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**NOTE**

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| From:           | Presidency   |
| To:             | Delegations  |
| No. prev. doc.: | 6199/23  |
| No. Cion doc.:  | 7854/22  |
| 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<br>- Presidency third compromise text |

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In view of the upcoming Working Party for Competitiveness and Growth (Internal Market – Ecodesign) on 19 April 2023, delegations will find in Annex to this note a Presidency third compromise text.

Changes compared to the Commission proposal are marked in bold and underlined for the new text and in strikethrough for deletions. Changes compared to the previous compromise text (doc. 6199/23) are highlighted in yellow.

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 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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C „, p. .

Whereas:

- (1) The European Green Deal<sup>2</sup> 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. 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 goods **that are** ~~and~~ 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.

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<sup>2</sup> 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 *The European Green Deal* COM(2019)640 final.

(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 Europe<sup>3</sup> (CEAP), with the objective of making the regulatory framework fit for a sustainable future. As set out in ~~this~~ **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. **Due to the lack of relevant information and affordable options, it** ~~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 and boost long-term competitiveness of the Union. Such measures would also remove a disproportionate burden on companies and provide industry and consumers with access to reliable and clear data, thereby allowing for more sustainable choices to be made.**

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<sup>3</sup> 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 Circular Economy Action Plan For a cleaner and more competitive Europe* COM(2020)98 final.

- (3) The European Industrial Strategy<sup>4</sup> 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 ~~this~~ 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. The 2021 Update to the Industrial Strategy<sup>5</sup> reinforces the main messages of the 2020 Strategy and focuses on the lessons from the COVID-19 crisis, including the need to foster resilience.

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<sup>4</sup> 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.

<sup>5</sup> 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 safeguard** the functioning of the internal market while ensuring a high level of environmental protection, ~~there is a need for a~~ **harmonised** regulatory framework to progressively introduce ecodesign requirements for products **is needed**. This Regulation will **provide such a framework**, by making the ecodesign approach initially set out in Directive 2009/125/EC of the European Parliament and of the Council<sup>6</sup> applicable to the broadest possible range of products, ~~provide such a framework.~~ **In view of the importance of sustainable products for the transition to a climate-neutral and circular economy, and in order to provide legal certainty to all operators involved and to prevent barriers in the internal market, it is necessary to create a harmonised regulatory framework for setting ecodesign requirements of products that are placed on the market.**

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<sup>6</sup> Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (Text with EEA relevance) (OJ L 285, 31.10.2009, p. 10).

- (5) This Regulation will contribute to making 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 and reparability, improve possibilities for **lightweight design**, refurbishment and maintenance, address the presence of hazardous chemicals in products, increase their energy and resource efficiency, **including in regard to strategic and critical raw material**, reduce their expected generation of waste materials and increase recycled content in products, while ensuring their performance and safety, enabling remanufacturing and high-quality recycling and reducing carbon and environmental footprints. **Ecodesign requirements could also concern resource use, including requirements related to usage of renewable resources or materials with bio-based content in the product.**
- (6) The European Parliament, in its Resolution of 25 November 2020 ‘Towards a more sustainable single market for business and consumers’<sup>7</sup>, 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 2021<sup>8</sup>, the European Parliament further endorsed the agenda presented by the Commission in the CEAP. 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 2020<sup>9</sup>, 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.

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<sup>7</sup> P9\_TA(2020)0318.

<sup>8</sup> P9\_TA(2021)0040.

<sup>9</sup> 13852/20.

(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 2016<sup>10</sup>, Regulation (EU) 2021/1119 of the European Parliament and of the Council, the ‘European Climate Law’<sup>11</sup> 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 Package<sup>12</sup> 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 Council<sup>13</sup>, energy efficiency improvements need to be significantly stepped up, to around 36% in terms of final energy consumption by 2030<sup>14</sup>. Product requirements established under this Regulation should play a significant role towards this target by substantially decreasing products’ energy footprint. ~~These~~ **Those reaching** 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.

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<sup>10</sup> 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).

<sup>11</sup> 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 ).

<sup>12</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3541](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3541)

<sup>13</sup> 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).

<sup>14</sup> 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 Programme<sup>15</sup> 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 as safe and sustainable as possible by design and during their life cycle, leading to non-toxic material cycles<sup>16</sup>. 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 ~~United Nations~~<sup>2</sup> Sustainable Development Goals of the ~~UN~~’s **United Nations** 2030 Agenda for Sustainable Development ‘Responsible consumption and production’<sup>17</sup>, both inside and outside the Union.

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<sup>15</sup> Decision (EU) 2022/.... of the European Parliament and of the Council of ... on a General Union Environment Action Programme to 2030 [Add reference when published in OJ – trilogue agreement 2 December 2021].

<sup>16</sup> As set out in the EU Action Plan *Towards zero pollution for air, water and soil* (COM(2021)400 final) and the *Chemicals Strategy for Sustainability* (COM(2020)667 final), which calls for embracing the zero pollution goals in production and consumption.

