirements under this Regulation, in relation to their respective roles in the supply chain, so as to ensure those products' free movement on the internal market and to improve their sustainability. Economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market products that are in conformity with this Regulation and the delegated acts adopted pursuant to it.
- (50) The manufacturer, having detailed knowledge of the design and production process, is *responsible for carrying out* the conformity assessment procedure *applicable or having it carried out on their behalf*.
- (51) In order to safeguard the functioning of the internal market, it is necessary to ensure that products from third countries entering the Union market comply with this Regulation and the delegated acts adopted pursuant to it, whether imported as products, components, or intermediate products. In particular, it is necessary to ensure that appropriate conformity assessment procedures have been carried out by manufacturers with regard to those products. Provision should therefore be made for importers to ensure that the products they place on the market comply with those requirements and that the CE marking and documentation drawn up by manufacturers are available for inspection by the competent national authorities. Provision should also be made for importers to ensure, where applicable, that a product passport is available for those products.

- (52) When placing a product on the *market*, every importer should indicate on the product their name, registered trade name or registered trade mark as well as their postal address and **■** electronic means of communication through which it can be contacted. Exceptions should be provided for in cases where the size of the product does not allow for such indications. This includes cases where the importer would have to open the packaging to put the name and address on the product or where the product is too small in size to affix this information **■**
- (53) As the distributor makes a product available on the market after it has been placed there by the manufacturer or importer, it should act with due care in relation to the applicable ecodesign requirements. The distributor should also ensure that its handling of the product does not adversely affect its compliance with the requirements of this Regulation or the delegated acts adopted pursuant to it.
- (54) As distributors and importers are close to the marketplace and have an important role in ensuring product compliance, *they* should be involved in market surveillance tasks carried out by the competent national authorities, and *they* should be prepared to participate actively, providing those authorities with all necessary information relating to the product concerned.
- (55) As the dealer offers a product for sale, hire or hire purchase, or displays products to customers or installers, it is necessary for the dealer to ensure that its customers, *including potential customers*, can effectively access the information required under this Regulation, including in the case of distance selling. In particular, this Regulation should require dealers to ensure that the product passport is accessible to their customers, *including potential customers*, and that labels are clearly displayed, in line with the applicable requirements. The dealer should comply with this obligation every time the product is offered for hire.

- (56) To facilitate the choice of more sustainable products, labels, where required, should be displayed in a clearly visible and identifiable way. They should be identifiable as the label belonging to the product in question, without the customer having to read the brand name and model number on the label. Labels should attract the attention of the customer browsing through the products displayed. To ensure that the label is accessible to customers when considering a purchase, both the dealer and the responsible economic operator should display the label whenever advertising the product, also in cases of distance selling, including online.
- (57) Any importer or distributor that either places on the market a product covered by a delegated act adopted pursuant to this Regulation under the importer's or distributor's own name or trademark, or modifies such a product *before it has been put into service* in such a way that compliance with this Regulation or with the relevant delegated act might be affected, should be considered to be the manufacturer and should assume the manufacturer's obligations.

(58) Online marketplaces play a crucial role in the supply chain, allowing economic operators to reach a large number of customers. Given their important role in intermediating the sale of products between economic operators and customers, online marketplaces should take responsibility for addressing the sale of products that do not comply with ecodesign requirements and should cooperate with market surveillance authorities. Directive 2000/31/EC of the European Parliament and of the Council¹⁹ provides the general framework for e-commerce and lays down certain obligations for online platforms. Regulation **■ (EU) 2022/2065**²⁰ regulates the responsibility and accountability of providers of intermediary services online with regard to illegal content, including products that do not comply with ecodesign requirements. Building on this general framework, specific requirements to effectively address the sale of non-compliant products online should be brought in.

¹⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

²⁰ **Regulation (EU) 2022/2065** of the European Parliament and of the Council **of 19 October 2022** on a Single Market For Digital Services **and amending Directive 2000/31/EC** (Digital Services Act) [OJ L 277, 27.10.2022, p. 1].

(59) It is essential that online marketplaces cooperate closely with the market surveillance authorities. An obligation of cooperation with market surveillance authorities is imposed on information society service providers under Article 7(2) of Regulation (EU) 2019/1020 of the European Parliament and of the Council¹ in relation to products covered by that Regulation, including products for which ecodesign requirements are set. ***For this purpose, the general obligations as laid down under Chapter IV of Regulation (EU) 2022/2065 should apply, in particular the obligation related to compliance by design for providers of online marketplaces in Article 31 of Regulation (EU) 2022/2065. In view of providing the information required by Article 25 and 30(1) of this Regulation, providers of online marketplaces should make use at least of the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. Online marketplaces should also cooperate with market surveillance authorities to tackle illegal content related to non-compliant products. Actions within the framework of this cooperation should include the establishment of regular and structured exchange of information on action taken by online marketplaces, including removal of offers. Online marketplaces should also grant access to their interfaces to help market surveillance authorities to identify non-compliant products sold online.*** Moreover, market surveillance authorities may also need to scrape data from the online marketplaces.

1. Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L169, 25.6.2019, p. 1).

1a. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

- (60) Article **14** of Regulation (EU) 2019/1020 provides market surveillance authorities with the power, where no other effective means are available to eliminate a serious risk, to require the removal of content referring to non-compliant products from an online interface **■** . The powers entrusted to market surveillance authorities by Article **14** of Regulation (EU) 2019/1020 also apply to this Regulation. However, for effective market surveillance under this Regulation and to avoid non-compliant products being present on the Union market, this power should apply in all necessary and proportionate cases, including for products presenting a less than serious risk. This power should be exercised in accordance with [Article **9**] of **Regulation (EU) 2022/2065**
- (61) Ensuring a product's traceability throughout the whole supply chain facilitates the market surveillance authorities' task of tracing economic operators who placed on the market or made available on the market non-compliant products. The economic operators should therefore be required to keep the information on their transactions for a certain period of time.
- (62) To speed up and facilitate the verification of compliance of products placed on the market, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring responsible economic operators, where necessary, to make specific parts of the technical documentation digitally available both to competent **national** authorities and to the Commission. This should allow competent national authorities to access this information without request, while continuing to guarantee the protection of trade secrets **and intellectual property rights**. Possible means of making this information digitally available should in principle include a product passport, or via inclusion in the compliance part of the product database referred to in Regulation (EU) 2017/1369, or on a website of the economic operator. Such an obligation should not take away from the competent national authorities' right to access other parts of the technical documentation on request.

(63) In order to allow for a better estimation of relevant products' market penetration, to better inform studies feeding into the drafting or updating of ecodesign requirement and working plans, and to help identify the market share of specific product groups in order to speed up the formulation or review of ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring the collection of adequate and reliable data on the sales of products, by allowing the collection of such data by or on behalf of the Commission directly from manufacturers or retailers. When adopting rules on monitoring and reporting, the Commission should take into account the need to maximise the available data on market penetration and the need to minimise the administrative burden for economic operators *especially for SMEs*.

(64) In order to improve future ecodesign requirements and improve end-users confidence identifying and correcting deviations between energy in-use and other performance parameters when measured under test conditions and actual functioning, the Commission should have access to ***non-personal data information about*** products' actual energy consumption while in use and where relevant to other performance parameters. To that end, the power to adopt ***delegated acts*** should be delegated to the Commission to supplement this Regulation by requiring individual products, similarly to road vehicles, to determine their in-use energy consumption and other relevant performance parameters and display it to the end-user. For products connected to the internet, the power to adopt ***delegated acts*** should be delegated to the Commission to supplement this Regulation by requiring economic operators to remotely collect ***non personal*** in-use data and report it to the Commission, as it is essential to identify how the products perform and to inform the public. For products whose in use performance depends significantly also on climatic or geographical conditions, ***general*** climatic or geographical information ***in a way that does not allow to determine the specific location of individuals appliances***, should also be collected, and reported. ***End-users should expressly agree to the collection of information what they consider it is appropriate to share. Collection of information about appliances' behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place or which could provide or which could allow the identification of individuals or the inference of their behaviors should not be allowed.***

- (64a) In order to help facilitate the verification of compliance with the ecodesign requirements, including to facilitate conformity assessment and market surveillance, the Commission should be empowered to require, where duly justified, that supply chain actors provide, free of charge, information on their supplies like quantity and type or chemical composition of materials used or production process employed, or information on the conditions of the provisions of their services. It should also be possible to allow manufacturers to have access to the documents relating such information or to the actual facilities of the supply chain actors to be able to access directly and by themselves the needed information if they do not provide the information requested within a reasonable time. The Commission should also be empowered to enable notified bodies and national authorities to verify the correctness of the information related to the activities of the supply chain actors.*
- (65) In order to ensure the effective and harmonised application of ecodesign requirements set under this Regulation, including on aspects such as energy use or efficiency, durability and reliability, and recycled content, compliance with those requirements should be measured using reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art methods. Delegated acts establishing ecodesign requirements for products should in principle include the specifications for tests, measurements or calculations needed to establish or verify compliance. In addition, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring the use of **digital** tools reflecting applicable calculation requirements, in order to ensure their harmonised application.
- (66) In order to ensure that ecodesign requirements achieve their intended effects, this Regulation should set out comprehensive and overarching provisions, applicable to all products covered by ecodesign requirements, prohibiting circumvention of such requirements. Therefore, any practice leading to an unjustified alteration of the product's performance during compliance testing or within a short period after putting the product into service, leading to a declared performance that misrepresents the product's actual performance while in use should be prohibited.

(67) Where appropriate, delegated acts establishing ecodesign requirements for products may refer to the use of standards to establish or verify compliance. In order to ensure that there are no barriers to trade on the internal market, such standards should be harmonised at Union level. Once a reference to such a standard has been adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council²¹ and published in the Official Journal of the European Union, products in conformity with such standards, for which ecodesign requirements have been adopted pursuant to this Regulation, should be considered in conformity with those requirements to the extent that they are covered by the relevant harmonised standards. Similarly, methods for tests, measurement or calculation that are in conformity with harmonised standards should be considered in conformity with the test, measurement and calculation requirements set out in the relevant delegated acts laying down ecodesign requirements, to the extent that they are covered by the relevant harmonised standards.

²¹ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

(68) *The current Union standardisation framework which is based on the principles of the so-called ‘New Approach’ and on Regulation (EU) 1025/2012 represents the framework to elaborate standards that provide a presumption of conformity with the relevant requirements set out in this Regulation.* In the absence of *relevant references to* harmonised standards, recourse to common specifications, *via the adoption of implementing acts*, should be used as *an exceptional* fall-back solution to facilitate the manufacturer’s obligation to comply with ecodesign requirements, for instance when the standardisation process is blocked due to lack of consensus between stakeholders or where there are undue delays in establishing a harmonised standard *and the prescribed deadline cannot be respected*. Such delays could for example occur when the required quality is not reached. In addition, recourse to this solution should be possible where the Commission has restricted or withdrawn the references to relevant harmonised standards in line with Article 11(5) of Regulation (EU) No 1025/2012. Compliance with common specifications should also give rise to the presumption of conformity. *In order to ensure efficiency, the Commission should involve relevant stakeholders in the process of establishing the common specifications that cover the ecodesign requirements of this Regulation.*

- (69) In order to enable economic operators to demonstrate, and competent authorities to verify, that products made available on the market comply with the ecodesign requirements adopted pursuant to this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by laying down conformity assessment procedures appropriate and proportionate to the nature of the product concerned and of the product parameters regulated. To ensure coherence with other Union law, the conformity assessment procedures should be chosen from among the internal production control module included in this Regulation and the modules included in Decision No 768/2008/EC of the European Parliament and of the Council²², ranging from the least stringent to the most stringent depending. To further ensure that the applicable module is appropriate and proportionate to the nature of the product concerned and of the product parameters regulated, the Commission should where needed adapt the module chosen in light of that nature.
- (70) Manufacturers should draw up an EU declaration of conformity to provide information on the conformity of products with this Regulation. Manufacturers may also be required by other Union legislation to draw up an EU declaration of conformity. To ensure effective access to information for market surveillance purposes, a single EU declaration of conformity should be drawn up in respect of all Union acts. To reduce the administrative burden on economic operators, it should be possible for that single EU declaration of conformity to be a dossier made up of relevant individual declarations of conformity.

²² Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

- (71) Regulation (EC) No 765/2008 of the European Parliament and of the Council¹⁷ lays down rules on the accreditation of conformity assessment bodies, ■ lays down the general principles of the CE marking. That Regulation should be applicable to products covered by this Regulation in order to ensure that products benefiting from the free movement of goods within the Union fulfil requirements providing a high level of protection of public interests such as human health, safety and the environment. Where ecodesign requirements have been adopted for a product, the CE marking should indicate that product's conformity with this Regulation and the ecodesign requirements adopted pursuant to it, insofar as they relate to the product. General principles governing the CE marking and its relationship to other markings are set out in Regulation (EC) No 765/2008. Considering that this Regulation provides for the setting of ecodesign requirements for a large range of products, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to *set out* rules on conformity marking in relation to ecodesign requirements in order to ensure coherence with requirements under Union law applicable to the products covered, prevent confusion with other *markings* and minimise administrative burden for economic operators.
- (72) Some of the conformity assessment modules laid down in Decision No 768/2008/EC require the intervention of conformity assessment bodies. In order to ensure uniform conditions for the implementation of this Regulation, those bodies should be notified to the Commission by Member State authorities.

- (73) To ensure a consistent level of quality in the performance of conformity assessment, it is necessary to set requirements for notifying authorities involved in the assessment, notification and monitoring of notified bodies. In particular, it should be ensured that the notifying authority is objective and impartial with regard to its activity. Furthermore, notifying authorities should be required to safeguard the confidentiality of the information they obtain, but should nonetheless be able to exchange information on notified bodies with national authorities, the notifying authorities of other Member States and the Commission to ensure consistency in the conformity assessment. To effectively establish and monitor the competence and independence of applicant bodies, notifying authorities should take as a basis for notification only the precise legal body applying, not taking into account the credentials of parent or sister companies. For the same reason, they should assess applicant bodies against all relevant requirements and conformity assessment tasks, relying on harmonised standards for the requirements and tasks covered by those standards.
- (74) Given their central role in ensuring the reliability of conformity assessments in relation to ecodesign requirements, it is essential that notifying authorities have a sufficient number of competent personnel and sufficient funding at their disposal for the proper performance of their tasks. ■
- (75) It is essential that all notified bodies perform their functions to the same level and under conditions of equal competition and autonomy. Therefore, requirements should be set for conformity assessment bodies wishing to obtain the status of notified body in order to provide conformity assessment activities. Those requirements should continue to apply to maintain the competence of the notified body. To ensure its autonomy, the notified body and the staff it employs should be required to maintain independence from economic operators in the value chain of the products in relation to which it has been notified and from other companies, including business associations and parent companies and subsidiaries.
- (76) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards it should be presumed to comply with the corresponding requirements set out in this Regulation.

- (77) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. To ensure that products placed on the Union market comply with ecodesign requirements, conformity assessment subcontractors and subsidiaries should fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks under this Regulation. ***To ensure this is the case, relevant notified bodies should establish procedures for the on-going monitoring of the competence, activities and performance of its subcontractors or subsidiaries, such as through a qualification matrix.***
- (78) In order for notifying authorities to effectively establish and monitor the competence and independence of applicant bodies, those bodies should be and remain autonomous. Therefore, certain activities and decision-making processes, both regarding the conformity assessment of products and other activities internal to the notified body, should exclusively be carried out by the individual notified body itself.
- (79) To facilitate the process of establishing and monitoring the competence and independence of applicant bodies, applicant bodies should ***provide a description of how relevant personnel, their status and tasks correspond to the conformity assessment, tasks in relation to which the body intends to be notified, such as in the form of a qualification matrix***, enabling the notifying authority to more effectively assess the adequacy of staffing and the continued autonomy of the notified body. ***Notified bodies should ensure rotation among the personnel carrying out different conformity assessment tasks.***
- (80) Since the services offered by notified bodies in a Member State might relate to products made available on the market throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. ■

- (81) In the interests of facilitating and accelerating the conformity assessment procedure, and to ensure equal treatment of economic operators, it is crucial that the notified bodies apply the conformity assessment procedures consistently and without creating unnecessary burdens for economic operators.
- (82) Prior to taking a final decision on whether a product can be granted a conformity certificate, the economic operator that wishes to place that product on the market should be allowed to supplement the relevant documentation once only. This limitation is necessary to ensure that notified bodies are not able to assist manufacturers in making changes until conformity is reached, as that would mean that the service provided resembles a consulting service and could in practice dilute the public interest nature of notified bodies' tasks. Where appropriate, notified bodies should also be able to restrict, suspend or withdraw any certificates or approval decisions.
- (83) To facilitate the identification and resolution of cases of non-conformity of notified bodies, manufacturers or products, notified bodies should proactively forward relevant information at their disposal to notifying authorities or market surveillance authorities.
- (84) It is essential to ensure efficient exchange of information between notified bodies and market surveillance authorities, including from other Member States. To that end, it is necessary for notifying authorities and notified bodies to ensure follow-up to requests for information from market surveillance authorities.
- (85) The Commission should enable appropriate coordination and cooperation between notified bodies. To ensure harmonised application of ecodesign requirements, notified bodies should discuss and coordinate on topics of possible divergence. In that process, they should take ***into account the relevant guidance and recommendation issued by the competent technical committees of the European standardisation bodies.***

(86) In order to incentivise consumers to make sustainable choices, in particular when the more sustainable products are not affordable enough, mechanisms such as eco-vouchers and green taxation should be provided for. When Member States decide to make use of incentives to reward the best-performing products **■** , they should do so by targeting those incentives at the highest two populated classes of performance *that were set* by the **■** delegated *acts pursuant to this Regulation, not necessarily taken cumulatively, in case classes of performance would be set in relation to more than one parameter. For energy-related products submitted to the Energy Labelling Framework Regulation or for tyres submitted to labelling requirements with respect to fuel efficiency and other parameters under the fuel efficiency tyres Regulation, the criteria set under these two instrument should apply instead of those under the present Regulation. However, Member States should not be able to prohibit the placing on the market of a product based on its class of performance.* The introduction of Member State incentives should be without prejudice to the application of the Union State aid rules.

(87) Public procurement amounts to 14% of the Union's GDP. To contribute to the objective of reaching climate neutrality, improving energy and resource efficiency and transitioning to a circular economy that protects public health and biodiversity, *by ensuring that there is sufficient demand for more environmentally sustainable products, contracting authorities and entities should, where appropriate, align their procurement with specific green public procurement requirements. In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission to set mandatory green public procurement requirements. Compared to a voluntary approach, mandatory green public procurement requirements will ensure that the leverage of public spending to boost demand for better performing products is maximised. It is important that Member State provide assistance to national contracting authorities to upskill and reskill staff in charge of green public procurement. Those green public procurement requirements should be minimum requirements, meaning that contracting authorities and entities will be able to set out additional and more demanding requirements. Those requirements should be transparent, objective and non-discriminatory. The public procurement procedure should be conducted by contracting authorities and contracting entities in compliance with Directives 2014/24/EU and 2014/25/EU and applicable sectoral legislation, as well as with the Union's international commitments, including the Government Procurement Agreement and other international agreements by which the Union is bound. These requirements are without prejudice to the possibility for contracting authorities and contracting entities to rely on derogations or exemptions regarding public contracts set out in Union law, in particular Directive 2014/24/EU and Directive 2014/50/EU. The requirements set for specific product groups should be complied with not only when directly procuring those products in public supply contracts but also in public works or public services contracts, where those products will be used for activities constituting the subject matter of those contracts. Those requirements should be set out in relation to the product aspects addressed in the delegated act regulating the products in question. As part of those requirements, the Commission might set out minimum mandatory technical specifications requiring products to comply with the best possible performance levels as set out in the relevant delegated acts, including where available with the two highest classes of performance or scores. As a result, for example, it would be mandatory for contracting authorities and contracting entities to require that the tenderers' products meet specific carbon footprint requirements. In compliance with*

the public procurement framework, those minimum mandatory technical specifications should avoid artificially narrowing down competition and favour a specific economic operator. The Commission might also set up minimum mandatory award criteria including assigning specific weighting, between 15% and 30%, to those criteria for the purpose of ensuring they can significantly influence the choice of products in favour of those that are most environmentally sustainable. As a result, for example, it would be mandatory for contracting authorities and contracting entities to give the recycled content of the products in question a weight between 20% and 30% of the award criteria. As a consequence, contracting authorities and contracting entities, in the specific award procedure, would have the possibility to assign a weight higher than 30%, but not lower than 20% to recycled content. Award criteria should be preferred to technical specifications when there are uncertainties about the availability or cost of the most performant products in the EU market. The Commission might also set contract performance conditions and targets, according to which, for instance, contracting authorities and contracting entities should award at least 50% of their annual procurement of certain products to those with more than 70% of recyclable material. As a result, Member States could still set higher targets for the procurement of those products. When developing implementing acts and in particular when considering the economic feasibility for contracting authorities, the Commission should take into account the best possible environmental products and solutions available on the market, the effects of the requirements on competition and the fact that different contracting authorities in different Member States might have different budgetary capacities or other constraints such as climate conditions or networks infrastructure.