<sup>17</sup> Including in particular targets under SDG 12 (“Responsible consumption and production”).

- (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 Council**<sup>18</sup>. It has, in combination with Regulation (EU) 2017/1369 of the European Parliament and of the Council, 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 Council<sup>19</sup> or the EU green public procurement criteria<sup>20</sup> 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, **and also specify where requirements on such key aspects are not necessary to increase the environmental sustainability of products.** 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.

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<sup>18</sup> Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

<sup>19</sup> Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

<sup>20</sup> Communication “Public procurement for a better environment” (COM (2008) 400) [https://ec.europa.eu/environment/gpp/eu\\_gpp\\_criteria\\_en.htm](https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm)

(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 and intermediate products. **Digital content that is an integral part of a physical goods product should be also included in the scope.** This should allow the Commissions to take into account the broadest range of products possible when prioritising the **establishment 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 purpose that could not be fulfilled when complying with ecodesign requirements. In addition, **exemptions 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<sup>21</sup>, medicinal products for human use as defined in Directive 2001/83/EC of the European Parliament and of the Council<sup>22</sup>, veterinary medicinal products as defined in Regulation (EU) 2019/6 of the European Parliament and of the Council<sup>23</sup>, living plants, animals and micro-organisms, products of human origin, and products of plants and animals relating directly to their future reproduction.

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<sup>21</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>22</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

<sup>23</sup> Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC (OJ L 4, 7.1.2019, p. 43).

(12) The proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)<sup>24</sup> 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 **implementing delegated** acts, provided that such requirements do not constitute an unjustifiable market barrier.

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<sup>24</sup> COM (2021) 802 final.

(13) In order to improve the environmental sustainability of products, and to ensure the free movement of products in the internal market, **and to ensure uniform conditions for the implementation of this Regulation** the power to adopt **implementing delegated** acts **in accordance with Article 290 TFEU** in accordance with Article 290 TFEU should be **conferred—delegated to** delegated to **upon** the Commission **to supplement this Regulation by setting for it to be able to set** to supplement this Regulation by setting out **the specific** ecodesign requirements **applicable**. Those ecodesign requirements should **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. **Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>25</sup>**.

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<sup>25</sup> **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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).**

**(13a) When defining the product group, the Commission should for example consider if products which are custom-made products and small series production should be exempted from the application of whole or parts of the ecodesign requirements.**

(14) **Ecodesign requirements are performance and information requirements. In order to allow the Commission to set ecodesign requirements as appropriate to the product groups covered, ecodesign requirements should include performance and information requirements.** Those requirements should be used to improve product aspects relevant for environmental sustainability, such as energy efficiency, durability, reparability and carbon and environmental footprints. Ecodesign requirements should be transparent, objective, proportionate and in compliance with international trade rules. **In view that Circular and sustainable business models, including those based on the resale of second-hand goods, need to be promoted. In line with this, ecodesign requirements should not apply to products already placed on the market. Products which are modified or reworked in such a substantial way that they are to be considered as new products having been placed on the market should however be subject to ecodesign requirements if they fall within the scope of the an implementing delegated act setting out them.** This assessment should be made on a case-by case basis and where applicable in line with product specific sectoral legislation. The “Commission’s Blue Guide” **‘Blue Guide’ on the implementation of EU product rules 2022 can also be a useful tool for determining when a product should be considered new when it is altered in a substantial manner.** **Refurbishment or repair of a product which do not meet the criteria of being waste should generally not be seen as resulting in a new product having been placed on the market**

(15) Once a delegated ~~an implementing 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 ~~implementing 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 ~~implementing delegated~~ act. **In order to ensure the functioning of the internal market and promote environmentally sustainable products, the empowerment to set ecodesign requirements should include the possibility, in duly justified cases, to establish that no performance requirement or no information requirement or neither is necessary for specific product parameters.** In order to ensure the functioning of 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, **when setting ecodesign requirements, when this is appropriate [in view of XXX].** **When a delegated act expressly provides that no performance or no information requirement or neither is necessary for a specific parameter, Member States should no longer be allowed to introduce or maintain national requirements based on product parameters under this Regulation with the exception of setting minimum energy performance requirements in accordance with Directive 2010/31/EU. Member States should not impose national requirements relating to product parameters referred to in Annex I, for products which an implementing act adopted pursuant to this Regulation provides that no performance, no information or neither performance nor information requirements are necessary for that parameter.**

(16) When ~~establishing~~ **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 which is to serve defence or national security. For dual-use products, any requirements shall meet the criteria of not having have negative impacts on security needs and activities of armed forces and take into account** ~~Therefore, for military or sensitive equipment ecodesign requirements should 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 Council<sup>26</sup>. 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 devices<sup>27</sup> and *in vitro* diagnostic medical devices as defined in Article 2(2) of Regulation (EU) 2017/746 on *in vitro* diagnostic medical devices<sup>28</sup>, 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, strive to consider national characteristics, such the different climate conditions in Member States and relevant national energy efficient practices and technologies, as well as practices and technologies used in Member States with proven beneficial environmental effects.**

<sup>26</sup> 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).

<sup>27</sup> 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).

<sup>28</sup> 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 duplication of efforts and regulatory burden, consistency should be ensured between this Regulation and requirements set in or pursuant to other Union legislation, especially products, chemicals and waste legislation<sup>29</sup>. 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.

**(17a) When considering preparing the implementing delegated acts ecodesign requirements, the Commission should pay close attention to existing Union legislation in order to avoid conflicts or overlaps with existing legal provisions. The Commission should in the early preparation of delegated acts setting out ecodesign requirements identify and evaluate if, and then how, to address a specific product group that is already regulated by Union harmonization legislation to avoid duplications of requirements and ensure a coherent and legally clear treatment of the product group. In addition, the Commission should also assess how to best articulate the future eco-design measures, be they product specific or horizontal, with other applicable Union frameworks in order to ensure optimal complementarity and to avoid conflicts and overlaps of obligations. In the unlikely event of a conflict between this Regulation and another Union legislation with the same objective of improving products' environmental sustainability, the specific provision in or derived from either legislation which regulates this in a more specific manner should apply.**

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<sup>29</sup> 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).

(18) Delegated acts **Implementing Delegated acts pursuant to Article 4** including setting 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** ~~being so~~, 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 Council<sup>30</sup>, Directive 2010/75/EU of the European Parliament and of the Council<sup>31</sup>, technical screening criteria adopted pursuant to Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>32</sup> and green public procurement criteria<sup>33</sup>.

**(18a) In the specific context of preparing ecodesign requirements, it is of utmost importance that all necessary expertise, including through the consultation of Member States' experts and through public consultations is taken into consideration. A dedicated Ecodesign Expert Group should hence be established for the consultation of experts designated by the Member States prior to the adoption of all delegated acts setting out ecodesign requirements pursuant to this Regulation.**

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<sup>30</sup> Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

<sup>31</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

<sup>32</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

<sup>33</sup> Communication "Public procurement for a better environment" (COM (2008) 400)

**(18b) In accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, it will be for the Member States to decide which experts are to participate in the Ecodesign Expert Group. Members of that group should be consulted in a timely manner and be provided with the draft delegated acts, the draft agenda and any other relevant documents in sufficient time to prepare. At the end of any meeting of the Ecodesign Expert Group or in the follow-up to such meetings, the Commission services should state the conclusions they have drawn from the discussions, including how they will take the experts' views into consideration and how they intend to proceed. Those conclusions should be recorded in the minutes of the meeting. Where the material content of a draft delegated act is changed in any way, the Commission should give members of the Ecodesign Expert Group the opportunity to react.**

(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, such as the update of the methodology for ecodesign of energy-related products, and the Product Environmental Footprint method set out in Commission Recommendation (EU) 2021/2279<sup>34</sup>, 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, identification of chemicals hindering re-use and recycling) in the assessment of products and in the preparation of ecodesign requirements, and should develop new methods or tools where appropriate. **New approaches may also be needed for the preparation of mandatory public procurement criteria and for bans on the destruction of unsold consumer products.**

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<sup>34</sup> Commission Recommendation (EU) 2021/2279 of 15 December 2021 on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations.

(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 where this is necessary to contribute to the environmental sustainability objectives of the Regulation. **A performance requirement should aim to make sure the total positive impacts on all aspects and parameters resulting from the requirement outweigh the total negative impacts on all aspects and parameters, and that the requirement is set at a level providing the highest environmental sustainability benefits while the costs fulfil the criteria that there should be no significant negative impact on consumers in terms of the affordability of relevant products, no disproportionate negative impact on the competitiveness of economic actors, at least of SMEs and no disproportionate administrative burden on manufacturers or other economic actors. 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 while the costs fulfil the same criteria.**

(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/EC<sup>35</sup> this Regulation may **however, when duly motivated,** complement that Directive by setting product-based requirements ~~focussing~~ on the packaging of specific products ~~when placed on the market~~ **where such a requirement can.** ~~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.

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<sup>35</sup> 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 Council<sup>36</sup>, Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>37</sup>, Regulation (EC) No 1272/2008<sup>38</sup>, Regulation (EC) No 1223/2009 of the European Parliament and of the Council<sup>39</sup>, Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>40</sup> and ~~Directive 2009/48/EC of the European Parliament and of the Council,~~ and Regulation (EU) 2019/1021 of the European Parliament and of the Council<sup>41</sup>, and and Directive 2009/48/EC of the European Parliament and of the Council<sup>42</sup>. This Regulation should not enable the restriction of substances based on chemical safety, as done under 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,

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<sup>36</sup> 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).

<sup>37</sup> 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).

<sup>38</sup> **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**

<sup>39</sup> 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).