(87a) Member States should not be precluded from introducing or maintaining national measures on green public procurement regarding product groups for which public procurement requirements under this Regulation have not yet been set and from introducing stricter national requirements regarding products which fall within the scope of implementing acts setting out green public procurement requirements, provided they are in line with Union law.

- (88) Effective enforcement of ecodesign requirements is essential to ensure equal competition in the Union market and to ensure that this Regulation's expected benefits and contribution to achieving the Union's climate, energy and circularity objectives are achieved. Therefore, Regulation (EU) 2019/1020 setting out a horizontal framework for market surveillance and control of products entering the Union market should apply to products for which ecodesign requirements are set pursuant to this Regulation, in so far as there are no specific provisions with the same objective, nature or effect in this Regulation. In addition, to lower the problematic levels of non-compliance of products covered by implementing measures adopted under Directive 2009/125/EC, to better prevent non-compliance with future ecodesign requirements, and taking account of the broader scope and increased ambition of this Regulation compared to Directive 2009/125/EC, this Regulation should contain specific additional rules complementing the framework created by Regulation (EU) 2019/1020. Those specific additional rules should be aimed at further strengthening the planning, coordination and support of Member State efforts and should provide additional tools for the Commission to **help** ensure sufficient action is taken by market surveillance **authorities** to prevent non-compliance with ecodesign requirements.
- (89) Beyond market surveillance authorities, customs authorities also have an important role to play in enforcing this Regulation with regard to imported goods and can rely on Council Regulation (EC) No 515/97²⁴ for that purpose.
- (90) To ensure that appropriate checks are performed on an adequate scale in relation to ecodesign requirements, ***in the national market surveillance strategy referred to in Article 13 of Regulation (EU) 2019/1020*** Member States should draw up a dedicated ***outline*** identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance of relevant products or with relevant ecodesign requirements. ■

²⁴ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

- (91) Priorities for market surveillance under this Regulation should be identified based on objective criteria such as the levels of non-compliance observed or the environmental impacts resulting from non-compliance. The activities planned to address those priorities should in turn be proportionate to the facts leading to their prioritisation. █
- (92) █
- (93) Based on data entered into the information and communication system for market surveillance, the Commission should draw up a report containing information on the nature and number of checks performed, on the levels of non-compliance identified and on the nature and severity of penalties imposed in relation to ecodesign requirements over the *four* previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks *and priorities* for market surveillance authorities. *When considering the adoption of implementing acts in accordance with Article 11(4) of Regulation (EU) 2019/1020, the Commission should take into account the results of those reports referred to in Article 61 of this Regulation and should address, as appropriate, the products or categories of products covered by delegated acts adopted pursuant to Article 4 where specific risks or serious breaches have been continuously identified, in order to ensure a high level of compliance with this Regulation.*
- (93a) *It is appropriate that the Commission assess the potential benefits of setting requirements also in relation to social aspects of products. As part of that assessment, the Commission should consider to what extent these requirements could complement Union legislation addressing adverse impacts on human and social rights arising from companies' operations and from products. The Commission should therefore carry out an evaluation by ... [insert the date no later than four years after date of application of this Regulation] on the potential benefits of inclusion of social sustainability requirements within the scope of this Regulation. The Commission should submit to the European Parliament, to the Council, the European Economic and Social Committee, and to the Committee of the Regions a report on the evaluation. Where appropriate, the report should be accompanied by a legislative proposal to amend relevant provisions of this Regulation.*

- (94) To further strengthen coordination of market surveillance authorities, the administrative cooperation group (‘ADCO’) set up pursuant to Regulation (EU) 2019/1020 should, for the purposes of identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance is Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States’ *national market surveillance strategies*, priorities for the provision of Union support, and ecodesign requirements that are interpreted differently leading to market distortion.
- (95) To support Member States in their efforts to ensure sufficient action is taken to prevent non-compliance with ecodesign requirements, the Commission should, where relevant, make use of the support measures provided for in Regulation (EU) 2019/1020. The Commission should organise and, where appropriate finance, joint market surveillance and testing projects in areas of common interest, joint investments in market surveillance capacities and common trainings for the staff of market surveillance authorities, notifying authorities and notified bodies. In addition, the Commission should draw up guidelines on how to apply and enforce ecodesign requirements where necessary to ensure their harmonised application.
- (96) Products should be placed on the market only if they do not present a risk. In order to better align with the specific nature of ecodesign requirements and to ensure that the focus of market surveillance efforts is on non-compliance with such requirements, a product presenting a risk should, for the purposes of this Regulation, be defined as a product that, by not complying with an ecodesign requirement or because a responsible economic operator does not comply with an ecodesign requirement, may adversely affect the environment or other public interests protected by the relevant requirements. This more specific definition should be used when applying Articles 19 and 20 of Regulation (EU) 2019/1020.

- (97) A procedure should exist under which interested parties are informed of measures intended to be taken with regard to products presenting a risk. It should also allow market surveillance authorities in the Member States, in cooperation with the relevant economic operators, to act at an early stage with regard to such products. To that end, the safeguard clause currently included in Directive 2009/125/EC should be updated and aligned with the safeguard procedures included in other Union harmonisation legislation and in Decision No 768/2008/EC. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to determine whether national measures in respect of non-compliant products are justified or not.
- (98) The market surveillance authorities should have the right to require economic operators to take corrective action on the basis of findings that either a product is not compliant with ecodesign requirements or that the economic operator has infringed the rules on the placing or making available on the market of products or other rules addressed to it.
- (99) When adopting delegated acts pursuant to Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²⁵. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

²⁵ OJ L123, 12.5. 2016, p. 1.

(100) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards: (a) specifying implementation arrangements for the interconnection of the registry referred to in Article 12 and the EU Customs Single Window Certificates Exchange; (b) establishing common requirements for the layout of labels; (c) containing a list of self-regulation measures established as valid alternatives to a delegated act adopted pursuant to Article 4; (d) setting out format for the disclosure of the information on unsold consumer products that have been discarded; (e) laying down, amending or repealing common specifications for ecodesign requirements, the essential requirements for product passports or for test, measurement or calculation methods; (f) laying down a minimum number of full-time equivalents considered sufficient for the proper monitoring of notified bodies; (g) requiring a Member State to take corrective action, including withdrawal of the notification, for non-compliant notified bodies; (h) listing the products or requirements that Member States must at least consider as priorities for market surveillance; and (i) deciding, pursuant to the Union safeguard procedure, whether a national measure is justified or not. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁶

²⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (101) To enhance trust in products placed on the market, in particular as regards **products' compliance** with ecodesign requirements, the public needs to be sure that economic operators placing non-compliant products on the market will be subject to penalties. It is therefore necessary that Member States lay down **rules on penalties applicable to infringements of this Regulation and ensure that those rules are implemented. The penalties provided for should be effective, proportionate and dissuasive and should at least include fines and time-limited exclusion from public procurement procedures. Without prejudice to Member States' procedural autonomy and to the discretion of competent authorities and judges to impose appropriate penalties in the individual cases, common non-exhaustive criteria should be established for determining the types and levels of penalties to be imposed in case of infringements of this Regulation to facilitate more consistent application of penalties. These criteria should include, inter alia, the nature and gravity of the infringement and the economic benefits derived from and caused by the infringement, insofar as these can be determined.**
- (102) The Commission should carry out an evaluation of this Regulation. Pursuant to paragraph 22 of the Interinstitutional Agreement on Better Law-Making, that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. The Commission should submit to the European Parliament, to the Council, the European Economic and Social Committee, and to the Committee of the Regions a report on the implementation of this Regulation and its impact on the environmental sustainability of products and the functioning of the internal market. Where appropriate, the report should be accompanied by a proposal to amend relevant provisions of this Regulation.

(102a) It is appropriate that the Commission assess the potential benefits of setting requirements also in relation to social aspects of products. As part of that assessment, the Commission should consider to what extent these requirements could complement Union legislation addressing adverse impacts on human and social rights arising from companies' operations and from products. The Commission should therefore carry out an evaluation by ... [insert the date no later than four years after date of application of this Regulation] on the potential benefits of inclusion of social sustainability requirements within the scope of this Regulation. The Commission should submit to the European Parliament, to the Council, the European Economic and Social Committee, and to the Committee of the Regions a report on the evaluation. Where appropriate, the report should be accompanied by a legislative proposal to amend relevant provisions of this Regulation.

(102b) To facilitate private enforcement of this Regulation, consumers who have suffered damage due to product's non-compliance with ecodesign requirements should have right to claim compensation for that damage from the product's manufacturer, or, in case the manufacturer is not established in the Union, the importer or the authorised representative of the manufacturer, or, in case none of these economic operators are established in the Union, the fulfilment service provider. Such right to compensation should be without prejudice to other remedies available to consumers under Union law, such as the remedies against the seller in case of lack of conformity of the goods sold in accordance with Directive (EU) 2019/771. Furthermore, Member States should not be prevented from maintaining or introducing consumers' rights to other remedies in accordance with national law, such as repair or replacement of the products infringing ecodesign requirements.

(102c) Consumers should be entitled to enforce their rights in relation to the obligations imposed on manufacturers and, where applicable, importers, authorised representatives and fulfilment service providers under this Regulation through representative actions in accordance with Directive (EU) 2020/1828 of the European Parliament and of the Council ⁽²¹⁾. For that purpose, this Regulation should provide that Directive (EU) 2020/1828 is applicable to the representative actions concerning infringements of this Regulation by manufacturers and, where applicable, importers, authorised representatives and fulfilment service providers who qualify as traders under Article 3(2) of that Directive, that harm or can harm the collective interests of consumers. Annex I to that Directive should therefore be amended accordingly. It is for the Member States to ensure that that amendment is reflected in their transposition measures adopted in accordance with that Directive, although the adoption of national transposition measures in that regard is not a condition for the applicability of that Directive to those representative actions. The applicability of that Directive to the representative actions brought against infringements by manufacturers and, where applicable, importers, authorised representatives and fulfilment service providers of provisions of this Regulation that harm or can harm the collective interests of consumers should start from the date of entry into force of this Regulation.

(103) It is necessary that ecodesign requirements apply to the widest possible range of products, and not only energy-related products, and that the definition of ecodesign requirements is widened to encompass all aspects of circularity. It is also necessary to align this Regulation to the New Legislative Framework set out in Regulation (EC) No 765/2008 and Decision No 768/2008/EC, and to improve the provisions related to market surveillance. Directive 2009/125/EC should therefore be replaced. In order to ensure legal certainty for all economic operators from the date of entry into force of this Regulation and to guarantee a level playing-field for businesses operating on the internal market, the provisions setting out transparency obligations related to the discarding of unsold consumer products, circumvention, and market surveillance, should be of uniform application for all operators across the Union. Directive 2009/125/EC should therefore be replaced by a Regulation.

(103a) The Ecodesign and Energy Labelling Working Plan 2022-2024²⁷ identified the political priorities for work on energy-related products. Preparatory work assessing the feasibility of ecodesign requirements pursuant to Directive 2009/125/EC would be substantially advanced for photovoltaic panels, space and combination heaters, water heaters, solid fuel local space heaters, air conditioners including air-to-air heat pumps and comfort fans, solid fuel boilers, air heating and cooling products ventilation units, vacuum cleaners, cooking appliances, water pumps, industrial fans, circulators, external power supplies, computers, servers and data storage products, power transformers, professional refrigeration and imaging equipment when the provisions of this Regulation take effect. Thanks to this preparatory work numerous areas where energy and material can be saved have been identified, and extensive consultations of citizens and stakeholders have taken place. Reconsidering this preparatory work under the present Regulation would considerably delay the adoption of requirements on energy and material savings for those products. In order to preserve the preparatory work, it is therefore necessary to provide for transitional rules allowing implementing measures on the products above mentioned to be adopted pursuant to Directive 2009/125/EC at the latest by 31 December 2026. In addition, and in order to ensure the proper functioning of implementing measures adopted under article 15 of Directive 2009/125/EC, the adoption of amendments addressing the necessary technical issues should be done if relevant in accordance with the relevant provisions of the Ecodesign Directive at the latest by 31 December 2030.

²⁷ *Communication from the Commission on the Ecodesign and Energy Labelling Working Plan 2022-2024 (2022/C 182/01)*

- (104) In order to ensure legal certainty and continuity for products placed on the market or put into service in conformity with implementing measures adopted pursuant to Directive 2009/125/EC, in its version applicable on the date of application of this Regulation, those measures should remain in force beyond that date, and until repealed by a delegated act adopted pursuant to this Regulation. For the same reasons, a number of provisions of Directive 2009/125/EC should continue to have full effect in the context of applying these implementing measures. This concerns in particular provisions of Directive 2009/125/EC excluding means of transport for goods or persons from its scope, establishing definitions relevant for implementing measures, setting economic operators' responsibilities in relation to products placed on the market, specifying the details of the relevant conformity assessment procedures and the EC declaration of conformity, establishing a presumption of conformity for products which have been awarded the EU ecolabel and enabling necessary action in relation to harmonised standards. Noting the importance of ensuring free movement of goods, banning practices illegally altering products' performance in order to reach a more favourable result and ensuring proper enforcement of ecodesign requirements, relevant provisions of this Regulation should be applicable to energy-related products placed on the market pursuant to implementing measures under Directive 2009/125/EC.
- (105) Since the objectives of this Regulation, namely to improve environmental sustainability of products and to ensure the free movement in the internal market of products for which ecodesign requirements are set, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter and scope

This Regulation establishes a framework *for setting ecodesign requirements that products have to comply with to be placed on the market or put into service, with the aim to improve the environmental sustainability of products in order to make sustainable products the norm and to reduce their overall carbon and environmental footprint over their lifecycle, and to ensure their free movement within the internal market.*



This Regulation also establishes a digital product passport (‘product passport’), provides for the setting of mandatory green public procurement *requirements* and creates a framework to prevent unsold consumer products from being destroyed.

2. This Regulation shall apply to any physical good that is placed on the market or put into service, including components and intermediate products. However, it shall not apply to:
- (a) food as defined in Article 2 of Regulation (EC) No 178/2002;
 - (b) feed as defined in Article 3(4) of Regulation (EC) No 178/2002;
 - (c) medicinal products for human use as defined in Article 1(2) of Directive 2001/83/EC;
 - (d) veterinary medicinal products as defined in Article 4(1) of Regulation (EU) 2019/6;
 - (e) living plants, animals and micro-organisms;
 - (f) products of human origin;
 - (g) products of plants and animals relating directly to their future reproduction.
- (ga) vehicles, as referred to in Article 2(1) of Regulation (EU) 2018/858, Regulation (EU) No 167/2013, and Regulation (EU) No 168/2013, in respect to those product aspects for which requirements are set under sector-specific Union legislative acts applicable to those vehicles.***

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘product’ means any physical good that is placed on the market or put into service;
- (2) ‘component’ means a product intended to be incorporated into another product;
- (3) ‘intermediate product’ means a product that requires further manufacturing or transformation such as mixing, coating or assembling to make it suitable for *customers*;
- (4) ‘energy-related product’ means any product that has an impact on energy consumption during use;
- (5) ‘product group’ means a set of products that serve similar purposes and are similar in terms of use, or have similar functional properties, and are similar in terms of consumer perception;
- (6) ‘ecodesign’ means the integration of environmental sustainability considerations into the characteristics of a product and the processes taking place throughout the product’s value chain;
- (7) ‘ecodesign requirement’ means a performance requirement or an information requirement aimed at making a product, *including processes taking place throughout the product’s value chain* more environmentally sustainable;

- (8) ‘performance requirement’ means a quantitative or non-quantitative requirement for or in relation to a product to achieve a certain performance level in relation to a product parameter referred to in Annex I;
- (9) ‘information requirement’ means an obligation for a product to be accompanied by information as specified in Article 7(2);
- (10) ‘supply chain’ means all upstream activities and processes of the value chain of the product, up to the point where the product reaches *the customer*;
- (11) ‘value chain’ means all activities and processes that are part of the life cycle of a product, as well as its possible remanufacturing;
- (12) ‘life cycle’ means the consecutive and interlinked stages of a product’s life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment and re-use, and end-of-life;
- (13) ‘end-of-life’ means the life cycle stage that begins when a product is discarded and ends when the *waste material of the* product is returned to nature ■ or enters another product’s life cycle;
- (14) ‘environmental impact’ means any change to the environment, whether adverse or beneficial, wholly or partially resulting from a product during its life cycle;
- (15) ‘class of performance’ means a range of performance levels in relation to one or more product parameters referred to in Annex I, *based on a common methodology for the product or product group*, ordered into successive steps to allow for product differentiation;

- (16) ‘remanufacturing’ means *a* process in which a *new* product is produced from objects that are waste, products or components and in which at least one change is made *that substantially* affects the safety, performance, purpose or type of the product.
- (17) ‘upgrading’ means *actions carried out to enhance* the functionality, performance, capacity, *safety* or aesthetics of a product;
- (18) ‘refurbishment’ means *actions carried out to prepare, clean, test, service and, where necessary repair* an object that is waste or a product *in order* to restore its performance or functionality within the intended use *and* range of performance **█** originally conceived at the design stage *at the time of its placing on the market*;
- (19) ‘maintenance’ means *one or several actions* carried out to keep a product in a condition where it is able to *fulfill its intended purpose*;
- (20) ‘repair’ means *one or several actions carried out to return* a defective product or waste to a condition where it fulfils its intended use;
- (20a) ‘Premature obsolescence’ means a product design feature or subsequent intervention resulting in the product becoming non-functional or less performant without it being the result of normal wear and tear.**
- (21) ‘durability’ means the ability of a product to *maintain over time its function and performance* under specified conditions of use, maintenance and repair.
- (22) ‘reliability’ means the probability that a product functions as required under given conditions for a given duration without *an occurrence which results in a primary or secondary function of the product no longer being delivered*;
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- (23) ‘environmental footprint’ means a quantification of **■** product **■** environmental impacts *throughout its life cycle*, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product Environmental Footprint method *or other scientific methods developed by international organisations and widely tested in collaboration with different industry sectors and adopted or implemented by the Commission in other Union legislation*;
- (24) ‘Product Environmental Footprint method’ means the life cycle assessment method to quantify the environmental impacts of products established by Recommendation (EU) 2021/2279;
- (25) ‘carbon footprint’ means the sum of greenhouse gas (GHG) emissions and GHG removals in a product system, expressed as CO₂ equivalents and based on a life cycle assessment using the single impact category of climate change;
- (25a) 'material footprint' refers to the total amount of raw materials extracted to meet final consumption demands;*
- (26) ‘public contracts’ means contracts *covered by Directive 2014/24/EU and Directive 2014/25/EU*;
- (27) ‘substance’ means a substance as defined in Article 3, point (1), of Regulation (EC) No 1907/2006;

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(28) 'substance of concern' means a substance that:

- (a) meets the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006; or
- (b) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:
 - carcinogenicity categories 1 and 2,
 - germ cell mutagenicity categories 1 and 2,
 - - reproductive toxicity categories 1 and 2; - ***Endocrine disruption for human health categories 1 and 2; - Endocrine disruption for the environment categories 1 and 2; - Persistent, Mobile and Toxic or Very Persistent, Very Mobile properties; - Persistent, Bioaccumulative and Toxic or Very Persistent, Very Bioaccumulative properties; ■***
 - respiratory sensitisation category 1,
 - skin sensitisation category 1,
 - chronic hazard to the aquatic environment categories 1 to 4,
 - hazardous to the ozone layer,
 - specific target organ toxicity – repeated exposure categories 1 and 2,

- specific target organ toxicity – single exposure categories 1 and 2; or
- *substances regulated under Regulation (EU) No 2019/1021 of the European Parliament and of the Council²⁸*;



- (c) negatively affects the re-use and recycling of materials in the product in which it is present;
- (29) ‘product passport’ means a set of data specific to a product that includes the information specified in the applicable delegated act adopted pursuant to Article 4 and that is accessible via electronic means through a data carrier in accordance with Chapter III;
- (30) ‘data carrier’ means a linear bar code symbol, a two-dimensional symbol or other automatic identification data capture medium that can be read by a device;
- (31) ‘unique product identifier’ means a unique string of characters for the identification of products that also enables a web link to the product passport;
- (32) ‘unique operator identifier’ means a unique string of characters for the identification of actors involved in the value chain of products;
- (32a) 'a Digital Product Passport (DPP) service provider' means a natural or legal person who, authorised by the economic operator placing the product on the market or putting it into service, processes the digital product passport data for that product for the purpose of making such data available to economic operators and other relevant actors with a right to access those data under this Regulation or other Union laws.***

²⁸ ***Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).***

- (33) ‘unique facility identifier’ means a unique string of characters for the identification of locations or buildings involved in the value chain of a product or used by actors involved in the value chain of a product;
- (34) ‘processing’ means processing as defined in Article 3, point (2), of Regulation (EU) 2018/1807;
- (35) ‘destruction’ means the intentional damaging or discarding of a product as waste with the exception of discarding for the only purpose of delivering *the discarded* product for preparing for re-use, *refurbishing* or remanufacturing operations;
- (35a) ‘customer’ means a natural or legal person who buys, hires or receives a product for own use whether or not acting for purposes which are outside its trade, business, craft or profession;**
- (35b) ‘consumer’ means a consumer as defined in Article 2, point (2), of Directive (EU) 2019/771;**
- (36) ‘consumer product’ means any product, excluding components and intermediate products, primarily intended for consumers ■ ;
- (37) ‘unsold consumer product’ means any consumer product that has not been sold *including surplus, excessive inventory, overstock and deadstock, including products* returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU, *or, where applicable, during any longer withdrawal period provided by the trader;*
- (38) ‘self-regulation measure’ means a voluntary agreement or codes of conduct, concluded by *economic operators* on their own initiative, which they are responsible for enforcing;

- (39) ‘making available on the market’ means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (40) ‘placing on the market’ means the first making available of a product on the Union market;
- (41) ‘putting into service’ means the first use, for its intended purpose, in the Union, of a product;
- (42) ‘manufacturer’ means any natural or legal person who manufactures a product or who has a product designed or manufactured, and markets that product under its name or trademark;
- (43) ‘authorised representative’ means any natural or legal person established in the Union who has received a written mandate from the manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer’s obligations under this Regulation;
- (44) ‘importer’ means any natural or legal person established in the Union who places a product from a third country on the Union market;
- (45) ‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;
- (46) ‘economic operator’ means the manufacturer, the authorised representative, the importer, the distributor, the dealer and the fulfilment service provider;

- (46a) ‘independent operator’ means a natural or legal person who is independent from the manufacturer and is directly or indirectly involved in the refurbishment, repair, maintenance or repurposing of the product, and includes waste management operators, refurbishers, repairers, manufacturers or distributors of repair equipment, tools or spare parts, as well as publishers of technical information, operators offering inspection and testing services and operators offering training for installers, manufacturers and repairers of equipment;*
- (46b) ‘professional repairer’ means a natural or legal person who provides repair or maintenance services for a product, irrespective of whether that person acts within the manufacturer’s distribution system or independently;*
- (47) ‘technical specification’ means a document that prescribes technical requirements to be fulfilled by a product, process or service;
- (48) ‘harmonised standard’ means a standard as defined in Article 2(1), point (c), of Regulation (EU) No 1025/2012;
- (49) ‘CE marking’ means a marking by which the manufacturer indicates that the relevant product is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing;
- (50) ‘accreditation’ means accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008;
- (51) ‘national accreditation body’ means a national accreditation body as defined in Article 2(11) of Regulation (EC) No 765/2008;
- (52) ‘conformity assessment’ means the process demonstrating whether the *ecodesign* requirements set out in the relevant delegated acts adopted pursuant to Article 4 have been fulfilled;

- (53) ‘conformity assessment body’ means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (54) ‘notified body’ means a conformity assessment body notified in accordance with Chapter IX of this Regulation;
- (55) ‘online marketplace’ means a provider of an intermediary service using ***an online interface which*** allows customers to conclude distance contracts with economic operators for the sale of products covered by delegated acts adopted pursuant to Article 4;
- (56) ‘Dealer’ means a ***distributor who is offering*** products for sale, hire or **■** purchase, or ***who is displaying*** products, ***to end users*** in the course of a commercial activity, ***including through distance selling. Any natural or legal person putting a product into service shall also be considered as a dealer.***
- (57) ‘distance selling’ means the offer for sale, hire or hire purchase of products, online or through other means of distance sales, whereby the potential customer cannot physically access the product displayed;
- (58) ‘product presenting a risk’ means a product that, by not complying with a requirement set out in or pursuant to this Regulation other than those listed in Article 65(1), may adversely affect the environment or other public interests protected by that requirement;
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- (59) ‘product presenting a serious risk’ means a product presenting a risk for which, based on an assessment, the degree of the relevant non-compliance or the associated harm is considered to require rapid intervention by the market surveillance authorities, including cases where the effects of the non-compliance are not immediate.

The definitions of ‘contracting authorities’ in Article 2(1) of Directive 2014/24/EU and of ‘contracting entities’ in Article 4(1) of Directive 2014/24/EU shall apply.

In addition, the definitions of ‘waste’, ‘hazardous waste’, ‘re-use’, ‘recovery’, ‘preparing for re-use’ and ‘recycling’ in Article 3, points (1), (2), (13), (15), (16) and (17), of Directive 2008/98/EC of the European Parliament and of the Council²⁹ shall apply.

The definitions of ‘market surveillance’, ‘market surveillance authority’, ‘fulfilment service provider’, ‘online interface’, ‘corrective action’, ‘end-user’, ‘recall’, ‘withdrawal’, ‘customs authorities’ and ‘release for free circulation’ in Article 3, points (3), (4), (11), (15), (16), (21), (22), (23), (24) and (25), of Regulation (EU) 2019/1020 shall also apply.

The definitions of ‘SMEs’, ‘small enterprises’ and ‘microenterprises’ in Article 2(1), (2) and (3), of Annex I to Commission Recommendation 2003/361/EC³⁰ shall also apply.

The definitions of ‘mixture’, ‘supplier of a substance or a mixture’ and ‘supplier of an article’ in Article 3, points (2), (32) and (33), respectively, of Regulation (EC) 1907/2006 shall apply.

Article 3

Free movement

1. Products shall only be placed on the market or put into service if they comply with the ecodesign requirements set out in the delegated acts adopted pursuant to Article 4 applicable to those products.

²⁹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

³⁰ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

2. Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with the performance requirements set out in delegated acts adopted pursuant to Article 4 for reasons of non-compliance with national performance requirements relating to product parameters referred to in Annex I covered by performance requirements included in such delegated acts.

Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with the information requirements set out in delegated acts adopted pursuant to Article 4 for reasons of non-compliance with national information requirements relating to product parameters referred to in Annex I covered by information requirements included *in* such delegated *acts*.

3. *Notwithstanding* paragraph 2, *Member States* shall not *be precluded* from setting minimum energy performance requirements in accordance with Article 4(1) and system requirements in accordance with Article 8 of Directive 2010/31/EU of the European Parliament and of the Council³¹.
4. Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products ■ for which a delegated act adopted pursuant to Article 4 *second sub-paragraph, establishes* that no performance, no information or neither performance nor information requirements are *to be set for one or several specific parameters as referred to in Annex I, on grounds of non-compliance with national requirements relating to such parameters*.
5. At trade fair, exhibitions and similar events, Member States shall not prevent the showing of products that do not comply with delegated acts adopted pursuant to Article 4, provided that a visible sign clearly indicates that such products do not comply and that they are not for sale until they have been brought into conformity.

³¹ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

Chapter II

Ecodesign requirements

Article 4

Empowerments to adopt delegated acts

The Commission is empowered to adopt delegated acts in accordance with Article 66, to supplement this Regulation by establishing ecodesign requirements for **■** products to improve their environmental sustainability. Those *delegated acts* shall include *at least* the elements listed in *Article 7a. Ecodesign requirements* shall be established in accordance with Articles 5, 6 and 7 and Chapter III. The empowerment to adopt *delegated acts to establish* ecodesign requirements includes the *possibility* to establish that no performance requirements, no information requirements or neither performance nor information requirements are *to be set* for certain specified product parameters referred to in Annex I *if a requirement related to that specific product parameter would have a negative impact on the ecodesign requirements considered for the product group.*

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The empowerment to adopt delegated acts to establish ecodesign requirements does not include the possibility to adopt a delegated act that establishes that no ecodesign requirements are necessary for a product group.

When establishing ecodesign requirements in delegated acts referred to in the first subparagraph *of this Article*, the Commission shall *provide economic operators with sufficient time to comply with such requirements, particularly taking into consideration the needs of SMEs, including micro-enterprises. The date of application of the delegated act shall not be shorter than 18 months from its entry into force, except in duly justified cases for the whole act or for some specific requirements or in cases of partial repeal or amendment of delegated acts where a shorter date of application may be set. The Commission shall* also supplement this Regulation by specifying the applicable conformity assessment procedures from *either the module A* set out in Annex IV to this Regulation *or one of the modules B to H1 set out in* Annex II to Decision No 768/2008/EC, with the adaptations necessary in view of the product or ecodesign requirements concerned, in accordance with Article 36 *of this Regulation*.

Delegated acts referred to in the first subparagraph may, *as appropriate in view of the specificities of the product group, include any of the following requirements:*

- (a) Where this is necessary for effective market surveillance:*
 - (i) requiring manufacturers, their authorised representatives or importers to keep the technical documentation and the EU declaration of conformity for a period longer or shorter than 10 years after the relevant product has been placed on the market or put into service taking into account of the nature of the product or requirements concerned;*
 - (ii) requiring economic operators to provide, upon request, market surveillance authorities with the information set out in Article 30(2) for a period longer or shorter than 10 years after that product has been supplied;*

- (iii) requiring manufacturers, their authorised representatives or importers to make parts of the technical documentation related to the relevant product digitally available to the Commission or market surveillance authorities without request, in accordance with Article 30(3);
 - (iv) *requiring supply chain actors to comply with the obligations listed under points a) to c) of Article 31(a).*
- (b) requiring manufacturers, their authorised representatives or importers to make available to the Commission information on the quantities of a product covered by those delegated acts placed on the market or put into service, in accordance with Article 31(1);
- (ba) *Where this is necessary in order to ensure energy-efficient usage of products or to develop future ecodesign requirements:***
- i. requiring products placed on the market to be able to measure the energy they consume or their performance in relation to other relevant product parameters referred to in Annex I while in use, in accordance with Article 31(2);
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- ii. requiring manufacturers, their authorised representatives or importers to collect *and anonymise* in-use data referred to in point (c) *and report to the Commission* in accordance with Article 31(3);
 - (iii) requiring the use of *digital* tools to calculate the performance of a product in relation to a product parameter referred to in Annex I, in accordance with Article 32(2);
- (c) *In order to ensure transparency about conformity with ecodesign requirements:***
- (i) *for products not subject to the requirement for affixing the CE marking before being placed on the market or put into service under Union law, specifying rules on markings, indicating conformity with ecodesign requirements* , in accordance with Article 40;
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The first such delegated act adopted under this Article shall not enter into force before [OJ Office: 12 months after the entry into force of this Regulation]

Article 5

Ecodesign requirements

1. *In order to address environmental impacts which arise in any of the stages of products' life cycle, and based on the product parameters in Annex I, the Commission shall establish ecodesign requirements to improve the following product aspects **when relevant to the product group concerned**:*
 - (a) durability;
 - (b) reliability;
 - (c) reusability;
 - (d) upgradability;
 - (e) reparability;
 - (f) possibility of maintenance and refurbishment;
 - (g) presence of substances of concern;
 - (h) energy use **and** energy efficiency;
 - (ha) water use and water efficiency;**
 - (i) resource use **and** resource efficiency;

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- (j) recycled content;
- (k) possibility of remanufacturing ■ ;
- (ka) possibility of recycling;**
- (l) possibility of recovery of materials;

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- (m) environmental impacts, including carbon and environmental footprint;
- (n) expected generation of waste ■ .

1b. The Commission shall select or develop tools or methodologies as necessary for the setting of ecodesign requirements.

1a. Ecodesign requirements shall, where relevant through product parameters, ensure that products do not become prematurely obsolete, for reasons including design choices by manufacturers, use of components which are significantly less robust than other components, impeded disassembly of key components, unavailable repair information or spare parts, when software no longer works once an operating system is updated or when software updates are not provided

1b. Products whose sole purpose is to serve defence or national security shall be excluded from the product group.

Ecodesign requirements shall be established for a specific product group. **They may be differentiated for any specific product that belongs to that product group.**

■ Where two or more product groups display *one or more* similarities allowing a product aspect referred to in paragraph 1 to be *effectively* improved based on *common ecodesign information or performance requirements, such requirements may be established horizontally for those product groups (“horizontal ecodesign requirements”)*. *When establishing horizontal ecodesign requirements, the Commission shall also take into account the positive effects towards reaching the objectives of this Regulation, in particular the ability to cover a wide range of product groups in the same act. Horizontal ecodesign requirements may be established also for those product groups that have not been included in the working plan referred to in Article 16. Horizontal ecodesign requirements may be supplemented through the establishment of ecodesign requirements for a specific product group.*

An ecodesign requirement may cover products falling in the scope of a self-regulation measure listed pursuant to Article 18(3), in case that self-regulation measure does not address the product aspect covered by that ecodesign requirement.

3. Ecodesign requirements shall, as appropriate *to improve the specific product aspects*, include:
 - (a) performance requirements as set out in Article 6 *or*
 - (b) information requirements as set out in Article 7;
 - (c) *or both.*
4. When preparing ecodesign requirements, the Commission shall *ensure consistency with other Union legislation and shall*:
 - (a) take into account the following elements:
 - (i) Union *priorities for climate, the environment, energy efficiency, resource efficiency and security, including non-toxic circular economy*, and other related Union priorities *and targets*;

- (ii) relevant Union **law**, including the extent to which it addresses the relevant product aspects listed in paragraph 1;
 - (iia) relevant international agreements;**
 - (iii) self-regulation measures ■ ;
 - (iv) relevant national environmental legislation;
 - (v) relevant European and international standards;
- (b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under **Union** funding programmes. ■ The establishment of ecodesign requirements on the ■ product **aspects** listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product. ***The impact assessment shall indicate the methodology used. In the impact assessment, the Commission shall:***
- (i) ensure that the all product aspects listed in paragraph 1 are analysed and that the depth of analysis of the product aspects is proportionate to their significance for the product concerned;***
 - (ii) ensure that interdependencies between the different product aspects are analysed;***
 - (iii) provide the changes expected in terms of environmental impacts, including quantified as carbon and environmental footprint whenever possible***
 - (iv) analyse the availability of feedstock for the refurbishment sector, where appropriate;***

(v) *analyse any relevant impacts on human health;*

(vi) *consider the minimum level of performance of a product or a product group needed to achieve in the future the Union's objectives as listed in paragraph 4, point (a)(i);*

(c) take into consideration relevant technical information used as a basis for or derived from Union *law* or instruments, including Regulation (EC) No 66/2010, Directive 2010/75/EU, technical screening criteria adopted pursuant to Regulation (EU) 2020/852 and green public procurement criteria;

(ca) *take into consideration the protection of confidential business information;*

(d) take into account the views expressed by the Ecodesign Forum referred to in Article 17 *and the Member States Expert Group referred to in Article 17a.*

5. Ecodesign requirements shall meet the following criteria:

(a) there shall be no significant negative impact on the functionality of the product, from the perspective of the user;

(b) there shall be no adverse effect on the health and safety of persons;

(c) there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account access to second-hand products, durability and the life cycle cost of products;

(d) there shall be no disproportionate negative impact on the competitiveness of economic *operators and other actors in the value chain, including SMEs, in particular micro-enterprises;*

- (e) there shall be no proprietary technology imposed on manufacturers or other *actors in the value chain*;
- (f) there shall be no disproportionate administrative burden on manufacturers or other *actors in the value chain, including SMEs, in particular micro-enterprise*

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7. ***Ecodesign requirements shall be verifiable.*** The Commission shall █ identify appropriate means of verification for specific ecodesign requirements, including directly on the product or on the basis of the technical documentation.

8. The Commission shall publish relevant studies and analyses, ***including the impact assessments referred to in paragraph 4, point (b),*** used in the establishment of ecodesign requirements in accordance with this Regulation.

8a. ***For each product group concerned by ecodesign requirements, the Commission shall determine, where relevant, which substances fall under the definition in Article 2 (28), point (c) taking into account at least, whether:***

- (a) ***based on standard technologies, the substances make the re-use, or recycling process more complicated, costly, environmentally impactful, or energy- or resource-demanding,***

- (b) *the substances impair the technical properties or functionalities, the usefulness or the value of the recycled material or products manufactured from this recycled material,*
- (c) *the substances negatively impact aesthetic or olfactory properties of the recycled material.*

Article 6

Performance requirements

1. Products shall comply with performance requirements related to the product aspects listed in Article 5(1), as laid down in the delegated acts adopted pursuant to Article 4.
2. Performance requirements referred to in paragraph 1 shall be based on the *relevant* product parameters referred to in Annex I and shall, as appropriate, include:
 - (a) minimum or maximum levels in relation to a specific product parameter or a combination thereof *or*;
 - (b) non-quantitative requirements that aim to improve performance in relation to one or more product parameters; *or both*.

3. Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety. ***However, the establishment of performance requirements shall also where appropriate, reduce significant risks to human health or the environment.***
4. When establishing performance requirements, the Commission shall follow the procedure set out in Annex II.

Article 7

Information requirements

1. Products shall comply with information requirements ***which are to be provided on the product aspects listed in Article 5(1) ■*** .
 - 1a.*** The information requirements shall:
 - (a) include, as a minimum, requirements related to the product passport referred to in Chapter III and requirements related to substances of concern referred to in paragraph 5 ■
 - (b) as appropriate, ***also*** require products to be accompanied by:
 - (i) information on the performance of the product in relation to ***one or more of the product parameters referred to in Annex I, including a scoring of reparability or durability, carbon footprint or environmental footprint;***
 - (ii) information for ***customers*** and other ***actors*** on how to install, use, maintain and repair the product, in order to minimise its impact on the environment and to ensure optimum durability, ***on how to install third-party operating systems where relevant,*** as well as on ***collection for refurbishment or remanufacture, and on*** how to return or ***handle*** the product at ***the end of its life;***

■

■

- (iii) information for treatment facilities on disassembly, *reuse, refurbishment*, recycling, or disposal at end-of-life;
 - (iv) other information that may influence *sustainable product choices for customers and* the way the product is handled by parties other than the manufacturer in order to *facilitate appropriate use, value retaining operations and correct treatment at end-of-life*
- (c) *be clear, easily understandable and tailored to the particular characteristics of the product groups concerned and the intended recipients of the information.*

An information requirement may be established for a specific parameter irrespective of whether a performance requirement is established for that specific parameter.

Where a delegated acts contains horizontal ecodesign requirements for two or more product groups as referred to in Article 5(2), second subparagraph, point (a) of this paragraph shall not apply.