<sup>40</sup> 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).

<sup>41</sup> **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)**

<sup>42</sup> **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).**

for the restriction, primarily for reasons other than chemical or food safety, of substances present in products or used in their manufacturing processes which negatively affect products' sustainability.

**(22a) The Commission, when setting performance requirements should be able to prevent substances that hinder circularity 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 criteria 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 that hinders circularity could also trigger an information requirement. The Commission should consult stakeholders and the Ecodesign Expert Group on determining which substances are of concern in the consultation related to the preparation of ecodesign requirements.**

This Regulation **also** should not result in the duplication or replacement of restrictions of substances covered by Directive 2011/65/EU of the European Parliament and of the Council<sup>43</sup>, 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.

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<sup>43</sup> 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).

- (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 footprint or its durability. They may 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. **For relevant product groups horizontal requirements on important aspects such as reparability and product carbon footprint should be considered in order to speed up the transition to a circular economy.** Where a delegated **implementing delegated** act includes information requirements, it should indicate the method for making the required information available, such as its inclusion on a free-access website, product passport or product label. Information requirements are necessary to lead to the behavioural change needed to ensure that the environmental sustainability objectives of this Regulation are achieved. 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.
- (24) Where delegated **implementing 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.



(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 Sustainability<sup>44</sup> 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 Council<sup>45</sup> 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 sustainability-related information not primarily related to hazards to health or the environment. Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive sustainability-related 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 **all** substances of concern in all products listed in working plans setting out the **indicative list of product groups to be subject of ecodesign requirements product groups the Commission intends to tackle. 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, after relevant impact assessment and consultation on ecodesign requirements with stakeholders and experts has taken place. Such a requirement on substances of concern should always be specified in such a way that**

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<sup>44</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Chemicals Strategy for Sustainability Towards a Toxic-Free Environment* COM(2020)667 final.

<sup>45</sup> 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 (OJ L 353, 31.12.2008, p. 1).

ensures the criteria applicable to ecodesign requirements are fulfilled. In order for the Commission to make sure such an information requirement does not entail disproportionate administrative negative impact on economic operators, the Commission should be allowed, amongst other measures, to lay down longer deadlines for the entry into application of the information requirements on certain substances of concern. The Commission should also be able to, in duly justified cases, provide exemptions from the requirements. For instance, an exemption based on technical feasibility may apply in cases where the presence of a substances in a product cannot be verified with the current available technologies. It might also be relevant to set thresholds for such reasons. Disproportionate administrative burden for businesses should however be avoided. Exemptions from this obligation requirement related to the tracking and communication of sustainability information should be defined based on technical feasibility of tracking, the need to protect trade secrets and in other duly justified cases. This regulation also enables the Commission to set requirements which prevents chemicals that hinder circularity from being included in the product. Where a substances have already been established as being a substance of concern that hinder circularity for another product group this can give indication that the chemical hinder circularity also for other product groups.

(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 consumers make informed choices by improving their access to product information relevant to them, allow economic operators other value chain actors such as repairers or recyclers to access relevant information, and enable competent national authorities to perform their duties. To this end, the product passport should not replace but complement non-digital forms of transmitting information, such as information in the product manual or on a 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.

**(26a) When determining in the delegated acts setting ecodesign requirements the period for which the product passport is to remain available, the duration of the life cycle of the specific product group should be taken into consideration with a view to ensure information on the product remains available also for end-of-life operations when appropriate considering the administrative burden of economic actors.**

**(26b) Actors such as manufacturers, repairers, refurbishers and other economic actors but also competent national authorities may be given a right to update the product passport. Economic actors who repair, upgrade or refurbish a product after it has been placed on the market should for example, where appropriate, be given the right to update the product passport in order that more accurate information are given. The economic operator should guarantee that each previous version of the product passport is separately stored and remain accessible. Competent national authorities could be given a right to update the product passport for example in situations where a product is no longer in conformity.**

(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 also analyse the costs and benefits of setting information requirements through digital product passports on 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 digital 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) In order Union legislation law already establishes various information requirements for products and sets up systems to make this information available to economic operators and consumers. Whenever feasible, the Commission should aim to ensure consistency and to reduce the administrative burden on economic operators due to potential duplication of reporting obligations under other Union legislations, the and information requirements under this Regulation. In particular, The the Commission should consider the feasibility, whenever relevant, to link the of linking information requirements under this Regulation to the other existing information requirements under EU 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 consider linking link the digital product passport to existing Union databasedatabases and tools such as EPREL or SCIP with the digital product passport.**

(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 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 operator, 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 unique operator identifiers and 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 unique operator identifiers and unique facility identifiers may be released, in light of technical or scientific progress.
- (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, **exceptions** **exceptions** 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 and lower costs for sustainable investments, marketing and compliance. 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, consumer organisations, experts, NGOs and international partners, including developing economies.
- (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 web portal where stakeholders such as consumers, economic operators and other relevant actors can have access to information included in the product passports in compliance with the differentiated 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<sup>46</sup>. Processing of personal data by the Commission should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>47</sup>.