3. Information requirements based on the product parameter set out in Annex I, point (f), shall not provide obligations on the labelling of substances or mixtures for reasons relating primarily to their hazards to health or the environment.
4. When establishing the information requirements referred to in paragraph 2, point (b), point (i), the Commission shall, as appropriate *in view of the specificity of the product group*, determine classes of performance. *Classes of performance may be based on single parameters, on aggregated scores, in absolute terms or in any other form that enables potential customers to choose the best performing products.*

Those classes of performance shall correspond to ■ significant improvements in performance levels. *Where classes of performance are based on parameters in relation to which performance requirements are established, they shall use as the minimum level the minimum performance required at the time when the classes of performance start to apply.*

Unless otherwise provided for under the second subparagraph of this paragraph, point c), the information requirements referred to in paragraph 1 shall enable the tracking of the substances of concern, throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned ■ and shall include at least the following:

- (a) the name of the substances of concern present in the product, *as follows:* - *name(s) in the International Union of Pure and Applied Chemistry (IUPAC) nomenclature, or another international name when IUPAC name is not available;* - *other names (usual name, trade name, abbreviation);* - *European Community (EC) number, as indicated in the European Inventory of Existing Commercial Chemical Substances (EINECS), the European List of Notified Chemical Substances (ELINCS) or the No Longer Polymer (NLP) list or assigned by the European Chemicals Agency (ECHA), if available;* - *the Chemical Abstract Service (CAS) name(s) and number(s), if available;*
- (b) the location of the substances of concern within the product;
- (c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its *relevant* components, or spare parts;
- (d) relevant instructions for the safe use of the product;
- (e) information relevant for disassembly, *preparation for reuse, reuse, recycling and the environmentally sound management of the product at the end of its life.*

The Commission may, as appropriate for the product group concerned, set thresholds for when the information requirement regarding substances of concern is to apply.

Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall, *where relevant*:

■

- (b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between substances; and
 - (c) provide *duly justified* exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph *based on the technical feasibility or relevance of tracking substances of concern, the existence of analytical methods to detect and quantify them, the need to protect confidential business information or in other duly justified cases. Substances of concern within the meaning of Article 2(28), point a), shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.*
- (ca) *ensure consistency with existing information requirements under Union law and minimise administrative burden, including through appropriate technical solutions.*

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Information requirements shall indicate the manner in which the required information shall be made available. *When a product passport is available, the required information shall be provided therein and shall, when necessary as a complement, be provided in one or more of the following manners:*

- (a) on the product itself;
- (b) on the product's packaging;
- (c) ■
- (d) on a label referred to in Article 14;
- (e) in a user manual *or other documentation accompanying the product*;
- (f) on a free access website or application.

Information *enabling the tracking* of substances *of concern* pursuant to paragraph 5 shall be given either on the product or be accessible through a data carrier included on the product.

7. The information to be supplied pursuant to information requirements shall be provided in a language which can be easily understood by *customers* , as determined by the Member State in which the product is to be made available on the market or put into service.

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Article 7a

Content of the delegated act

The delegated acts adopted pursuant to Article 4 shall specify at least the following elements:

- (a) the definition of the product group or groups covered, including the list of commodity codes as set out in Annex I to Regulation (EEC) No 2658/87 and product descriptions;*
- (b) the ecodesign requirements for the product groups covered, including the list of commodity codes as set out in Annex I to Regulation (EEC) No 2658/87 and product descriptions;*
- (c) where relevant, the parameters for which the Commission explicitly states that no ecodesign requirements are necessary, pursuant to Article 4.*
- (d) the test, measurement or calculation standards or methods to be used pursuant to Article 32 (1); where relevant, requirements for the use of digital tools pursuant to Article 32 (2);*
- (e) where relevant, the transitional methods, the harmonised standards, the reference numbers of which have been published in the Official Journal of the European Union, or common specifications to be used;*
- (f) the format, the manner, and the order in which the information necessary for the verification of compliance is to be made available.*

- (g) *the conformity assessment module to be used pursuant to Article 4, third subparagraph, of this Regulation. Where the module to be applied is different from the module set out in Annex IV of this Regulation, the factors leading to the selection of that specific procedure.*

Where different conformity assessment modules in Annex II to Decision 768/2008/EC, are to be used pursuant to other Union legislation for the same product, the module defined in the delegated act adopted pursuant to Article 4 of this Regulation shall prevail for the ecodesign requirement concerned.

When this Regulation, where appropriate, intervenes in a complementary manner to the Construction Products Regulation, the delegated act shall specify the conformity assessment procedure, including, where appropriate, any systems provided for pursuant to a measure under the Construction Products Regulation, taking into account the characteristics of the product group, the relevant ecodesign requirements, and the cost for economic operators.

Requirements on information to be provided by manufacturers, including on the elements of the technical documentation to enable the verification of compliance of the product with the ecodesign requirements. Where relevant, any additional information requirements pursuant to Articles 30 and 31;

- █
- █
- (h) *the duration of the transitional period during which Member States are to permit the placing on the market or putting into service of products, which comply with the national measures in force in their territory on the date of entry into force of the delegated act.*

- (i) *the date for the evaluation and revision of the delegated act.*

When setting the date for evaluation, the Commission shall take into consideration, among other aspects, the characteristics of the product group and its market, the need to adapt the requirements to make products more sustainable, Union policy objectives, technical progress and availability of methods.

Chapter III

Digital product passport

Article 8

Product passport

1. The information requirements referred to in Article 7(1) shall provide that products can only be placed on the market or put into service if a product passport is available in accordance with the applicable delegated act adopted pursuant to Article 4 and Articles 9 and 10. *The information in the product passport shall be accurate, complete, and up to date.*
2. The requirements related to the product passport laid down in the delegated acts adopted pursuant to Article 4 shall, as appropriate for the product groups covered, specify the following:
 - (a) the information to be included in the product passport pursuant to Annex III;
 - (b) *one or more data carriers* to be used;
 - (c) the layout in which the data carrier *is to* be presented and its positioning;

- (d) whether the product passport is to correspond to the model, batch, or item level, ***and the definition of the appropriate levels;***
- (e) the manner in which the product passport ***is to*** be made accessible to customers before they are bound by a ***contract for sale, hire or hire purchase***, including in case of distance selling;
- (f) the actors that ***are to*** have access to information in the product passport and to what information they ***are to*** have access, ***such as*** customers, ■ manufacturers, importers and distributors, dealers, ***professional*** repairers, ***independent operators, refurbishers***, remanufacturers, recyclers, ***market surveillance and customs*** authorities, ***civil society*** organisations, ***researchers, trade unions***, and the Commission, or any organisation acting on their behalf;
- (g) the actors that ***are to*** introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update, ***such as customers, manufacturers, importers and distributors, dealers, professional*** repairers, ***independent operators, refurbishers***, remanufacturers, recyclers, ***market surveillance*** authorities, ***civil society organisations, researchers, trade unions***, or any organisation acting on their behalf. ***The modalities to introduce the updated information in the product passport of an existing product will be specified in the delegated acts adopted pursuant to Article 4. Any new product passport shall be linked to the product passport or passports of the original product whenever appropriate.***
- (h) the period ***during*** which the product passport ***is to*** remain available, ***which shall correspond to at least the expected lifetime of a specific product.***

3. The requirements referred to in paragraph 2 shall:
 - (a) ensure that actors along the value chain *can easily access and understand* product information relevant to them;
 - (b) facilitate the verification of product compliance by competent national authorities; █
 - (c) improve traceability of products along the value chain; *and*
4. When establishing the requirements related to the product passport, the Commission may exempt product groups from the requirement *to have a product passport* where:
 - (a) technical specifications *of the product passport* are not available in relation to the essential requirements included in Article 10; or
 - (b) other Union law includes a system for the digital provision of information related to a product group for which the Commission considers that it achieves the objectives referred to in paragraph 3, points (a) and (b).

Article 9

General requirements for the product passport

A product passport shall meet the following conditions:

- (a) it shall be connected through a data carrier to a *persistent* unique product identifier;
- (b) the data carrier shall be physically present on the product, its packaging or on documentation accompanying the product, as specified in the applicable delegated act adopted pursuant to Article 4;

- (c) the data carrier and the unique *identifiers* shall comply with ***one or more of the standards referred to in point (l) in Annex III or equivalent international or European standards until referenced harmonised standards are listed in the OJEU***;
- (d) all information included in the product passport shall be based on open **■** standards, developed with an inter-operable format and shall be, ***as appropriate***, machine-readable, structured, ***searchable, and transferable through an open interoperable data exchange network without vendor lock-in***, in accordance with the essential requirements set out in Article 10;
- (da) ***personal data related to the customer of the product shall not be stored in the product passport without the explicit consent of the end-user in compliance with article 6 of Regulation (EU) 2016/679***;
- (e) the information included in the product passport shall refer to the product model, batch, or item as specified in the delegated act adopted pursuant to Article 4;
- (f) the access to information included in the product passport shall be regulated in accordance with the essential requirements set out in Article 10 and the specific access rights at product group level shall be identified in the applicable delegated act adopted pursuant to Article 4.

The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend **■** point (c) ***and (l) of Annex III*** in light of technical and scientific progress by replacing the *standards* or adding other European or international standards with which the data *carriers, the unique operator identifiers* and the unique *facility identifiers, are to* comply ***with*** for the purposes of meeting the conditions set out in this Article.

2. Where other Union legislation requires or allows the inclusion of specific information in the product passport, that information may be included in the product passport pursuant to the applicable delegated act adopted pursuant to Article 4.
 3. The economic operator placing the product on the market shall provide dealers *and online marketplaces* with a digital copy of the data carrier *or the unique product identifier, as relevant*, to allow *them* to make it accessible to customers where they cannot physically access the product. The economic operator shall provide that digital copy *or a webpage link* free of charge and within 5 working days of *receiving the* request.
- 3a. To ensure access to the product passport for the period specified in delegated acts adopted pursuant to Article 4, including after an insolvency, a liquidation, or a cessation of activity in the Union, the economic operator, when placing the product on the market, shall make also available a back-up copy of the product passport through a certified independent third-party DPP service provider.*

Article 10

Technical design and operation of the product passport

The technical design and operation of the product passport shall comply with the following essential requirements:

- (a) product passports shall be fully interoperable with other product passports required by delegated acts adopted pursuant to Article 4 in relation to the technical, semantic and organisational aspects of end-to-end communication and data transfer;

- (b) *customers, manufacturers, importers and distributors, dealers, professional repairers, independent operators, refurbishers, remanufacturers, recyclers, market surveillance authorities and customs authorities, civil society organisations, trade unions* and other relevant actors shall have free *of charge and easy* access to the product passport based on their respective access rights set out in the applicable delegated act adopted pursuant to Article 4;
- (c) the data included in the product passport shall be stored *by* the economic operator responsible for its creation or by *certified independent third-party product passport service providers* authorised to act on their behalf;
- (d) if the data included in the product passport is stored or otherwise processed by *certified independent third-party product passport service providers* authorised to act on their behalf, those *certified independent third-party product passport service providers* shall not be allowed to sell, re-use or process such data, in whole or in part, beyond what is necessary for the provision of the relevant storing or processing services, *unless specifically agreed with the economic operator placing the product on the market or putting it into service*;
- (e) the product passport shall remain available for the period specified in delegated acts adopted pursuant to Article 4, including after an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created the product passport;
- (f) the rights to access and to introduce, modify or update information in *the* product passport shall be restricted based on the access rights specified in delegated acts adopted pursuant to Article 4;

(fa) the rights to access and to introduce, modify or update information in the product passport shall be restricted based on the access rights specified in delegated acts adopted pursuant to Article 4;

(g) data authentication, reliability and integrity shall be ensured;

(h) product passports shall be designed and operated so that a high level of security and privacy is ensured and fraud is avoided.

The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this article by setting out the rules and requirements to be followed by product passport service providers, including a certification scheme to verify such requirements, if appropriate.

The Commission may adopt implementing acts setting out procedures to issue and verify the digital credentials of economic operators and other relevant actors that shall have access rights to information included in the product passport. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

Article 11

Unique operator identifier and unique facility identifier

1. The unique operator identifiers referred to in Annex III, points (g) and (h), and the unique facility identifiers referred to in Annex III, point (i), shall comply with the ***standards referred to in point (c) and (l) in Annex III or equivalent European or international standards until referenced harmonised standards are listed in the OJEU;***

Where a unique operator identifier referred to in Annex III, point (h), is not yet available, the economic operator creating ***or updating*** the product passport shall request a unique operator identifier on behalf of the relevant actor.

Before issuing a request as referred to in the first subparagraph, the economic operator creating **or updating** the product passport shall seek confirmation from the actor concerned that no unique operator identifier exists and shall provide the supply chain actor concerned with full details of the released unique operator identifier.

Where a unique facility identifier referred to in Annex III, point (i), is not yet available, the economic operator creating **or updating** the product passport shall request a unique facility identifier on behalf of the actor responsible for the relevant location or building.

Before issuing a request as referred to in the first subparagraph, the economic operator creating **or updating** the product passport shall seek confirmation from the responsible actor that no unique facility identifier exists and provide the responsible actor with the full details of the released unique facility identifier.

4.



4a. The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by establishing rules and procedures related to unique identifiers and data carriers' lifecycle management. In particular, the delegated acts shall: (a) Establish rules for organisations wishing to become a DPP unique identifier and data carriers issuing agency. (b) Establish rules for economic operators wishing to mint their own unique identifiers and data carriers without relying on DPP unique identifier and data carriers issuing agency. The rules and procedures established through these delegated acts shall refer to: a) The criteria to become a DPP unique identifier and data carriers issuing agency. b) The roles to be played by DPP unique identifier and data carriers issuing agencies. c) The rules to ensure reliability, verifiability, global uniqueness of identifiers and data carriers. d) The rules to mint, maintain, update, and withdraw unique identifiers and data carriers. e) The rules related to data management.

When adopting those rules, the Commission shall:

a) seek to ensure the interoperability between different approaches. b) take into account relevant existing technical solutions and standards. ensure that the rules and procedures established remain, to the largest extent possible, technologically neutral.

Article 12

Product passport registry

By [2 years from entering into force of this Regulation], the Commission shall set up and manage a digital registry ("the registry") storing in a secure manner at least the unique product identifier, the unique operator identifier, the unique facility identifiers. In case of products intended to be placed under the customs procedure 'release for free circulation', the registry shall also store the product commodity code. The registry shall also store the batteries' unique identifiers referred to in Article 77(3) of Regulation (EU) 2023/1542.

The Commission shall ensure that the information stored in the registry referred to in the first subparagraph is processed securely and in compliance with Union law, including applicable rules on the protection of personal data.

2. The Commission shall, in the delegated acts adopted pursuant to Article 4, specify **any other** information which, in addition to being included in the product passport, shall be stored in the registry **■** , taking into account at least the following criteria:
 - (a) the need to allow for the verification of the authenticity of the product passport;
 - (b) the relevance of information for improving the efficiency and effectiveness of market surveillance checks and customs controls in relation to products covered by delegated acts adopted pursuant to Article 4;
 - (c) the need to avoid disproportionate administrative burden for economic operators **and customs authorities**.

3. In relation to its responsibility to **set up** and manage the registry **■** and the processing of any personal data that might result from that activity, the Commission shall be regarded as controller as defined in Article 3, point (8), of Regulation (EU) 2018/1725.
4. The economic operator placing the product on the market or putting it into service shall upload, in the registry **■** , the information referred to in **paragraphs 1 and 2**.
- 4a. *Upon upload of the information referred to in paragraphs 1 and 2 in the registry, the registry shall automatically communicate to the economic operator acting pursuant to paragraph 4, a unique registration identifier associated to the three identifiers uploaded in the registry for a specific product. That communication by the registry shall not be deemed to be proof of compliance with this Regulation or other Union legal acts. The Commission shall adopt an implementing act specifying the details of the implementation arrangements of the registry referred to in the first paragraph, including the communication of the unique registration identifier referred to in this paragraph. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3).*
5. The Commission, competent national authorities and customs authorities shall have access to the registry **■** for carrying out their duties pursuant to Union **law**.

Article 12a

Web portal for information in the digital product passport

The Commission shall set up and manage a publicly accessible web portal allowing stakeholders to search and compare information included in product passports. The web portal shall be designed to guarantee that stakeholders can search and compare for the information in line with their respective access rights pursuant to the delegated act pursuant Article 4.

Customs controls relating to the product passport

The Commission shall interconnect the registry **■** with the EU Customs Single Window Certificates Exchange (EU CSW-CERTEX), thus enabling the automated exchange of information with the national customs systems through the EU Single Window Environment for Customs established by Regulation (EU) 2022/2399³².

The interconnection referred to in the first subparagraph shall be *operational* within four years from the date of *entry into force* of the implementing act *on the registry* referred to in *article 12 (4a)*.

2. *The person intending to place a product covered by a delegated act adopted pursuant to Article 4 under the customs procedure ‘release for free circulation’ shall provide or make available to customs authorities the unique registration identifier of that product referred to in Article 12(4a).*

This paragraph shall apply from the moment the registry *is operational*.

3. *Customs authorities may release a product for free circulation only after having verified as a minimum that the unique registration identifier and the commodity code provided or made available to them correspond to the information stored in the registry. The verification referred to in the first subparagraph shall take place electronically and automatically via the interconnection referred to in paragraph 5. It shall apply as from the moment that interconnection is operational.*

The release for free circulation shall not be deemed to be proof of compliance with Union law.

■

³² *Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013*

5. █
6. Customs authorities *and the Commission* may retrieve and use the information included in the product passport and the registry █ for carrying out their duties pursuant to Union *legal acts*, including for risk management, *customs controls and release for free circulation in accordance with* Regulation (EU) No 952/2013.
- 6a. *This Article is without prejudice to any other Union legal acts, in particular Regulation (EU) 952/2013 and Chapter VII of Regulation (EU) 2019/1020.*

Chapter IV

Labels

Article 14

Labels

1. Where the information requirements referred in Article 7(1) specify that information shall be included in a label pursuant to Article 7(6), point (c), the delegated acts adopted pursuant to Article 4 shall specify:
- (a) the content of the label;
 - (b) the layout of the label *ensuring* visibility and legibility;
 - (c) the manner in which the label shall be displayed to customers including in case of distance selling, taking into account the requirements set out in Article 26 and the implications for the relevant economic operators;
 - (d) where appropriate, electronic means for generating labels.

2. Where an information requirement entails the inclusion in a label of the class of performance of a product as referred to in Article 7(4), the layout of the label referred to in paragraph 1, point (b), shall ***be clear and easily understandable, and shall*** enable customers to easily compare product performance in relation to the relevant product parameter and to choose better performing products.
3. For energy-related products ***that are subject to energy labels established pursuant to Regulation (EU) 2017/1369***, where information on a relevant product parameter, including on classes of performance referred to in Article 7(4), cannot be incorporated in the energy label ***and provided this information is considered to be more relevant and comprehensive than the information covered by the energy label***, the Commission, after assessing the ***risk of confusion for customers, the administrative burden for economic operators and the*** best way to communicate ***that*** particular information, may, if appropriate, require the establishment of a label in accordance with this Regulation ***instead of the energy label***.
4. When establishing the information requirements referred to in paragraph 1, the Commission shall, where appropriate, require the label to include data carriers or other means to allow customers to access additional information on the product, including means allowing access to the product passport ■ .

The Commission ***shall*** adopt implementing acts establishing common requirements for the layout of the labels required pursuant to Article 7(6), point (c).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

Article 15

Mimicking labels

Products shall not be placed on the market or put into service if they bear or are accompanied with labels which are likely to mislead or confuse customers by mimicking the labels provided for in Article 14 or if they are accompanied by any other information which is likely to mislead or confuse customers with respect to the labels provided for in Article 14.

Chapter V

Prioritisation, planning and consultation

Article 16

Prioritisation and planning

- 1. When prioritising products to be covered by ecodesign requirements **■**, the Commission shall *analyse the* potential contribution *of those products* to achieving Union climate, environmental and energy efficiency objectives, *taking into account* the following criteria:
- (a) the potential for improving the product aspects listed in Article 5(1) without entailing disproportionate costs, taking into account in particular:
 - (i) the absence or insufficiency of Union law or failure of market forces or self-regulation measures adopted in accordance with Article 18 to address the objective properly; and
 - (ii) the disparity in the performance of products available on the market with equivalent functionality in relation to the product aspects listed in Article 5(1);

- (b) the volume of sales and trade of the product within the Union;
- (c) the distribution of the *climate and* environmental impacts, energy use, *resource use* and waste generation across the value chain **■** ;
- (d) the need to regularly review and adapt delegated acts adopted pursuant to Article 4 in light of technological and market developments.

When prioritising aspects to be covered by horizontal requirements in accordance with this Regulation, the Commission shall take into consideration the benefits of having horizontal requirements imposed on a range of products and product groups.

The Commission shall also strive to assess their potential contribution to the functioning of the internal market and to the Union's economic resilience.

The Commission shall adopt *a working plan and make it publicly available, together with the relevant preparatory documents. The working plan shall set out a list of product groups **■** which will be prioritised for the establishment of* ecodesign requirements *and the estimated timelines for their establishment.* That list shall include products aspects referred to in Article 5(1) *and product groups which will be considered priorities for the establishment of* horizontal ecodesign requirements *in accordance with* Article 5(2), second subparagraph. *The working plan shall cover a period of at least 3 years, and it shall be regularly updated.*

When adopting or updating the working plan referred to in the first subparagraph, the Commission shall take into account the criteria set out in *paragraphs 1 and 1a of this* Article **■** .

- 2a. *The Commission shall present to the European Parliament the draft working plan and its updates before their adoption.*

- 2b. *In the first working plan, [to be adopted no later than 9 months after the entry into force of this Regulation], the Commission shall prioritise the following product groups: - iron, steel - aluminium - textiles, notably garments and footwear - furniture, including mattresses - tyres - detergents - paints - lubricants - chemicals - energy related products, the implementing measures for which need to be revised or newly defined - ICT products and other electronics. If any of those product groups is not included in the working plan or if any other product group is included, the Commission shall provide a justification for its decision in the working plan.*
- 2c. *Where there is an absence of adequate performance and information requirements on the environment and carbon footprint for cement under [the forthcoming Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (2022/0094 COD)] the Commission shall adopt a delegated act establishing ecodesign requirements on cement not earlier than 31 December 2028 and by 1 January 2030.*
- 2d. *The Commission shall inform the European Parliament and the Council annually of the progress made in the implementation of the working plan.*

Article 17

Ecodesign Forum

The Commission shall *establish an expert group referred to as the Ecodesign Forum with a balanced and effective participation of experts designated by Member States* ■ *and of all interested parties involved with the product or product group in question, such as representatives of industry, including SMEs and craft industry, social enterprises, trade unions, traders, retailers, importers, environmental* ■ *and consumer organisations, actors involved in circular economy activities, European Standardisation Organisations as well as researchers and other experts.*

The parties referred to in the first paragraph shall contribute in particular to preparing ecodesign requirements, preparing working plans, examining the effectiveness of the established market surveillance mechanisms, assessing self-regulation measures and prohibitions of destruction of unsold consumer products.



17a

Member States Expert Group

1. *The Commission shall establish, within the Ecodesign Forum, a sub-group referred to as the Member States Expert Group composed of experts designated by the Member States.*

Those experts shall contribute in particular to:

- (a) *preparing ecodesign requirements;*
- (b) *assessing self-regulation measures;*

(c) *exchanging information and best practices on measures to enhance compliance with this Regulation;*

(d) *setting priorities and planning under Article 20d.*



Article 18

Self-regulation measures

1. **█** Economic operators may submit *to the Commission* a self-regulation measure establishing ecodesign requirements for products *not falling within the scope of* a delegated act adopted pursuant to Article 4 *or if the products are not included in the current working plan*. Those operators shall provide evidence that the criteria referred to in paragraph 3, points (a) to (e), are fulfilled. **█**

The self-regulation measure *submitted pursuant to paragraph 1* shall contain the following information:

- (a) a list of the economic operators that are signatories to the self-regulation measure;

- (b) the ecodesign requirements applicable to products covered by the self-regulation measure;
- (c) a detailed, transparent and objective monitoring plan, with clearly identified responsibilities for industry and independent inspectors, including the criteria set out in point 6 of Annex VII;
- (d) rules on information to be reported by signatories and on testing and inspections **and**;
 - (da) rules on the consequences of the non-compliance of a signatory that include provisions whereby, if the signatory has not undertaken sufficient corrective actions within three months, it is dismissed from the self-regulation measure.*
 - (db) an explanatory note explaining how the self-regulation measure submitted pursuant to paragraph 1 improves the environmental sustainability of products in line with the objectives of this Regulation more quickly or at lesser expense than mandatory requirements than a delegated act adopted pursuant to Article 4. In order to enable the Commission to assess the self-regulation measure, this note shall be supported by evidence, consisting of a structured technical, environmental and economic analysis, justifying the ecodesign requirements and objectives of the self-regulation measure, and assessing the impacts of the ecodesign requirements set in that self-regulation measure.*

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The information referred to in this paragraph shall be kept up-to-date and be available on a publicly **and freely** accessible website.

The Commission shall assess the *submitted* self-regulation measure, and, where necessary, shall seek scientific advice from Union decentralised agencies. *In the* assessment, *the Commission* shall *verify* whether the following criteria are fulfilled:

- (a) the self-regulation measure contributes to improving the environmental sustainability of products *in line with the objectives of this Regulation* and ensuring the free movement in the internal market *more* quickly or at a lesser expense than *would* a delegated act adopted pursuant to Article 4 *and consists of product requirements that are necessary to achieve the objectives of this Regulation*;
- (aa) *the self-regulation measure is submitted by at least two economic operators*;
- (b) the market share in terms of volume of the signatories to the self-regulation measure in relation to the products covered by that measure is at least 80 % of units placed on the market or put into service;
- (c) the self-regulation measure complies with the criteria set out in Annex VII;
-
- (d) the self-regulation measure is in line with Union *law* and international trade commitments of the Union. ■

■

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The Commission shall adopt an implementing act containing a list of self-regulation measures *which fulfil the criteria of this* Article ■ . That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

The economic operators shall notify without delay the Commission of any changes to the self-regulation measure, in particular any changes to the signatories.

4. The Commission may at any point in time request the signatories of a self-regulation measure ***listed in an implementing act adopted pursuant to paragraph 3, third subparagraph***, to submit a revised and updated version of that measure in view of relevant market or technological developments within the product group concerned ***within an appropriate period of time***. Where ***the Commission*** has reason to believe that the criteria set out in ***this Article*** are no longer fulfilled, ***the signatories shall submit a revised and updated version of that measure within three months of the request made by the Commission***.
5. Once a self-regulation measure has been listed in an implementing act adopted pursuant to paragraph 3, second subparagraph, the signatories of that measure shall report to the Commission, at regular intervals set out in that implementing act, on the progress towards achieving the objectives of the self-regulation measures and to demonstrate that the criteria set in paragraph 3, points (a) to (e), remain fulfilled. ***The independent inspector shall notify the Commission of the lack of compliance of a signatory. Progress reports, including compliance reports made by the independent inspector, and notifications about lack of compliance and corresponding corrective action shall*** be made available on a publicly accessible website
6. Where the Commission considers ***that a self-regulation measure listed in an implementing act adopted pursuant to paragraph 3, third subparagraph***, no longer fulfils the criteria set out in ***this Article or where the signatories of the self-regulation measure concerned did not met the deadline referred to in*** paragraph 4, it shall delete it from the list referred to in that paragraph. In such cases, the Commission may decide to adopt ecodesign requirements applicable to the product covered by that self-regulation measure. ***The list shall be updated in accordance with the advisory procedure referred to in Article 67(2)***.

■ Small and medium-sized enterprises

1. In the context of programmes from which *SMEs, in particular micro-enterprises*, can benefit, the Commission shall ***make sure there are*** initiatives which help *those enterprises* to integrate environmental sustainability ■ including energy efficiency in their value chain.
2. When adopting delegated acts pursuant to Article 4 the Commission shall, where appropriate, accompany those acts with ***digital tools, such as for life cycle assessment calculation, and*** guidelines, covering specificities of SMEs, ***in particular micro-enterprises***, active in the product or product group sector affected for facilitating the application of this Regulation by *those enterprises*. ***The Commission shall consult SMEs representative organisations in the drafting of the guidelines.***

Member States shall take appropriate measures to help SMEs, ***in particular micro-enterprises***, apply ecodesign requirements set out in delegated acts adopted pursuant to Article 4. ***Member States shall consult organisations that represent SMEs on the kind of measures SMEs consider useful.***

Those measures shall at least include ensuring the availability of one-stop shops or similar mechanisms to raise awareness and create networking opportunities for SMEs, ***in particular micro-enterprises***, to adapt to requirements.

In addition, without prejudice to applicable State aid rules, such measures may include:

- (a) financial support, including by giving fiscal advantages and providing physical and digital infrastructure investments;
- (b) access to finance;
- (c) specialised management and staff training;
- (d) organisational and technical assistance.

Chapter VI

Destruction of unsold consumer products

Article 19a

General principle to prevent destruction

Economic operators shall take necessary measures which can reasonably be expected to prevent the need to destroy unsold consumer products.

Article 20

Disclosure of information on unsold consumer products

1. An economic operator that discards unsold consumer products directly, *or has unsold consumer products discarded on their behalf*, shall disclose:
 - (a) the number *and weight* of unsold consumer products discarded per year, differentiated per type or category of products;
 - (b) the reasons for the discarding of products, *and where applicable, the relevant exemption according to Article 20b (6)*;
 - (c) *the proportion of* the delivery of discarded products, *whether directly or through a third party, to each of the following activities*: preparing for re-use, remanufacturing, recycling, *other recovery including* energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC;

- (d) measures taken and measures aimed at preventing the destruction of unsold consumer products.*

The economic operator shall disclose that information *in a clear and visible manner at least on an easily accessible page of their website. Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may also include the information referred to above in that sustainability reporting.*

The information shall be disclosed on an annual basis and shall cover the unsold consumer products discarded during the previous financial year. The information for each year shall be publicly available. The first disclosure shall cover unsold consumer products discarded during the first full financial year of this regulation being in force.

2. *With the exception of when the information is available to the national authority on the basis of another legal act, the economic operator shall, upon request from the Commission or a competent national authority, provide all the information and documentation necessary to demonstrate the delivery and reception of the discarded products as disclosed pursuant to paragraph 1(c), where requested, information about the applicability of an exemption from a prohibition against destruction pursuant to Article 20b (6). Such information and documentation shall be provided in paper or electronic form within 30 days of receipt of the request. Paragraph 1 shall apply to medium-sized enterprises from [OJ note: 6 years after entry into force of this Regulation]. It shall not apply to micro and small enterprises.*

3. The Commission ***shall*** adopt implementing acts setting out the ***details and*** format, ***including the delimitation of product types or categories and how the information is to be verified, for the disclosure of the information referred to in paragraph 1.***

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

The first implementing act shall be adopted no later than [OJ note: 12 months after entry into force of this Regulation].





Article 20a

Destruction of unsold consumer products

- 1. From [OJ note: 24 months after entry into force of this Regulation], destruction of unsold consumer products for the product categories listed in Annex VIIa, is prohibited.***
- 2. Paragraph 1 shall apply to medium-sized enterprises from [OJ note: 6 years after entry into force of this Regulation]; it shall not apply to micro and small enterprises.***
- 3. Economic operators that are not subject to the prohibition of destruction shall not destroy unsold consumer products supplied to them with the purpose to circumvent that prohibition.***

4. *The Commission is empowered to adopt delegated acts in accordance with Article 66 in order to amend Annex VIIa:*
- (a) to add new product groups or categories, in order to take account of the environmental impact of the destruction of certain types of unsold consumer products;*
 - (b) to update the existing entries of product groups or categories, in order to align them to any modifications in their respective CN codes or descriptions that are made in Annex I to Council Regulation No 2658/87.*
5. *When preparing a delegated act referred to in paragraph 4, the Commission shall:*
- (a) assess the prevalence and environmental impact of the destruction of specific consumer products;*
 - (b) take into account the information disclosed by economic operators pursuant to Article 20, paragraph 1;*
 - (c) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary.*

The delegated act shall specify the date of application, and where appropriate, any tiered or transitional measures or periods.

6. *The Commission shall adopt delegated acts setting out exemptions to the prohibition of destruction of unsold consumer products listed in Annex VIIa where it is appropriate in view of:*
- (a) health, hygiene and safety reasons;*
 - (b) damage to products as a result of their handling or detected after a product has been returned, that cannot be repaired in a cost-effective manner;*

- (c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;*
- (d) refusal of products for donation, preparing for re-use or remanufacturing;*
- (e) products rendered unsellable due to infringement of intellectual property rights, including counterfeit products;*
- (f) products for which destruction is the option with the least negative environmental impact.*

The delegated act may also, where relevant, provide that the prohibition to destroy unsold consumer products referred to in paragraph 1 or the disclosure obligation referred to in Article 20 shall apply to micro and small enterprises where there is sufficient evidence that they may be used to circumvent the prohibition to destroy unsold consumer products or the disclosure obligation.

The first delegated act shall be adopted by [OJ note: 12 months after entry into force of this Regulation].

Article 20b

Prioritisation of unsold consumer products for setting a prohibition against destruction

- 1. *The Commission shall, no later than [OJ note: 36 months after entry into force of this Regulation] and every 36 months thereafter publish on a Commission website consolidated information on the destruction of unsold consumer products, including the following elements:***
 - (a) the prevalence of the destruction of specific groups of unsold consumer products per year, on the basis the information disclosed by economic operators pursuant to Article 20(1);*
 - (b) the comparative environmental impact resulting from such destruction per product group.*

2. *Based on the consolidated information provided pursuant to paragraph 1 and any other available evidence, the Commission shall identify in the working plan referred to in Article 16, the groups of unsold consumer products, if any, for which it will consider to prohibit their destruction by economic operators.*
3. *The Commission shall in particular consider the inclusion of electrical and electronic equipment when it first identifies the groups of unsold consumer products, if any, in relation to which it will consider introducing a prohibition of destruction, by economic operators.*

Chapter VII

Obligations of economic operators

Article 21

Obligations of manufacturers

1. When placing products covered by a delegated act adopted pursuant to Article 4 on the market or putting them into service, manufacturers shall ensure that:
 - (a) those products have been designed and manufactured in accordance with the requirements set out in the delegated acts adopted pursuant to Article 4;
 - (b) those products are accompanied by the information required by Article 7 and the delegated acts adopted pursuant to Article 4 *and*;
 - (c) a product passport is available in accordance with Article 8 and the delegated acts adopted pursuant to Article 4, *including a back-up copy of the most updated version of the product passport stored by a certified independent third-party product passport service provider in accordance with Article 10(2new).*

Before placing a product covered by a delegated act adopted pursuant to Article 4 on the market or putting it into service, manufacturers shall carry out the conformity assessment procedure specified in the delegated acts adopted pursuant to Article 4 ■ , or have it carried out on their behalf, ***and draw up the required technical documentation.***

Where compliance of a product covered by a delegated act adopted pursuant to Article 4 ***with*** the applicable requirements has been demonstrated by that procedure, manufacturers shall draw up an EU declaration of conformity in accordance with Article 37 and affix the CE marking in accordance with Article 39. However, where the Commission has specified alternative rules pursuant to Article 4, third subparagraph, point (f), the manufacturer shall affix conformity marking in accordance with those rules.

3. Manufacturers shall keep the technical documentation and the EU declaration of conformity for 10 years after ***a product covered by a delegated act adopted pursuant to Article 4 has been placed on the market or put into service unless a different period has been specified in that delegated act.***
4. Manufacturers shall ensure that procedures are in place for ***products covered by a delegated act adopted pursuant to Article 4 which are part of a*** series production to remain in conformity with the applicable requirements. Changes in the production process, product design or in characteristics, as well as changes in harmonised standards, common specifications or other technical specifications by reference to which product conformity is declared or by application of which its conformity is verified, shall be adequately taken into account by manufacturers and, in case they found that the product's conformity is affected, manufacturers shall carry out a re-assessment in accordance with the ***applicable*** conformity assessment procedure ■ , or have it carried out on their behalf. ■
5. Manufacturers shall ensure that their products ***covered by a delegated act adopted pursuant to Article 4*** bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow so, that the required information is provided on the packaging or in a document accompanying the product.

6. Manufacturers shall *for products covered by a delegated act adopted pursuant to Article 4, indicate* their name, registered trade name or registered trade mark, postal address and **■** electronic means of communication, where they can be contacted:
- (a) *on the public part of the product passport, when applicable, and*
 - (b) *on the product or, where this is not possible, on its packaging, or in a document accompanying the product.*

The address shall indicate a single point where the manufacturer can be contacted. The contact details shall be clear, understandable and legible.

7. Manufacturers shall ensure that **■** a product covered by a delegated act adopted pursuant to Article 4 is accompanied by instructions *in digital format* that enable *customers* and other *relevant actors to* assemble, install, operate, store, maintain, repair and dispose of the product in a language that can be easily understood **■**, as determined by the Member State concerned. Such instructions shall be clear, understandable and legible and include at least the information *set out in Article 7(2), point (b), point (ii)* specified in the delegated acts adopted pursuant to Article 4. *However, the manufacturer shall provide in paper, in a concise format, safety information and the instructions relevant for the health and safety of customers and other relevant actors. When providing the instructions in a digital format, the manufacturer shall: include them in a product passport and make them accessible through the corresponding data carrier, or, where not available, mark on the product, or, where that is not possible, on its packaging or in an accompanying document, how to access the digital instructions; present them in a format that makes it possible to download them and save on an electronic device so that the user can access them at all times; make them accessible online during the expected lifetime of the product and for at least 10 years after the placing on the market of the product. However, at the request of the customer at the time of the purchase or up to 6 months after that purchase, the manufacturer shall provide the instructions in paper format free of charge within one month. The delegated acts adopted pursuant to Article 4 may specify that certain information forming part of the instructions provided for in the first subparagraph shall be provided also in paper format.*

7a.

Manufacturers who consider or have reason to believe that a product covered by a delegated act adopted pursuant to Article 4 that they have placed on the market or put into service is not in conformity with the requirements set out in *that* delegated *act* shall *without undue delay* take the necessary corrective *actions* to bring that product into conformity, *or to immediately* withdraw it or recall it, if appropriate.

Manufacturers shall immediately inform the market surveillance authorities of the Member States in which they made the product available *or put it into service* of the suspected non-compliance and of any corrective *action* taken.

8a. *Manufacturers shall make publicly available communication channels such as a telephone number, electronic address or dedicated section of their website, taking into account the accessibility needs for persons with disabilities, in order to allow end-users to submit complaints or concerns regarding the potential non-conformity of products.*

Manufacturers shall keep a register of complaints and concerns for a period of 5 years only as long as it is necessary for the purpose of this Regulation and make it available upon request from a market surveillance authority.

Manufacturers shall, *for products covered by a delegated act adopted pursuant to Article 4*, further to a reasoned request from a competent national authority, provide all the information and documentation necessary to demonstrate the conformity of *those products*, including the technical documentation, in a language that can be easily understood by that authority. That information and documentation shall be provided in paper or electronic form, *as soon as possible and* within *15* days of receipt of a request by a competent national authority.

Manufacturers shall cooperate with the competent national authority, on any action taken to remedy any case of non-compliance with the requirements set out in a delegated act adopted pursuant to Article 4 by which the product in question is covered.

Article 22

Authorised representatives

A manufacturer may, by a written mandate, appoint an authorised representative.

The obligations laid down in Article 21(1) and the drawing up of technical documentation shall not form part of the authorised representative's mandate.

2. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:
 - (a) keep the EU declaration of conformity and technical documentation at the disposal of the national market surveillance authorities for 10 years after a product covered by a delegated act adopted pursuant to Article 4 has been placed on the market or put into service *unless a different period has been specified in that delegated act*;
 - (b) cooperate with the competent national authorities, at their request, on any measures taken with regard to non-compliances of the product covered by the authorised representative's mandate;
 - (c) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product in a language that can be easily understood by that authority;

- (d) further to a request from a competent national authority, ***provide relevant documents as soon as possible and*** within ***15*** days of the receipt of such a request ***and***;
- (e) terminate the mandate if the manufacturer acts contrary to its obligations under this Regulation **■** .

Article 23

Obligations of importers

1. Importers shall , ***with regard to*** products covered by a delegated act adopted pursuant to Article 4, ***only place on the market products*** that comply with the requirements set out in the applicable delegated acts.

Before placing a product covered by a delegated act adopted pursuant to Article 4 on the market, importers shall ensure that:

- (a) the appropriate conformity assessment procedure has been carried out by the manufacturer and that the manufacturer has drawn up the technical documentation;
- (b) products are accompanied by the information required by the Article 7 and the delegated acts adopted pursuant to Article 4;
- (c) a product passport is available in accordance with Article 8 and the delegated acts adopted pursuant to Article 4, ***including a back-up copy of the most updated version of the product passport stored by a certified DPP service provider in accordance with Article 10(2new)***.

The importer shall further ensure that *a product covered by a delegated act adopted pursuant to Article 4* bears the required CE marking referred to in Article 38, *where applicable, in accordance with the rules and conditions referred to in Article 39*, or the alternative conformity marking as laid down in a delegated act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 21(5) and (6).