(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 this reference corresponds to a unique product identifier that is stored in the registry. This would allow the verification by customs that a product passport exists for imported products.

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<sup>46</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

<sup>47</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).



~~(37) Where certain information included in the product passport is stored in the registry in addition to data carriers and unique identifiers, the Commission should be able to provide, where appropriate, that customs authorities verify the consistency between this information and the customs declaration, in order to improve the compliance of products with ecodesign requirements and taking into account the need to avoid disproportionate burden for customs authorities.~~

(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 Council<sup>48</sup>.

(39) To drive consumers towards more sustainable choices, labels should, when required by the delegated **implementing delegated** acts adopted pursuant to this Regulation, provide 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 **implementing 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.

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<sup>48</sup> 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).

- (40) Regulation (EU) 2017/1369 setting a framework on energy labelling applies, in parallel to this Regulation, to energy-related products. ~~E-This means that~~ energy labels are **a successful** ~~the~~ **primary** 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.** ~~should assess whether a label in accordance with this Regulation is to be established, taking into account the need for consumers to be informed on the most relevant parameters for the product and the disadvantages in terms of risks of confusion for the public and of excessive administrative burden for economic operators. -~~
- (41) Consumers should be protected from misleading information that could hamper their choices for more sustainable products. For ~~this~~ **those** reasons it should be prohibited to place on the market products bearing a label mimicking the labels provided for in this Regulation. **Only labels which copy or are closely similar to the layout or the graphics of the labels provided for in this Regulation should be considered as mimicking labels.**

(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 are considered as priorities for it plans to adopt delegated implementing delegated** acts setting out ecodesign requirements as well as the product aspects for which it intends to adopt delegated **implementing delegated** acts **setting out horizontal requirements of horizontal application.** The Commission should base its prioritisation on a set of criteria pertaining in particular to the delegated **implementing 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: **contributing to Union economic resilience and competitiveness. The Commission should also assess whether there is a risk of unfair competition between final products manufactured in the Union and those manufactured outside the Union before proposing requirements for intermediate products.** 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. **Experts designated by the Member States should also be consulted through the Ecodesign Expert Group, as well as through the Ecodesign Forum, which also gather** and stakeholders, **including actors from the circular business models** 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 Commission should strive to align 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.** **Product groups which under Union law are already subject to specific environmental requirements, such as for example motor vehicles and means of transport** should not be prioritised the first for the establishment of ecodesign requirements, **such as for example motor vehicles.**

(43) In addressing construction products, this **Where other, more product-specific regulations, enable the Commission to adopt delegated acts regulating environmental sustainability, and such delegated acts have been adopted, this Regulation should only in exceptional cases intervene in a complementary manner. Ecodesign requirements for construction products will be should be laid down under the [the revised Construction Products EN 29 EN Regulation should]** For example, t. **This Regulation should not be able to** set requirements on final **final construction** products **only** when **the ecodesign requirements on environmental sustainability obligations for such products have already been** have been **developed under** created by {the **revised** Construction Products Regulation<sup>49</sup>} and its implementation **do not** are unlikely to sufficiently achieve the environmental sustainability objectives pursued by this Regulation. In addition, **Only in exceptional cases where requirements under the Construction Products Regulation are insufficient or ineffective, and cannot be amended or complemented under the Construction Products Regulation in a reasonable time, this Regulation should be able to intervene in a complementary manner on construction products, provided the administrative cost entailed, including as a result of economic actors being subject to two conformity assessment procedures, is shown to be reasonable. To avoid that economic operators become subject to a duplication of or potentially conflicting requirements or delegated acts the Commission should, before preparing such complementary requirements under the Construction Product Regulation, consider if the delegated act already adopted under this Regulation can be repealed or amended so that requirements are instead included in delegated act being adopted under the Construction Products Regulation.** ~~w~~ **When** formulating working plans **under this Regulation**, the Commission should **however** 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, gives 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 **only** intervene in a

<sup>49</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.

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.

- (44) In order to encourage self-regulation as a valid alternative to regulatory approaches, this Regulation should, ~~in continuation of~~ **based on the experience gathered under** Directive 2009/125/EC, include the possibility for industry to submit self-regulation measures **as long as on the condition that the level of ambition of such measures is in line 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 considered as valid alternatives ~~before to~~ a delegated **implementing delegated** act setting ecodesign requirements **is adopted**. 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** ~~not adopt~~ a delegated **implementing delegated** act establishing ecodesign requirements for this specific product group. However, it is not excluded that the Commission may adopt ~~horizontal~~ 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 establishing preparing ecodesign requirements under this Regulation, take into account the impact of the requirements on SMEs 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. Member States actions should be taken in respect of applicable State aid rules.