Where importers consider or have reason to believe that a product is not in conformity with the requirements set out in the applicable delegated acts adopted pursuant to Article 4, they shall not place the product on the market or put it into service until it has been brought into conformity.

3. Importers shall , *for products covered by a delegated act adopted pursuant to Article 4, indicate* their name, registered trade name or registered trade mark, postal address and electronic means of communication, where they can be contacted:
 - (a) *on the public part of the product passport, when applicable, and*
 - (b) *on the product or, where this is not possible, on the packaging, or in a document accompanying the product .*

The contact details shall be clear, understandable and legible.

4. Importers shall ensure that *a product covered by a delegated act adopted pursuant to Article 4is* accompanied by instructions *in digital format* that enable the *customer and other relevant actors* to assemble, install, operate, store, maintain, repair and dispose of the product, in a language that can be easily understood , as determined by the Member State concerned. Such instructions shall be clear, understandable and legible and shall include at least the information *set out in Article 7(2), point (b), point (ii), as* specified in the delegated acts adopted pursuant to Article 4. *The obligations under Article 21, paragraph 7, subparagraphs [7b], [7c] shall apply mutatis mutandis.*

5. Importers shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in a delegated act adopted pursuant to Article 4 by which it is covered.

Importers who consider or have reason to believe that a product covered by a delegated act adopted pursuant to Article 4, which they have placed on the market **■**, is not in conformity with the requirements set out in that act shall *without undue delay* take the corrective *actions* necessary to bring that product into conformity, *or to immediately* withdraw it or recall it, if appropriate.

Importers shall immediately inform the market surveillance authorities of the Member States in which they made the product available of the suspected non-compliance and of any corrective *action* taken.

7. Importers shall **■** keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request, *for 10 years after a product covered by a delegated act adopted pursuant to Article 4 has been placed on the market or put into service, unless a different period has been specified in that delegated act.*

Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product *covered by a delegated act adopted pursuant to Article 4*, including technical documentation, in a language that can be easily understood by that authority. That information and documentation shall be provided in paper or electronic form, within **15** days of receipt of a request by the competent *national authority*.

Importers shall cooperate with the competent national authority on any action taken to remedy any case of non-compliance with the requirements set out in a delegated act adopted pursuant to Article 4 by which the product in question is covered.

Obligations of distributors

1. When making a product covered by a delegated act adopted pursuant to Article 4 available on the market, distributors shall act with due care in relation to the requirements set out in that act.
2. Before making a product covered by a delegated act adopted pursuant to Article 4 available on the market, distributors shall verify that **■** :
 - (a) the product bears the CE marking in accordance with Articles 38 and 39 or *the* conformity marking adopted *in accordance with* Article 4, third subparagraph, point (f), and, where relevant, is labelled or is linked to a product passport in accordance with that delegated acts;
 - (b) the product is accompanied by the required documents and by instructions *that* enable the *customer and other relevant actors* to assemble, install, operate, store, maintain, *repair* and dispose of the product, in a language that can be easily understood by *customers*, as determined by the Member State in which the product is to be made available on the market, and that such instructions are clear, understandable and legible and include at least the information set out in Article 7(2), point (b), point (ii), as *specified* in the delegated act adopted pursuant to Article 4; *the obligations set in Article 21, paragraph 7, subparagraphs [7b and 7c], shall apply mutatis mutandis; and;*
 - (c) the manufacturer and the importer have complied with the requirements set out in Article 21(5) and (6) and Article 23(3).

Where a distributor considers or has reason to believe that a product, before making it available on the market, or its manufacturer is not complying with the requirements set out in a delegated act adopted pursuant to Article 4, they shall not make the product available on the market until the product has been brought into conformity or the manufacturer complies.

Distributors shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in in the delegated act adopted pursuant to Article 4.

Distributors who consider or have reason to believe that a product which they have made available on the market is not in conformity with the requirements set out in a delegated act adopted pursuant to Article 4 shall make sure that the ***necessary corrective action*** to bring that product into conformity, to withdraw it or recall it, if appropriate, are taken.

Distributors shall immediately inform the market surveillance authorities of the Member States in which they made the product available of the suspected non-compliance and of any corrective ***action*** taken.

Distributors shall, further to a reasoned request from a competent national authority, provide the authority with all the information and documentation to which they have access and that is relevant for demonstrating the conformity of a product. That information and documentation shall be provided in **■** paper or electronic form, ***within 15 days of receipt of a request by a competent national authority.***

Distributors shall cooperate with that authority on any corrective action taken to remedy any case of non-compliance with a delegated act adopted pursuant to Article 4 by which the product in question is covered.

Article 25

Obligations of dealers

1. Dealers shall ensure that their ***potential customers and*** customers have access to any relevant information ***accompanying the products, as*** required by the delegated acts adopted pursuant to Article 4, including in case of distance selling.

2. Dealers shall ensure that the product passport is easily accessible to *potential customers and* customers, including in case of distance selling, as *set out* in Article 8(2), point (e), *and specified in the* delegated acts adopted pursuant to Article 4 by which the product is covered.
3. Dealers shall, *including in case of distance selling*:
 - (a) display to *potential customers and* customers, in a visible manner, labels provided in accordance with Article 26(1), point (b) or 26(1), point (c) *and*;
 - (b) make reference to the information included in labels provided in accordance with Article 26(1), point (b) or 26(1), point (c) in visual advertisements or in technical promotional material for a specific model, in accordance with delegated acts adopted pursuant to Article 4 by which the product is covered *and*;
 - (c) not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the information included on the label *regarding ecodesign requirements*.

Article 26

Obligations related to labels

1. Where a delegated act adopted pursuant to Article 4 requires products to have a label as referred to in Article 14, the economic operator placing the product on the market or putting it into service shall:
 - (a) *ensure that products are accompanied, for each individual unit and free of charge, by printed labels in accordance with that delegated act.*

- (b) *provide* printed labels or digital copies of the label to the dealer free of charge, promptly and in any event within 5 working days of the dealer's request;
- (c) ensure that its labels are accurate and shall, as part of the applicable conformity assessment procedure, produce technical documentation sufficient to enable the accuracy to be assessed.

■

2. *Where a delegated act adopted pursuant to Article 4 requires products to have a label as referred to in Article 14, the economic operator making the product available or putting it into service shall:*

4b. make reference to the information included in the label, in visual advertisements or in technical promotional material for a specific model in accordance with the relevant delegated act adopted pursuant to Article 4;

- (a) not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the information included on the label.

Article 27

Obligations of fulfilment service providers

Fulfilment service providers shall ensure that, for products that they handle that are covered by a delegated act adopted pursuant to Article 4, the conditions during warehousing, packaging, addressing or dispatching ■ do not jeopardise the products' compliance with that delegated act ■ .

Article 28

Cases in which obligations of manufacturers apply to importers and distributors

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation where they:

- (1) place a product covered by a delegated act adopted pursuant to Article 4 on the market under their name or trademark *or*;
- (2) modify such a product already placed on the market in a way that affects compliance with the requirements set out in delegated acts adopted pursuant to Article 4 by which the product is covered.

Article 29

Obligations of online marketplaces and online search engines

1. The *general obligations foreseen* in Article 11 of Regulation (EU) 2022/2065 and Article 30 of Regulation (EU) 2022/2065 shall *apply for the purpose of this Regulation. Without prejudice to the general obligations referred to in the first subparagraph* online marketplaces *shall cooperate with the market surveillance authorities, at the request of the market surveillance authorities and in specific cases, to facilitate any action taken to eliminate or, if that is not possible, to mitigate non-compliance presented by a product that is or was offered for sale online through their services.*

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3. As far as powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by a relevant delegated act adopted pursuant to Article 4, to order an online marketplace to ***act against one or more specific items of content referring to a non-compliant product, including by removing it. Such content shall be considered as illegal content within the meaning of Article 3, point (h) of Regulation (EU) 2022/2065. Market surveillance authorities may, in accordance with Article 9 of Regulation (EU) 2022/2065, issue such orders .***

Online marketplaces shall establish a single contact point allowing for direct communication with Member States' market surveillance authorities in relation to compliance with this Regulation .

This contact point may be the same contact point as the one referred to in Article 22(1) of Regulation (EU) 2023/988 or Article 11(1) of Regulation (EU) 2022/2065.

Information obligations of economic operators

1. ***When making a product covered by a delegated act adopted pursuant to Article 4 available on the market through distance selling, economic operators shall ensure that the product offer*** ■ ***clearly and visibly provides at least the following information:***
 - (a) the name, registered trade name or registered trade mark of the manufacturer, as well as the postal ***and email*** address where they can be contacted;
 - (b) in case the manufacturer is not established in the Union, the name, ***postal*** address, telephone number and email address of the economic operator established in the Union within the meaning of Article 4(2) of Regulation (EU) 2019/1020, ***and***;
 - (c) information ***allowing the identification of*** the product, including ***a picture of it, its type*** and any other product identifier.

Economic operators shall, upon ***reasoned*** request, provide the market surveillance authorities with:

- (a) the name of any economic operator who has supplied them with a product falling within the scope of a delegated act adopted pursuant to Article 4;
- (b) any economic operator to whom they have supplied such products, as well as the quantities and exact models.

Economic operators shall be able to provide this information for 10 years after they have been supplied with the relevant products and for 10 years after they have supplied such products ***unless a different period has been specified in that delegated act. That information shall be provided in paper or electronic form within 15 days of receipt of a request by the market surveillance authority.***

When requiring manufacturers, their authorised representatives or importers to make parts of the technical documentation related to the relevant product digitally available pursuant to Article 4, third subparagraph, point (a), the Commission shall take into account the following criteria:

- (a) the need to facilitate the verification of compliance with the applicable requirements by market surveillance authorities;
- (b) the need to avoid disproportionate administrative burden for economic operators, *in particular for SMEs, and;*



The Commission shall specify the manner in which the relevant parts of the technical documentation shall be made available. Where available, technical documentation shall be made available through the product passport.

Article 31

Monitoring and reporting obligations of economic operators

When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:

- (a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;

- (b) the need to avoid disproportionate administrative burden for economic operators, *especially SMEs*.

(ba) the usefulness of data required and the proportionality of this requirement to the objectives

The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.

The Commission shall ensure that the resulting data is processed securely and in compliance with Union law.

The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.

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When requiring a product to be able to measure the energy it consumes or its performance in relation to other relevant product parameters referred to in Annex I while in use, pursuant to Article 4, third subparagraph, point **(b(i))**, the Commission shall take into account the following criteria:

- (a) the usefulness of in-use data for end-users to understand and manage the energy use or performance of the product;
- (b) the technical feasibility of recording in-use data *and*;
- (c) the need to avoid disproportionate administrative burden for economic operators, *in particular for SMEs*;
- (d) *the need to ensure that no data allowing the identification of individuals or allowing the inference of individuals behaviours are collected*;

Products covered by a requirement set pursuant to Article 4, third subparagraph, point (c), shall, *where appropriate, in line with the criteria in paragraph 2*, record the resulting in-use data and make it visible to the end-user.

When requiring manufacturers, their authorised representatives or importers to collect *and* report to the Commission *non-personal* in-use data referred to in paragraph 2, pursuant to Article 4, third subparagraph, point *(b(ii))*, the Commission shall take into account the following criteria:

(a) the usefulness of *non-personal* in-use data for the Commission when reviewing ecodesign requirements or assisting market surveillance authorities with statistical information for their risk-based analysis;

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(b) the need to avoid disproportionate administrative burden for economic operators, *in particular for SMEs*.

Such requirements referred to in the first subparagraph may in particular consist of:

- (a) collecting *non-personal* in-use data if it can be accessed remotely via the internet, *following explicit consent by the end-user* to make that data available;
- (b) *reporting* it to the Commission at least once a year. The economic operator shall include the product database identification number of the model as referred to in Article 12(5) of Regulation (EU) No 2017/1369 and, if relevant to their performance, *general* geographical information on the products. ■

The Commission shall specify the details and format for reporting the *non-personal* in-use data as referred to in the second subparagraph, point (b), *in the relevant delegated act*.

4. The Commission shall periodically assess the in-use data received pursuant to paragraph 3 and shall, where appropriate, publish aggregated datasets.

Article 31a

Requirements on supply chain actors

When specified in the delegated act adopted pursuant Article 4, supply chain actors shall:

- (a) provide, upon request and free of charge, manufacturers, notified bodies and competent national authorities with available relevant information related to their supplies or services;*
- (b) allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services and give access to relevant documents or facilities to those manufacturers;*
- (c) enable notified bodies and competent national authorities to verify the correctness of relevant information related to their activities.*



Chapter VIII

Conformity of products

Article 32

Test, measurement and calculation methods

1. For the purposes of compliance and verification of compliance with ecodesign requirements, tests, measurements and calculations shall be made using ***harmonised standards or other*** reliable, accurate and reproducible methods that take into account the generally recognised state-of-the art methods. Such methods shall fulfil the ***requirements on*** test, measurement and calculation ***methods*** set out in the relevant delegated acts adopted pursuant to Article 4.



When setting *the requirement to use digital tools pursuant to Article 4, third subparagraph, point (b(iii))*, the Commission shall take into account the following criteria:

- (a) the need to ensure the harmonised application of calculation *methods*;
- (b) the need to minimise administrative burden imposed on economic operators .

Digital tools shall be freely accessible for economic operators .

Article 33

Prevention of circumvention and worsening of performance

- 1. *An economic operator shall not engage in any behaviour that undermines the compliance with this Regulation regardless of whether that behaviour is of a contractual, commercial, technical or any other nature.*

Products falling within the scope of a delegated act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties when they are tested in order to reach a more favourable result for any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered.

For the purposes of this paragraph, products designed to be able to detect they are being tested and automatically alter their performance in response and products pre-set to alter their performance at the time of testing shall constitute products designed to alter their behaviour or properties when they are tested.

Economic operators placing *on the market or putting into service* a product covered by a delegated act adopted pursuant to Article 4 shall not prescribe instructions specific to testing that alter the behaviour or the properties of products in order to reach a more favourable result for any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered.

For the purposes of this paragraph, instructions leading to a manual alteration of the product before a test that alters the performance of the product shall constitute instructions specific to testing that alter the behaviour or the properties of products.

3. Products falling within the scope of a delegated act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties within a short period after putting the product into service leading to a worsening of their performance in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or their functional performance from the perspective of the user.

Software or firmware updates shall not worsen product performance *beyond acceptable margins specified in the concerned delegated acts* in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or the functional performance from the perspective of the user when measured with the test method used for the conformity assessment, except with explicit consent of the *customer* prior to the update. No **■** change shall occur as a result of rejecting the update.

Software or firmware updates shall not *in any case* worsen performance referred to in the first subparagraph to the extent that the product becomes non-compliant with the requirements set out in delegated acts adopted pursuant to Article 4 applicable at the time of the placing on the market or putting into service of the product.

Presumption of conformity

1. Tests, measurement or calculation methods referred to in Article 32 which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation requirements set out in delegated acts adopted pursuant to Article 4 to the extent that those requirements are covered by such harmonised standards or parts thereof.
 - 1a. ***Requirements for product passports referred to in Article 9 and 10 which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the requirements set out in those Articles to the extent that those requirements are covered by such harmonised standards or parts thereof.***
2. Products which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union shall be presumed to be in conformity with ecodesign requirements set out in delegated acts adopted pursuant to Article 4 to the extent that those requirements are covered by such harmonised standards or parts thereof.
3. Products covered by a delegated act adopted pursuant to Article 4, which have been awarded the EU Ecolabel pursuant to Regulation (EC) No 66/2010 shall be presumed to comply with the ecodesign requirements set out in that delegated act in so far as those requirements are covered by the EU Ecolabel criteria established according to Article 16(2) of Regulation (EC) No 66/2010.

Common specifications

The Commission may adopt implementing acts *establishing* common specifications *covering* ecodesign requirements, the essential requirements for product passports referred to in *Article 9 and 10* or for test, measurement or calculation methods referred to in Article 32, *for products covered by delegated acts adopted pursuant to Article 4.*

Those implementing acts shall only be adopted where the following conditions are fulfilled:

- (a) *the Commission has requested, pursuant to Articles 9 and 10(1) of Regulation (EU) No 1025/2012, one or more European standardisation organisations to draft a harmonised standard for an ecodesign requirement , an essential requirement for product passports referred to in Article 10 of this Regulation or for a test, measurement or calculation method referred to in Article 32 of this Regulation and*
 - (i) *the request has not been accepted, or*
 - (ii) *the harmonised standards addressing that request is not delivered within the deadline set in accordance with Article 10(1) of Regulation 1025/2012, or*
 - (iii) *the harmonised standards do not comply with the request; and*
- (b) *no reference to harmonised standards for an ecodesign requirement or an essential requirement for product passports referred to in Article 10 of this Regulation or for a test, measurement or calculation method referred to in Article 32 of this Regulation is published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012 and no such reference is expected to be published within a reasonable period;*

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

- 1a. Before preparing a draft implementing act, the Commission shall inform the committee referred to in Article 22 of Regulation EU (No) 1025/2012 that it considers that the conditions in paragraph 1 of this article are fulfilled.**
- 1b. When preparing the draft implementing act establishing the common specification, the Commission shall take into account the views of relevant bodies or the Ecodesign Forum [and the Ecodesign Expert Group], and shall duly consult all relevant stakeholders.**
2. Test, measurement and calculation methods referred to in Article 32 which are in conformity with common specification or parts thereof shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation requirements set out in delegated acts adopted pursuant to Article 4 to the extent that those requirements are covered by such common specification or parts thereof.
3. Products ***within the scope of this Regulation*** which are in conformity with common specifications ***established by implementing acts referred to in paragraph 1*** shall be presumed to be in conformity with ecodesign requirements, ***the essential requirements for product passports referred to in Article 10 or for test, measurement or calculation methods referred to in Article 32*** set out in the delegated act adopted pursuant to Article 4 by which those products are covered to the extent that those requirements are covered ***by*** those common specifications or parts thereof.
- 4. Where a harmonised standard is adopted by an European standardisation organisation and proposed to the Commission for the purpose of publishing its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012. When references of a harmonised standard are published in the Official Journal of the European Union, the Commission shall repeal implementing acts referred to in paragraph 1, or parts thereof which cover the same ecodesign requirements, essential requirements for product passports and the test, measurement or calculation methods.**

- 3b. *When a Member State or the European Parliament consider that a common specification does not entirely satisfy the ecodesign requirements, the essential requirements for product passports and the test, measurement or calculation methods, it shall inform the Commission thereof by submitting detailed explanation and the Commission shall assess that information and, if appropriate, may amend the implementing act establishing the common specification in question.*

Article 36

Conformity assessment

1. When specifying the applicable conformity assessment procedure pursuant to Article 4, second subparagraph, the Commission shall consider the following criteria:
 - (a) whether the module concerned is appropriate to the type of product, *appropriate to the relevant ecodesign requirements* and proportionate to the public interest pursued;
 - (b) the nature of the *risks entailed by the product and the extent to which conformity assessment corresponds to the type and degree of risk,*
 - (c) where third party involvement is mandatory, the need for the manufacturer to have a choice between quality assurance and product certification modules set out in Annex II of Decision No 768/2008/EC.
2. **■** Records and correspondence relating to the conformity assessment shall be drawn up in an official language of the Member State where a notified body involved in a conformity assessment procedure referred to in paragraph 1 is established, or in a language accepted by that body.

Article 37

EU declaration of conformity

1. The EU declaration of conformity shall state that the fulfilment of ecodesign requirements specified in the applicable delegated acts adopted pursuant to Article 4 *or according to Article 34* has been demonstrated.
2. The EU declaration of conformity shall have the model structure set out in Annex V, shall contain the elements specified in the applicable conformity assessment procedure and a reference to the applicable delegated acts adopted pursuant to Article 4. It shall be continuously updated. It shall be translated into the language or languages required by the Member State in which the product is placed or made available *on the market*.
3. Where a product covered by a delegated act adopted pursuant to Article 4 is subject to more than one Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall state the Union acts concerned and their publication references. It may be a dossier made up of relevant individual EU declarations of conformity.
4. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the product.

Article 38

General principles of the CE marking

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

Article 39

Rules and conditions for affixing the CE marking

1. The CE marking shall be affixed visibly, legibly and indelibly to the product. Where that is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents.
2. The CE marking shall be affixed before the product is placed on the market *or put into service*.