(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 **consumer** products primarily intended for consumers pursuant to Directive (EU) 2019/771 of the European Parliament and of the Council<sup>50</sup>, **including products that have not been offered for sale, and** including products that have been 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 Council<sup>51</sup>, **or in view of any commercial right of withdrawal offered by the economic operator, thus striving toward limiting the number of unused and fit-for-purpose products being destroyed. Products that have been returned, and cannot be sold again due to the condition of the product, and areis not suitable for remanufacturing refurbishment, preparation for reuse or donation, should not constitute an unsold consumer product within the meaning of this Regulation. The concept of destruction as outlined in this Regulation should cover the last three activities on the waste hierarchy as defined in the Waste Framework Directive: recycling, other recovery and disposal. Remanufacturing and preparation for re-use should furthermore not be considered destruction. While recycling is an important waste treatment activity for a circular economy, it is unreasonable that products are manufactured only to immediately be recycled, hence the inclusion of recycling in the concept of destruction. Preventing destruction** This 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

<sup>50</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 6).

<sup>51</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

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.

**Member states should not be prevented to maintain or introduce national bans as regards destruction of unsold consumer products for products which the Commission has not yet prepared an implementing act prohibiting the destruction of unsold consumer products if such national bans are in compliance with Union law.**

**(46a) Economic operators should take necessary measures to prevent the need to discard unsold consumer products that are fit for use. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste currently under revision, lays down rules to prohibit export of products to third countries under the false pretense that they are being sold or donated for use, when such products are in fact destined for destruction.**

**(46b) Nothing in this Regulation should be construed as contradicting the order of the waste hierarchy as defined in Directive 2008/98/EC.**

**(46c) 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 direct prohibition or not yet covered by an implementing act setting out a prohibition, provided that such measures are in line with the EU law.**



(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/SMEs**, requiring them to disclose information on the number of unsold consumer products discarded per year. **When determining the scope of the transparency obligation, guidance should be found in the reference to the term “discard” in the definition of waste in Article 3.1 of Directive 2008/98/EC.** The economic operator should indicate the product type or category, the reasons for their discarding and their delivery for subsequent waste treatment operations. While economic operators should be free to determine how to disclose that information in a manner appropriate to their business environment, it should be considered a best practice to include the required information in a publicly available non-financial statement drafted in accordance with Article 19a of Directive 2013/34/EU of the European Parliament and of the Council<sup>52</sup> where applicable. **For those economic operators that are subject to reporting obligations according to Directive 2022/2464/EU the information could also be included in reporting under said directive.** **When preparing the implementing act on disclosure of information, the Commission should take account of the need to avoid a disproportionate administrative burden on economic operators, considering in particular the possibility of making use of existing reporting requirements in Union Law. Economic operators should furthermore set up a policy to ensure that they prevent the generation of waste.**

**(47a) The unnecessarily high production volumes and short use phase of textiles cause significant environmental impact. Clothing should be valued higher, worn, and cared for more than what today’s fast fashion culture entails. Newly produced but unsold textiles and especially clothes are among the items reportedly being destroyed. From a circular economy perspective, such wasting of valuable resources is in clear contradiction to the aims of this regulation of improving the environmental sustainability. It is therefore justified to prohibit the destruction of unsold consumer clothes and apparel.**

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<sup>52</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

**(47b) Also for electronics there is an increasing number of reports that destruction is taking place, with negative environmental consequences, also considering the resources use including critical and strategic raw materials used during manufacturing. Therefore, electronics should be considered amongst the prioritised products for a prohibition against destruction.**

(48) In order to ~~avoid~~ **ensure uniform conditions for the implementation of the prohibition of** the destruction of unsold consumer products **in the Union**, where the destruction of such products is prevalent, **implementing powers should be conferred on the Commission to adopt and update an act provisions applicable to the specify the product group in question** subject to this prohibition the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by prohibiting the destruction of such products. Given the wide range of products that may potentially be destroyed without ever being sold or used, it is necessary to establish such empowerment in this Regulation. However, the prohibition set in the delegated acts should apply to specific ~~product groups~~ to be determined based on an assessment by the Commission of 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. **In parallel to this assessment, in order to enable the first prohibition to be established as soon as possible, the Commission shall begin work on a prohibition on destruction of textiles and electronics, for which adequate evidence exists to justify an immediate prioritisation of these product groups.** To ensure that this **prohibition obligation** is proportionate, the Commission should consider 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 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-SMEs**, they should be exempted ~~from the obligations to disclose their unsold discarded products~~ **from the obligations to disclose their unsold discarded consumer products** and from the prohibition to **destroy** ~~discard~~ specific products groups set ~~out~~ in ~~delegated~~ **implementing** acts. However, where there is reasonable **sufficient** evidence that **small and microenterprises-SMEs** may be used to circumvent those obligations, the Commission should be able to require, in those ~~delegated~~

**implementing** acts, for some product groups, that these obligations also apply to micro **or** small ~~or medium sized~~ enterprises.