For a product in the *production control phase* of which a notified body participates, the CE marking shall be followed by the identification number of that notified body.

The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or its authorised representative.

4. The CE marking and, where applicable, the identification number of the notified body may be followed by a pictogram or other marking indicating a special risk or use.
5. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and take appropriate action in the event of improper use of the marking.

Article 40

Specific rules on markings

When specifying rules on ***markings, for products without requirements for CE marking in Union law***, indicating conformity with the applicable requirements under Union law pursuant to Article 4, third subparagraph, point (f), the Commission shall take into account the following criteria:

- (a) the need to minimise administrative burden for economic operators;
- (b) the need to ensure coherence with other **■** markings applicable to a specific product;
- (c) the need to prevent confusion about the meaning of markings under other Union law.

Chapter IX

Notification of conformity assessment bodies

Article 41

Notification

Member States shall notify the Commission and the other Member States of bodies authorised to carry out the third-party conformity assessment tasks ***when*** provided for under the delegated acts adopted pursuant to Article 4.

Article 42

Notifying authorities

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with the provisions of Article 47.
2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.
3. Where the notifying authority delegates or *otherwise* entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article 43. In addition, it shall have arrangements to cover liabilities arising out of its activities.
4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

Article 43

Requirements relating to notifying authorities

1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies occurs.
2. A notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.
3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
4. A notifying authority shall not offer or provide any activities that conformity assessment bodies perform, or consultancy services on a commercial or competitive basis.
5. A notifying authority shall safeguard the confidentiality of the information it obtains. However, it shall, upon request, exchange information on notified bodies with the Commission, with notifying authorities of other Member States and with other relevant national authorities.
6. A notifying authority shall take as a basis for notification only the specific conformity assessment body applying for notification and not take account of the capacities or personnel of parent or sister companies. The authority shall assess that body against all relevant requirements and conformity assessment tasks.

A notifying authority shall have a sufficient number of competent personnel and sufficient funding at its disposal for the proper performance of its tasks.

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Article 44

Information obligation on notifying authorities

Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto.

The Commission shall make that information publicly available.

Article 45

Requirements relating to notified bodies

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in paragraphs 2 to 11.
2. A conformity assessment body shall be established under the national law of a Member State and have legal personality.
3. A conformity assessment body shall be a third-party body independent of the organisation or the product it assesses. It shall not have any business ties with organisations that have an interest in the products it assesses, in particular manufacturers, their trade partners and their shareholding investors. This shall not preclude the conformity assessment body from carrying out conformity assessment activities for competing manufacturers.

A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, importer, distributor, installer, purchaser, owner, user or maintainer of the products which they assess, nor the representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall apply in particular to consultancy services.

Conformity assessment bodies shall ensure that the activities of its parent or sister companies, subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

A conformity assessment body shall not delegate to a subcontractor or a subsidiary the establishment and the supervision of internal procedures, general policies, codes of conduct or other internal rules, the assignment of *its* personnel to specific tasks and the conformity assessment decisions ■ .

5. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field. They shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it under the relevant delegated act adopted pursuant to Article 4 and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times and for each conformity assessment procedure, and for each kind or category of products in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:

- (a) personnel with technical knowledge, and sufficient and appropriate experience to perform the conformity assessment tasks ■ ;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the *transparency* and the ability *of reproduction of those procedures including a description of how* relevant personnel, their status and tasks *correspond to* the conformity assessment tasks in relation to which the body intends to be notified;
- (c) appropriate policies and procedures to distinguish the tasks it carries out as a notified body from other activities;
- (d) procedures for the performance of activities, which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

It shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out conformity assessment activities shall have the following:
- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
 - (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments, including appropriate knowledge and understanding of the relevant legislation, test, measurement and calculation requirements, of the applicable harmonised standards or common specifications and of the relevant provisions of this Regulation, and of the delegated acts adopted pursuant to Article 4;
 - (c) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

7a. *Personnel responsible for taking assessment decisions shall be employed by the conformity assessment body under the national law of the notifying Member State, shall not have any other potential conflict of interest, shall be competent to verify the assessments made by other staff, external experts or subcontractors. The number of such personnel shall be sufficient to ensure business continuity and a consistent approach to conformity assessments.*

The impartiality of the conformity assessment bodies and their top-level management and of the assessment personnel shall be guaranteed.

The remuneration of the top-level management and assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or their results.

9. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.

10. The personnel of a conformity assessment body shall observe professional secrecy regarding all information obtained in carrying out the conformity assessment tasks under the relevant delegated acts adopted pursuant to Article 4, except in relation to the notifying authorities and other national authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.
11. Conformity assessment bodies shall participate in, or ensure that their assessment personnel are informed about, the relevant standardisation activities and ***and take into account the relevant guidance and recommendations issued by the competent technical committees of the European standardisation bodies.***

Article 46

Presumption of conformity of conformity assessment bodies

Where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in the Official Journal of the European Union it shall be presumed to comply with the requirements set out in Article 45 in so far as the applicable harmonised standards cover those requirements.

Article 47

Subsidiaries of and subcontracting by notified bodies

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 45 and shall inform the notifying authority accordingly.

2. Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established. ■
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
4. Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment and monitoring of the qualifications of the subcontractor or the subsidiary and the work carried out by them under the relevant delegated acts adopted pursuant to Article 4.

Article 48

Application for notification

1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
2. That application shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the product or products for which that body claims to be competent, ■ as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article 45. The accreditation certificate shall relate only to the precise legal body applying for notification and shall be based, in addition to relevant harmonised standards, on the specific requirements and conformity assessment tasks set out in the relevant delegated act adopted pursuant to Article 4.
3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 45.

Notification procedure

1. Notifying authorities only notify conformity assessment bodies which have satisfied the requirements laid down in Article 45.
2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.
3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and product or products concerned and the relevant attestation of competence.
4. Where a notification is not based on an accreditation certificate as referred to in Article 48(2), the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 45.

The body concerned may perform the activities of a notified body if the Commission or the other Member States do not raise any objections within 2 weeks of a notification where an accreditation certificate is used, or within 2 months of a notification where accreditation is not used.

Only such a body shall be considered a notified body for the purposes of this Regulation.

The notification shall become valid the day after the body is included in the list of notified bodies referred to in Article 50(2) by the Commission. The body concerned may perform the activities of a notified body only after the notification has become valid.

The Commission shall not publish a notification if it is aware or becomes aware that the relevant notified body does not meet the requirements laid down in Article 45.

7. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

Article 50

Identification numbers and lists of notified bodies

The Commission shall assign an identification number to a notified body.

It shall assign a single such number even where the body is notified under several Union acts.

The Commission shall make the list of the bodies notified under this Regulation publicly available, including the identification numbers that have been allocated to them and the activities for which they have been notified.

The Commission shall ensure that that list is kept up to date.

Article 51

Changes to notifications

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 45, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly.
2. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that this body's files are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
2. The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.

Where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, it shall **inform** the notifying Member State **accordingly and request it** to take the necessary corrective **measures**, including withdrawal of the notification if necessary. ▀

The Commission shall update the list of notified bodies referred to in Article 50(2) within 2 weeks **from the notification** of the **measures taken by the notifying Member States in accordance to the first subparagraph of this Article**.

Operational obligations of notified bodies

1. Notified bodies shall carry out conformity assessments in accordance with the conformity assessment procedures provided for in the delegated acts adopted pursuant to Article 4.

Conformity assessments shall be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators. *Notified* bodies shall perform their activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing they shall nevertheless respect the degree of rigour and the level of protection required for the compliance of the product with the relevant requirements.

3. Where a notified body finds that a manufacturer does not meet the relevant requirements or corresponding harmonised standards, common specifications or other technical specifications, it shall require that manufacturer to take appropriate corrective measures in view of a final conformity assessment, unless the deficiencies cannot be remedied, in which case it shall not issue a certificate or approval decision.
4. Where, in the course of the monitoring of conformity following the issue of a certificate *in accordance with the conformity assessment procedures provided for in a delegated act adopted pursuant to Article 4* or approval decision, a notified body finds that a product or the manufacturer does not comply or no longer complies, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate or approval decision if necessary.
5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates or approval decisions, as appropriate.

Information obligation on notified bodies

1. Notified bodies shall inform the notifying authority of the following:
 - (a) any refusal, restriction, suspension or withdrawal of a certificate;
 - (b) any circumstances affecting the scope of and conditions for notification;
 - (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
 - (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.
2. Notified bodies shall provide the other bodies notified under this Regulation which carry out similar conformity assessment activities that cover the same *product group* with relevant information on issues relating to negative and, on request, positive conformity assessment results.
3. Where the Commission or a Member State's market surveillance authority submits a request to a notified body established on the territory of another Member State relating to a conformity assessment carried out by that notified body, it shall send a copy of that request to the notifying authority of that other Member State. The notified body concerned shall respond without delay and within 15 days at the latest to the request. The notifying authority shall ensure that such requests are resolved by the notified body ■ .

Where notified bodies have or receive evidence that:

- (a) another notified body does not comply with the requirements laid down in Article 45 or its obligations; or

- (b) a product placed on the market does not comply with ecodesign requirements set out in delegated acts adopted pursuant to Article 4 by which that product is covered; or
- (c) a product placed on the market, due to its physical condition, is likely to cause a serious risk;

they shall alert and share such evidence with the relevant market surveillance or notifying authority, as appropriate.

Article 55

Exchange of experience

The Commission shall provide for the organisation of exchange of experience between the Member States' authorities responsible for notification policy.

Article 56

Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under this Regulation are put in place and properly operated in the form of a group or groups of notified bodies, where appropriate including groups of bodies notified under the same delegated act adopted pursuant to Article 4 or in relation to similar conformity assessment tasks.

Notified bodies shall participate in the work of any relevant group, directly or by means of designated representatives.

2. Notified bodies shall apply as general guidance any relevant documents produced as a result of the work of the groups referred to in paragraph 1.

3. Coordination and cooperation in the groups referred to in paragraph 1 shall aim at ensuring the harmonised application of this Regulation and of the delegated acts adopted pursuant to Article 4. In doing so, the groups shall *take into account the relevant guidance and recommendations issued* by the *competent technical committees of the European standardisation bodies*

Chapter X

Incentives

Article 57

Member State incentives

1. *When* Member States *provide incentives for* products covered by a delegated act adopted pursuant to Article 4, *those incentives shall aim at* the highest two classes of performance that are populated at Union level or, where relevant, *at* products with **■** EU Ecolabel **■** .

As a derogation from paragraph 1, where Member States provide incentives for energy-related products or tyres covered by a delegated act adopted pursuant to Article 4 which are also subject to energy or fuel efficiency labelling requirements, Article 7(2) of Regulation (EU) 2017/1369 of the Council and the Parliament and Article 11 of Regulation(EU) 2020/740 of the Council and the Parliament³³ shall apply respectively.

³³ *on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation (EU) 2017/1369 and repealing Regulation (EC) No 1222/2009, OJ L 177, 5.6.2020, p. 1–31*

Green public procurement

1. *Contracting authorities and contracting entities, in compliance with Directives 2014/24/EU or 2014/25/EU, shall award public contracts complying with the minimum requirements set out pursuant to paragraph 2 for the purchase of products covered by delegated acts pursuant to Article 4, or for works or services where those products are used for activities constituting the subject matter of those contracts.*

2. *The minimum requirements referred to in paragraph 1 shall be set as appropriate, in order to incentivise the supply and demand for environmentally sustainable products covered by delegated acts adopted pursuant to Article 4, taking into account the value and volume of public contracts awarded for the relevant product groups and the economic feasibility for contracting authorities and contracting entities to buy more environmentally sustainable products without entailing disproportionate costs.*

3. *The Commission is empowered to adopt implementing acts setting out the minimum requirements referred to in paragraph 1 in the form of technical specifications, award criteria, contract performance conditions or targets.*

Those minimum requirements shall be established in relation to the product aspects referred to in article 5 addressed in the delegated act pursuant to Article 4 applicable to the product groups in question, as relevant for those product groups.

Those minimum requirements shall be based on the two highest performance classes, the highest scores or, when not available, on the best possible performance levels as set out in the delegated act adopted pursuant to Article 4 applicable to the products in question.

Award criteria shall, where appropriate, include a minimum weight, between 15% and 30%, in the awarding process, enabling them to significantly impact the outcome of the tendering procedure favouring the selection of the most environmentally sustainable products.

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Targets shall require, on annual or multiannual basis, a minimum percentage of 50% of procurement conducted at the level of contracting authorities or entities, or at aggregated national level, of the most sustainable products as referred to in the third subparagraph.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

Chapter XI

Market surveillance

Planned Market surveillance activities

Each Member State shall, in the national market surveillance strategy referred to in Article 13 of Regulation (EU) 2019/1020, provide an section on the market surveillance activities planned to ensure that appropriate checks, including, where appropriate, physical and laboratory checks, are performed on an adequate scale in relation to this Regulation and the delegated acts adopted pursuant to Article 4. ▯

The **section** referred to in paragraph 1 shall at least include:

- (a) the products or requirements identified as priorities for market surveillance ▯ taking into account the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a) **and the reports pursuant to Article 61(2).**
- (b) the market surveillance activities planned in order to reduce **or bring to an end** non-compliance for those products or requirements identified as priorities, including the nature of checks to be performed during the period covered by the action plan.

2. The priorities for market surveillance referred to in paragraph 1, point (a), shall be identified on the basis of objective criteria, including:

- (a) the levels of non-compliance observed in the market;
- (b) the environmental impacts of non-compliance;
- (ba) where available, the number of complaints received from end-users, consumer organisations or other information received from economic operators or the media;**
- (c) the number of relevant products made available on national markets; and
- (d) the number of relevant economic operators active on those markets.

3. *For product categories identified as representing a high risk of non-compliance, the checks shall include, where appropriate, physical and laboratory checks based on adequate samples.*



Market surveillance authorities shall have the right to recover from the responsible economic operator the costs of document inspection and physical product testing in case of non-compliance with delegated acts adopted pursuant to Article 4.



Reporting and benchmarking

1. Market surveillance authorities shall enter into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 information on the nature and severity of any penalty imposed in relation to non-compliance with this Regulation.

The Commission shall, every **4** years, draw up a report by 30 June based on the information entered by market surveillance authorities into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. The first of these reports shall be published by [**OP: Please add date: four years after date of application of this Regulation**].

The report shall include:

- (a) information on the nature and number of checks performed by market surveillance authorities during the **four** previous calendar years pursuant to Article 34(4) and (5) of Regulation (EU) 2019/1020;
 - (b) information on the levels of non-compliance identified and on the nature and severity of penalties imposed for the **four** previous calendar years in relation to products covered by delegated acts adopted pursuant to Article 4 of this Regulation;
 - (c) a comparison of this information with the activities planned in the context of the action plans drawn up pursuant to Article 59(1);
 - (d) indicative benchmarks for market surveillance authorities in relation to the frequency of checks and the nature and severity of penalties imposed.
- (da) list of priorities for market surveillance authorities in terms of products and requirements.**

3. The Commission shall publish the report referred to in paragraph 2 of this Article in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall make *it public*.

Article 62

Market surveillance coordination and support

For the purposes of this Regulation, the administrative cooperation group ('ADCO') set up pursuant to Article 30(2) of Regulation (EU) 2019/1020 shall meet at regular intervals and, where necessary, at the reasoned request of the Commission or of two or more participating market surveillance authorities.

In the context of performing its tasks set out in Article 32 of Regulation (EU) 2019/1020, the ADCO shall support the implementation of the *outlines* drawn up pursuant to Article 59(1) and shall identify:

- (a) common priorities for market surveillance as referred to in Article 59(1), point (a), based on objective criteria as referred to in Article 59(2);
- (b) priorities for Union support pursuant to paragraph 2;
- (c) requirements set out in delegated acts adopted pursuant to Article 4 that are applied or interpreted differently that should be priorities for the organisation of common trainings or adoption of guidelines pursuant to paragraph 2 of this Article.

Based on priorities identified by the ADCO, the Commission shall:

- (a) organise joint market surveillance and testing projects in areas of common interest;
- (b) organise joint investment in market surveillance capacities, including equipment and IT tools;

- (c) organise common trainings for the staff of market surveillance authorities, **customs authorities**, notifying authorities and notified bodies, including on the correct interpretation and application of requirements set out in delegated acts adopted pursuant to Article 4 and on methods and techniques relevant for applying or verifying compliance with such **requirements**;
- (d) elaborate guidelines for the application and enforcement of requirements set out in delegated acts adopted pursuant to Article 4, including common practices and methodologies for effective market surveillance.

(da) where appropriate, consult with stakeholders and experts.

The Union shall, where appropriate, finance the actions referred to in points (a), (b) and (c).

3. The Commission shall provide technical and logistic support to ensure the ADCO fulfils its tasks set out in **this Article and** Article 32 of Regulation (EU) 2019/1020 **where such tasks relate to this Regulation.**

Chapter XII

Safeguard procedures

Article 63

Procedure for dealing with products presenting a risk at national level

Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by a delegated act adopted pursuant to Article 4 **presents** a risk, they shall carry out an evaluation covering all requirements relevant to the risk and laid down in this Regulation or in the relevant delegated act. ■

Where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in the applicable delegated acts adopted pursuant to Article 4, they shall without delay require the relevant economic operator to take appropriate and proportionate corrective action, within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature and where relevant the degree of the non-compliance, to bring the non-compliance to an end. The corrective action required to be taken by the economic operator may include *inter alia* the actions listed in Article 16(3) of Regulation (EU) 2019/1020.

The market surveillance authorities shall inform the relevant notified body accordingly.

2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.
3. The *relevant* economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.

Where the relevant economic operator does not take corrective action within the period referred to in the second subparagraph of paragraph 1 or the non-compliance persists, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the product concerned on their national market, to withdraw the product from that market or to recall it.

They shall inform the Commission and the other Member States, without delay, of those measures.

5. The information to the Commission and the other Member States referred to in paragraph 4 shall be communicated through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall include all available details, in particular the data necessary for the identification of the non-compliant product, the origin of the product, the nature of the non-compliance alleged and the non-compliance involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. The market surveillance authorities shall also indicate whether the non-compliance is due to either:
- (a) failure of the product to meet requirements set out in the relevant delegated act adopted pursuant to Article 4; or
 - (b) shortcomings in the harmonised standards or common specification referred to in Articles 34 and 35 conferring a presumption of conformity.
6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the product concerned, and, in the event of disagreement with the notified national measure, of their objections.
7. Where, within three months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified. Measures may specify a period longer or shorter than three months in order to take account of the specificities of the products or requirements concerned.
8. Member States shall ensure that appropriate restrictive measures are taken in respect of the product concerned, such as withdrawal of the product from their market, without delay.

Article 64

Union safeguard procedure

Where, on completion of the procedure set out in Article 63(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide by means of an implementing act whether the national measure is justified or not.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3).

The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

If the national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant product is withdrawn from their market, and shall inform the Commission accordingly.

If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.

3. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in Article 34 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the common specifications referred to in Article 35, the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 67(3).

Article 65

Formal non-compliance

1. Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:
 - (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 39 of this Regulation;
 - (b) the CE marking has not been affixed;
 - (c) the identification number of the notified body has been affixed in violation of Article 39 or has not been affixed where required;
 - (d) the EU declaration of conformity has not been drawn up;
 - (e) the EU declaration of conformity has not been drawn up correctly;
 - (f) the technical documentation is not available, not complete or contains errors;
 - (g) the information referred to in Article 21(6) or Article 23(3) is absent, false or incomplete;
 - (h) any other administrative requirement provided for in Article 21 or Article 23 or in the applicable delegated act adopted pursuant to Article 4, is not fulfilled.
2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the product being made available on the market or ensure that it is recalled or withdrawn from the market.

Chapter XIII

Delegated powers and committee procedure

Article 66

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4, Article 9(1), second subparagraph, Article 11(4), Article 20(3), and Article 61(1) shall be conferred on the Commission for a period of **five** years from [*the date of* entry into force of this act]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the **five-year** period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 4, Article 9(1), second subparagraph, Article 11(4), Article 20(3), and Article 61(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State acting in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 4, Article 9(1), second subparagraph, Article 11(4), Article 20(3), and Article 61(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 67

Committee procedure

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Chapter XIV

Final provisions

Article 68

Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive **█** .

Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:

- (a) the nature, gravity and duration of the infringement;*
- (b) where appropriate, the intentional or negligent character of the infringement;*
- (c) the financial situation of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;*
- (d) the economic benefits derived from the infringement by the natural or legal person held responsible, insofar as they can be determined;*
- (e) the environmental damage caused by the infringement;*
- (f) any action taken by the natural or legal person held responsible to mitigate or remedy the damage caused;*

█

(g) *the repetitive or singular character of the infringement;*

■

(h) *any other aggravating or mitigating factor applicable to the circumstances of the case.*

Member States shall at least be able to impose the following penalties in case of infringements to this Regulation:

(a) *fines;*

■

(c) *time-limited exclusion from public procurement procedures.*

Member States shall, without delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.

Article 69

Monitoring and evaluation

Among the relevant preparatory documents for the update of the working plan in accordance with Article 16(2), first subparagraph, the Commission shall compile a report on the ecodesign requirements with a view to monitoring the improvements of the environmental sustainability and circularity of the products covered by the Regulation.

■

■

No later than [6 years after the date of application of this Regulation], and every 6 years thereafter, the Commission shall carry out an evaluation of this Regulation and of its contribution to the functioning of the internal market, including as regards the reuse and refurbishing sector, the exception set out in Article 1 (2) point (h), the obligations referred to in Chapter VI, in particular the exemptions for small and micro-enterprises, and to the improvement of the environmental sustainability of products. As part of that evaluation, the Commission shall assess the feasibility of including automatic adaptation of ecodesign requirements on the basis of improvement of product performance in the products that are being placed on the market.

Member States shall provide the Commission with the information necessary for the preparation of that report.

No later than [4 years after the date of application of this Regulation], the Commission shall evaluate the potential benefits of the inclusion of social sustainability requirements within the scope of this Regulation. The Commission shall present a report on the main findings of its evaluation to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, and make it publicly available.

Where *appropriate*, the Commission shall accompany the reports referred to in [sub-paragraphs x and x] with a legislative proposal for amendment of the relevant provisions of this Regulation.

Article 69a

Consumer redress

In the event of non-compliance of a product with ecodesign requirements established in the delegated acts adopted pursuant to Article 4, the following economic operators shall be liable for damage suffered by the consumer: (a) the manufacturer, or, (b) in case the manufacturer is not established in the Union, and without prejudice to its own liability, the importer or the authorised representative of the manufacturer, or, (c) in case the importer is not established in the Union or there is no authorised representative of the manufacturer, the fulfilment service provider. The liability of the economic operators mentioned in points (a) to (c) for damages shall be without prejudice to the application of other remedies available to consumers under Union or national law.

Article 69b

Amendment to Directive (EU) 2020/1828

Point (27) of Annex I to Directive (EU) 2020/1828 of the European Parliament and of the Council³⁴ shall be replaced by the following: ‘(27) Regulation (EU) .../... of the European Parliament and of the Council ... on establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC.’

³⁴ *Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).*

Repeal and transitional provisions

1. Directive 2009/125/EC is repealed *with effect from [OJ note: date of entry into force of this Regulation], with the exception of:*

(a) *Articles 1, 2, 8(2), 11, 14, 15, 18, and 19 and Annexes I, II IV, V and VII of Directive 2009/125/EC in the version applicable on [OP: please insert the day before the date of entry into force of this Regulation] shall continue to apply:*

(i) *until 31 December 2026, to photovoltaic panels, space and combination heaters, water heaters, solid fuel local space heaters, air conditioners including air-to-air heat pumps and comfort fans, solid fuel boilers, air heating and cooling products ventilation units, vacuum cleaners, cooking appliances, water pumps, industrial fans, circulators, external power supplies, computers, servers and data storage products, power transformers, professional refrigeration, and imaging equipment,*

(ii) *until 31 December 2030, to products regulated by implementing measures that are adopted pursuant to Article 15 of Directive 2009/125/EC, however only insofar as amendments are necessary to address technical issues to those implementing measures;*

instead of Articles 1, 2, 4, 5, 6, 7, 7a, 8, 9, 10, 11, 12, 17 and 17a of and Annexes I, II, III and IV to this Regulation. Once the Commission adopts those measures, the third paragraph of this Article applies.

(b) Article 1(3), 2, 3(1), 4, 5, 8, 9(3), 10, 14 and 20 of and Annexes IV, V and VI to Directive 2009/125/EC in the version applicable on [OP: please insert the day before the date of entry into force of this Regulation] shall continue to apply to products regulated by implementing measures that are adopted pursuant to Article 15 of that Directive until such measures are repealed or declared obsolete, instead of Articles 1, 2, 21, 23, 34(3), 36(2), 37 to 39 and 68 of and Annexes IV and V to this Regulation.

2. *Articles 3, 33 and 59 to 65 of this Regulation shall apply to products regulated by implementing measures that are adopted pursuant to Article 15 of Directive 2009/125/EC.*

3. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VIII.

4. For products placed on the market or put into service in accordance with Directive 2009/125/EC before the date of application of a delegated act adopted pursuant to Article 4 of this Regulation covering the same products, the manufacturer shall, for a period of 10 years as from the date when the last of that product was manufactured, make an electronic version of documentation relating to the conformity assessment and the declaration of conformity available for inspection within 10 days of a request received from market surveillance authorities or the Commission.

Article 70a

Amendment to Regulation (EU) 2023/1542

- In Article 77 of Regulation (EU) 2023/1542, the following paragraph is added: '10. The economic operator placing the battery on the market or putting it into service shall upload the unique identifier in the registry referred to in Article 12(1) of Regulation (EU) 2024/[ESPR no.]'***

Article 71

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

Annex I

Product parameters

The following parameters *shall*, as appropriate, and where necessary supplemented by others, be used, *individually or combined*, as a basis for improving the product aspects referred to in Article 5(1):

- (a) durability and reliability of the product or its components as expressed through the product's guaranteed lifetime, technical lifetime, mean time between failures, indication of real use information on the product, resistance to stresses or ageing mechanisms;
- (b) ease of repair and maintenance, as expressed through: characteristics, availability, delivery time *and affordability* of spare parts, modularity, compatibility with commonly available *tools and* spare parts, availability of repair and maintenance instructions, number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and *whether specialised tools are* needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed;
- (c) ease of upgrading, re-use, remanufacturing and refurbishment as expressed through: number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed, conditions of access to test protocols or not commonly available testing equipment, availability of guarantees specific to remanufactured or refurbished products, conditions for access to or use of technologies protected by intellectual property rights, modularity;

- (d) ***design for recycling***, ease and quality of recycling as expressed through: use of easily recyclable materials, safe, easy and non-destructive access to recyclable components and materials or components and materials containing hazardous substances ***and*** material composition and homogeneity, possibility for high-purity sorting, number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed;
- (e) avoidance of technical solutions detrimental to re-use, upgrading, repair, maintenance, refurbishment, remanufacturing and recycling of products and components;
- (f) use of substances, ***and in particular the use of substances of concern***, on their own, as constituents of substances or in mixtures, during the production process of products, or leading to their presence in products, including once these products become waste, ***and their impacts on human health and the environment***;
- (g) ***use or*** consumption of energy, water and other resources in one or more life cycle stages of the product, including the effect of physical factors or software and firmware updates on product efficiency and including the impact on deforestation;
- (h) use or content of recycled materials ***and recovery of materials, including critical raw materials***;
- (ha) use or content of sustainable renewable materials***;
- (i) weight and volume of the product and its packaging, and the product-to-packaging ratio;

- (j) incorporation of used components
- (k) quantity, characteristics and availability of consumables needed for proper use and maintenance *as expressed, inter alia, through yield, technical lifetime, ability to reuse, repair, and remanufacture, mass-resource efficiency, interoperability;*
- (l) the environmental footprint of the product, expressed as a quantification, in accordance with the applicable delegated act, of a product's life cycle environmental impacts, whether in relation to one or more environmental impact categories or an aggregated set of impact categories;
- (m) the carbon footprint of the product;
- (ma) the material footprint of the product;**
- (n) microplastic *and nanoplastic* release *as expressed through the release during relevant product lifecycle stages including manufacturing, transport, use, and end of life stages;*
- (o) emissions to air, water or soil released in one or more life cycle stages of the product *as expressed through quantities and nature of emissions, including noise;*
- (p) amounts of waste generated, including plastic waste and packaging waste and their ease of re-use, and amounts of hazardous waste generated;
- (q) *functional performance and* conditions for use *including as expressed through ability in performing its intended use, precautions of use, skills required, compatibility with other products or systems ;*
- (qa) █**
- (qb) █**

(qc) lightweight design as expressed through reduction of material consumption, load- and stress-optimisation of structures, integration of functions within the material or into a single product component, use of lower density or high-strength materials and hybrid materials, with respect to material savings, recycling and other circularity aspects, and waste reduction.

Annex II

Procedure for defining performance requirements

Performance requirements shall be set as follows:

A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic viability of the options and avoiding any significant increase of other life cycle environmental impacts, and significant loss of performance or of usefulness for consumers.

The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing products and technologies available on the market, *as well as emerging technology improvements*.

The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.

Based on this analysis, and taking into account economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, levels or non-quantitative requirements shall be defined.

Any concentration limit for substances as referred to in Annex I, point (f), shall be based on a thorough analysis of the sustainability of the substances and their identified alternatives, and shall not have significant adverse effects on human health or the environment. Any performance requirement on substances as referred to in Annex I, point (f), shall take into consideration existing chemical safety assessments performed by the relevant Union bodies for the substances concerned, as well as safe and sustainable by design criteria for chemicals and materials developed by the Commission. Proposed concentration limits shall also consider aspects of enforceability, such as analytical detection limits.

Where relevant, the analysis referred to in the first subparagraph shall take into account the likely impacts of climate change on the product during its prospective lifetime, and the product's potential to improve climate resilience throughout its life cycle.

A sensitivity analysis covering the relevant factors, such as the price of energy or other resources, the cost of raw materials and necessary technologies, production costs, discount rates, and, where appropriate, external environmental costs, including avoided greenhouse gas emissions, must be carried out.

For the development of the technical, environmental and economic analyses, relevant information available in the framework of other Union activities, ***including among others existing sectoral roadmaps as referred to in Regulation (EU) 2021/1119***, shall be taken into account and shall include technical information used as a basis for or derived from Regulation (EC) No 66/2010, Directive 2010/75/EU and Green Public Procurement criteria.

That shall also apply for information available from existing programmes applied in other parts of the world for setting the specific ecodesign requirement of products traded with the Union's economic partners.

Annex III

■ Product Passport

(referred to in *Articles 8, 9,10 and 11*)

The requirements related to the product passport laid down in the delegated acts adopted pursuant to Article 4 shall specify what information shall or may be included in the product passport from among the following elements:

- (a) information required under *Article 7(2) point (b) and Article 7(5)* or by other Union law applicable to the relevant product group;
- (b) the unique product identifier at the level indicated in the applicable delegated act adopted pursuant to Article 4;
- (c) the Global Trade Identification Number as provided for in standard ISO/IEC 15459-6 or equivalent of products or their parts;
- (d) relevant commodity codes, such as a TARIC code as defined in Council Regulation (EEC) No 2658/87¹;
- (e) compliance documentation and information required under this Regulation or other Union law applicable to the product, such as the declaration of conformity, technical documentation or conformity certificates;
- (f) user manuals, instructions, warnings or safety information, as required by other Union legislation applicable to the product;

¹ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

- (g) information related to the manufacturer, such as its unique operator identifier and the information referred to in Article 21(7);
- (h) unique operator identifiers other than that of the manufacturer;
- (i) unique facility identifiers;
- (j) information related to the importer, including the information referred to in Article 23(3) and its EORI number;
- (k) the name, contact details and unique operator identifier code of the economic operator established in the Union responsible for carrying out the tasks set out in Article 4 of Regulation (EU) 2019/1020, or Article 15 of Regulation (EU) [.../...] on general product safety, or similar tasks pursuant to other EU legislation applicable to the product.
- (l) ***The data carrier, the unique product identifier referred to in point (b), the unique operators identifiers referred to in points (g) and (h), and the unique facility identifiers referred to in point (i) shall, where relevant for the concerned products, comply with International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-1:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-2:2015; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-3:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-4:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-5:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-6:2014.***

(kb) the reference of the certified independent third-party product passport service provider hosting the back-up copy of the product passport.

The delegated acts adopted pursuant to Article 4 shall identify information relevant to ecodesign requirements that manufacturers may include in the product passport in addition to the information required pursuant to Article 8(2), point (a), including information on specific voluntary labels applicable to the product. That shall include whether an EU Ecolabel has been awarded to the product in line with Regulation (EC) No 66/2010.

Annex IV

Internal production control

(Module A)

1. Internal production control is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4, and ensures and declares on its sole responsibility that the product satisfies the requirements of the delegated act adopted pursuant to Article 4.
2. Technical documentation

The manufacturer shall establish the technical documentation. The documentation shall make it possible to assess the product's conformity to the requirements of the delegated act adopted pursuant to Article 4. The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall, wherever applicable, contain at least the following elements:

- a general description of the product and of its intended use,
- conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.
- descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,

- a list of the harmonised standards, common specification or other relevant technical specifications the references of which have been published in the Official Journal of the European Union, applied in full or in part, and descriptions of the solutions adopted to meet the requirements where those harmonised standards have not been applied. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied,
- results of design calculations made, examinations carried out, etc.,
- the results of measurements carried out in relation to ecodesign requirements, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the delegated act adopted pursuant to Article 4,
- test reports, and
- a copy of the information provided in accordance with the information requirements pursuant to Article 7,

3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure compliance of the product with the technical documentation referred to in point 2 and with requirements of the delegated act adopted pursuant to Article 4.

4. CE marking and EU declaration of conformity

The manufacturer shall affix the required conformity marking to each individual product that satisfies requirements of the delegated act adopted pursuant to Article 4.

The manufacturer shall draw up a written declaration of conformity for each product model in accordance with Article 37 and keep it, together with the technical documentation, at the disposal of the competent national authorities for ten years after the product has been placed on the market or put into service. The declaration of conformity shall identify the product for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

5. Authorised representative

The manufacturer's obligations set out in point 4 may be fulfilled by his or her authorised representative, on his or her behalf and under his or her responsibility, provided that they are specified in the mandate.

Annex V

EU declaration of conformity

(referred to in Article 37)

The EU declaration of conformity shall contain the following elements:

- (1) No ... (unique identification of the product)
- (2) Name and address of the manufacturer and, where applicable, its authorised representative;
- (3) This EU declaration of conformity is issued under the sole responsibility of the manufacturer.
- (4) Object of the declaration (description of the product sufficient for its unambiguous identification and allowing traceability; it may, where necessary for the identification of the product, include an image);
- (5) The object of the declaration described above is in conformity with this Regulation, the delegated act adopted pursuant to Article 4 and, where applicable, other Union harmonisation legislation;
- (6) references to the relevant harmonised standards or to the common specifications used or references to the other technical specifications in relation to which conformity is declared;
- (7) where applicable, the notified body ... (name, number) performed ... (description of intervention) and issued the certificate or approval decision ... (number);
- (8) where appropriate, the reference to other Union legislation providing for the affixing of the CE mark that is applied; and

- (9) the identification and signature of the person empowered to bind the manufacturer or its authorised representative.

Additional information:

Signed for and on behalf of:

(place and date of issue):

(name, function) (signature)

- (1) the definition of the product groups covered, ***including the list of commodity codes as set out in Annex I to Regulation (EEC) No 2658/87 and product descriptions;***

Annex VII

Criteria for self-regulation measures

(referred to in Article 18)

The following non-exhaustive list of criteria *shall* be used to assess self-regulation measures *in accordance with* Article 18 :

Openness of participation

Self-regulation measures must be open to the participation of any operators placing on the market a product covered by the self-regulation measure, including third country operators *and SMEs*, both in the preparatory and in the implementation phases. Economic operators intending to establish a self-regulation measure should make a public announcement of their intention to do so before the process of developing the measure is started.

Sustainability and added value

Self-regulation measures must respond to the policy objectives of this Regulation and must be consistent with the economic and social dimensions of sustainable development. Self-regulation measures must have an integrated approach to the protection of the *environment*, interests of consumers, health, **■** quality of life and economic interests.

Representativeness

Industry and their associations taking part in a self-regulation measure must represent a large majority of the relevant economic sector, in accordance with Article 18(3), first subparagraph, point (b). Care must be taken to ensure respect for Union competition legislation, in particular Article 101 of the Treaty on the Functioning of the European Union regarding anti-competitive agreements.

Quantified and staged objectives

The objectives defined by the signatories in their self-regulation measures must be set in clear, **quantifiable** and unambiguous terms, starting from a well-defined baseline. If the self-regulation measure covers a long time-span, interim targets must be included. It must be possible to monitor compliance with objectives and interim targets in an affordable and credible way using clear and reliable indicators.

Involvement of civil society

With a view to ensuring transparency, self-regulation measures must be publicised, including online **on a publicly and freely accessible website** and via other electronic means of disseminating information.

Stakeholders including Member States, industry, environmental NGOs and consumers' associations **shall** be invited to comment on a self-regulation measure.

Monitoring and reporting

An independent inspector must be selected and nominated. An independent inspector must monitor compliance of signatories with the self-regulation measure. The self-regulation measure must empower the independent inspector to verify compliance with the requirements of the self-regulation measure. It must also lay down the procedure to select an independent inspector and how it will be ensured that the inspector is free of conflict of interest and has the necessary skills for verifying compliance with the requirements set out in the self-regulation measure.

Every year, each signatory must report all the information and data necessary for the independent inspector to reliably verify the signatory's compliance with the self-regulation measure.

The independent inspector must draw up a compliance report at end of each one-year reporting period.

Where a signatory *does not comply* with the requirements of the self-regulation measure, it must take corrective action. ***The independent inspector shall notify the other signatories participating in the self-regulation measure of a lack of compliance by a signatory and of the corrective action the signatory intends to take.***

The results of any market surveillance activity conducted by a market surveillance authority where non-compliance with the self-regulation measures requirements has been identified, shall be taken into account by the independent inspector, in particular in the compliance report, and corrective action shall be taken.

Cost-effectiveness of administering a self-regulation measure

The cost of administering the self-regulation measure, in particular as regards monitoring, must not lead to a disproportionate administrative burden, as compared to their objectives and to other available policy instruments.

Annex VIII

Annex VIIa

Groups and categories of consumer products of which the destruction by economic operators is prohibited

CN code in which the product is currently listed	Description
Apparel and clothing accessories	
61 – all listed codes within the chapter	Articles of apparel and clothing accessories, knitted or crocheted
62 – all listed codes within the chapter	Articles of apparel and clothing accessories, not knitted or crocheted
6504	Hats and other headgear, plaited or made by assembling strips of any material, whether or not lined or trimmed
6505	Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hairnets of any material, whether or not lined or trimmed
4203	Articles of apparel and clothing accessories, of leather or composition leather (excl. footwear and headgear and parts thereof, and goods of chapter 95, e.g. shin guards, fencing masks)
Footwear	
6401	Waterproof footwear with outer soles and uppers of rubber or of plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes

6402	Other footwear with outer soles and uppers of rubber or plastics
6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather
6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials
6405	Other footwear

Correlation table

Directive 2009/125/EC	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	-
Article 4	Article 23
Article 5	Articles 37-39
Article 6	Article 3
Article 7	Articles 63 to 65
Article 8	Articles 21, 36
Article 9	Article 34
Article 10	-
Article 11	Article 5(6)

Article 12	Article 62
Article 13	Article 19
Article 14	Article 7
Article 15	Articles 4 and 5
-	
Article 16	Article 16
Article 17	Article 18
Article 18	Articles 17
-	Article 20
	Article 22
	Articles 24-33
	Article 35
	Article 40-61
	Article 66
Article 19	Article 67
Article 20	Article 68
Article 21	Article 69
Article 22	-
Article 23	-
Article 24	Article 70
Article 25	Article 71

Article 26	-
ANNEX I	Articles 5, 7, ANNEX I
ANNEX II	ANNEX II
-	ANNEX III
ANNEX III	-
ANNEX IV	ANNEX IV
ANNEX V	-
ANNEX VI	ANNEX V
ANNEX VII	ANNEX VI
ANNEX VIII	ANNEX VII
ANNEX IX	-
ANNEX X	ANNEX VIII