**(48a) The Commission should, when necessary, always conduct an impact assessments before preparing any implementing act introducing any prohibition to destroy unsold consumer products which consider the impact on the environment, consumers, manufacturers and other economic operators, including SMEs, in terms of competitiveness — including in relation to markets outside the Union — innovation, market access and costs and benefits.**

**(48b) It is important that the Commission, when prioritising products that should be subject to prohibition against destruction of unsold consumer products, consults the Ecodesign Forum and the Ecodesign Expert Group.**

(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 **implementing delegated** acts adopted pursuant to it.

(50) The manufacturer, having detailed knowledge of the design and production process, **is best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer. 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 **implementing 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 ~~where available~~, 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 **implementing 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. **They should take special care to avoid confusing or misleading customers by displaying, on a product required to have a label pursuant to this Regulation, other labels referring to the same information. Other labels would not be considered to be confusing or misleading when they are required under other legislation and could continue to be displayed as required by that legislation. Neither the EU Ecolabel nor any other nationally or regionally officially recognised EN ISO 14024 type I environmental labels should be considered as misleading.**
- (57) Any importer or distributor that either places on the market a product covered by a ~~delegated~~ **implementing 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~~ **implementing 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 Council<sup>53</sup> provides the general framework for e-commerce and lays down certain obligations for online platforms. Regulation ~~[.../...]~~ **(EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC**<sup>54</sup> 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.

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<sup>53</sup> 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).

<sup>54</sup> ~~[Add reference when adopted Proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM(2020)825 final)]. 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 Council<sup>55</sup> in relation to products covered by that Regulation, including products for which ecodesign requirements are set. To further improve cooperation to tackle illegal content related to non-compliant products, this Regulation should include concrete obligations to put this cooperation into practice as regards online marketplaces. For instance, market surveillance authorities are constantly improving the technological tools they use for online market surveillance in order to identify non-compliant products sold online. For these tools to be operational, online marketplaces should grant access to their interfaces. Moreover, market surveillance authorities may also need to scrape data from the online marketplaces.

(60) Article 14(4) 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 **or to require the explicit display of a warning to end users when they access an online interface**. The powers entrusted to market surveillance authorities by Article 14(4) 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 8]**9** of the **Regulation (EU) 2022/2065** [Digital Services Act].

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<sup>55</sup> 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).

- (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** the power to adopt **implementing powers should be conferred on** acts in accordance with Article 290 TFEU should be delegated to the Commission **to supplement this Regulation** 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.~~

(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 **anonymised information about** products' actual energy consumption while in use and where relevant to other performance parameters. To that end, the power to adopt **implementing delegated** acts in accordance with Article 290 TFEU 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 **implementing delegated** acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring economic operators to remotely collect **and anonymise** such 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, climatic or geographical information should also be collected, anonymised and reported.

**(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 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~~ **Implementing 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 **implementing delegated** acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring the use of **online digital** tools reflecting applicable calculation requirements, in order to ensure their harmonised application. **The Commission should will make available those tools after an internal testing period and should will establish the conditions ensuring proper functioning and remedies in case of malfunctioning.**

- (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 **implementing delegated** acts establishing ecodesign requirements for products ~~may~~ **should** refer to the use of standards to **assess their conformity with ecodesign requirements** ~~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 Council<sup>56</sup> 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 **implementing delegated** acts laying down ecodesign requirements, to the extent that they are covered by the relevant harmonised standards.

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<sup>56</sup> 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) **In order to ensure uniform conditions for the implementation of this Regulation and in** the absence of harmonised standards, recourse to common specifications should be used as a 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. 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. **Those powers should be exercised in accordance with Regulation (EU) No 182/2011.** Compliance with common specifications should also give rise to the presumption of conformity.
- (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 Council<sup>57</sup>, 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.

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<sup>57</sup> 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).

- (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.
- (71) Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>58</sup> lays down rules on the accreditation of conformity assessment bodies, ~~provides a framework for the market surveillance of products and for controls on products from third countries, and~~ 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 **implementing delegated** acts ~~in accordance with Article 290 TFEU should be delegated to~~ **conferred on** the Commission to ~~supplement this Regulation by setting out alternative or more specific rules on the declaration of conformity or~~ 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 ~~or declarations~~ and minimise administrative burden for economic operators.

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<sup>58</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (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. ~~Where, in the implementation of this Regulation, it occurs that notifying authorities do not effectively verify and monitor notified bodies due to a lack of competent personnel, implementing powers should be conferred on the Commission to lay down a minimum number of full-time equivalents that should be at the disposal of notifying authorities, where appropriate in relation to specific conformity assessment 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.
- (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** draw up and regularly update a qualification matrix. ~~This matrix should match personnel and their qualifications to specific conformity assessment tasks,~~ enabling the notifying authority to more effectively assess the adequacy of staffing and the continued autonomy of the notified body.
- (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. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to request that the notifying Member State take corrective action if a notified body does not meet, or no longer meets, the requirements of this Regulation.
- (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 as general guidance any document produced by the administrative cooperation group made up of market surveillance authorities, as referred to in Article 30(2) of Regulation (EU) 2019/1020.~~
- (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 among those for which classes of performance have been set by delegated acts pursuant to this Regulation, they should do so by targeting those incentives at the highest two populated classes of performance, unless otherwise indicated by the relevant delegated act. However, Member States should not be able to prohibit the placing on the market of a product based on its class of performance. For the same reason, the power to adopt **implementing** acts ~~in accordance with Article 290 TFEU~~ should be ~~delegated~~ **conferred** to the Commission to **specify** ~~supplement this Regulation by further specifying~~ which product parameters or related levels of performance Member States' incentives concern in case no class of performance is determined in the applicable delegated act or where classes of performance are established in relation to more than one product parameter-, **in which cases the Commission should specify the parameters concerned by the Member States' incentive.** 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, the power to adopt **implementing** acts in accordance with Article 290 TFEU should be delegated **conferred** to the Commission to require, where appropriate, contracting authorities and entities as defined in Directive 2014/24/EU<sup>59</sup> and 2014/25/EU<sup>60</sup> of the European Parliament and of the Council, to align their procurement with specific **minimum** green public procurement criteria or targets, to be set out in the **implementing** delegated acts adopted pursuant to this Regulation.

**The Commission may require targets to be achieved by establishing, for instance, a percentage of all the tendering procedures concerning a particular product group to comply with public procurement requirements. The percentage may be expressed in the aggregate number or value of contracts for the purchase of relevant sustainable products, as compared to the overall number and value of relevant contracts for the sector or products at stake.** The criteria or targets set by **delegated** acts 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. Compared to a voluntary approach, mandatory criteria or targets will ensure that the leverage of public spending to boost demand for better performing products is maximised. The criteria should be transparent, objective and non-discriminatory. **Green public procurement requirements should not be developed if they are likely to disproportionately impact other public policy objectives of the Member States.** **When developing implementing acts related to Green Public Procurement, the Commission should take due account of the Member States different geographical, social and economic circumstances. When considering the effect on the market situation, the Commission should take into account, among others, the effects of the requirements on competition and the best environmental products and solutions available on the market. When considering the economic feasibility for**

<sup>59</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>60</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

**contracting authorities, the Commission should take into account that different contracting authorities in different Member States might have different budgetary capacities. In duly justified cases, contracting authorities should be able to derogate from the requirements such as when there is an emergency and applying the requirements would result in severe negative impact on public health.**

**(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 **that regulate in a more specific manner particular aspects of market surveillance and enforcement, 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~~ **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 ensure sufficient action is taken by market surveillance ~~authorities~~ **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 515/97<sup>61</sup> for that purpose.
- (90) To ensure that appropriate checks are performed on an adequate scale in relation to ecodesign requirements, Member States should, **as part of the overarching national market surveillance strategy according to Article 13 of Regulation (EU) 2019/1020**, draw up a dedicated action plan 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. ~~Where relevant, this action plan should be part of Member States' national market surveillance strategies adopted pursuant to Article 13 of Regulation (EU) 2019/1020.~~ **While drawing up an action plan, Member States should take into account products regulated under the framework of Directive 2009/125/EC. In order to address those products regulated at the moment of entry into force of this Regulation, Member States should draw up the first action plan by 6 months of entry into force of this Regulation. Member States should draw up subsequent action plans at least every 4 years, which could be revised if needed. Where relevant, those action plans should be part of Member States' national market surveillance strategies adopted pursuant to Article 13 of Regulation (EU) 2019/1020.**

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<sup>61</sup> 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. **Information on the environmental impacts of non-compliance can be derived from the impact assessments underlying the relevant ecodesign requirements.** The activities planned to address those priorities should in turn be proportionate to the facts leading to their prioritisation. **In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to determine products and requirements that Member States should consider as priorities for market surveillance in the context of their action plans identifying priorities for market surveillance under this Regulation and activities planned to reduce non-compliance.**
- (92) Where problematic levels of non-compliance with ecodesign requirements are observed despite the enhanced planning, coordination and support laid down by this Regulation, the Commission should be able to intervene **in accordance with Article 11(4) of Regulation (EU) 2019/1020** to ensure that market surveillance authorities perform checks on an adequate scale. Therefore, in order to safeguard the effective enforcement of ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to ~~lay down a minimum number of checks to be performed on specific products or requirements.~~ This empowerment should be additional to the empowerment in **accordance with** Article 11(4) of Regulation (EU) 2019/1020.
- (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, **and** on the levels of non-compliance identified ~~and on the nature and severity of penalties imposed~~ in relation to ecodesign requirements over the two previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks for market surveillance authorities.

- (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 with this Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States' action plans, priorities for the provision of Union support, and ecodesign requirements that are interpreted differently leading to market distortion. **Whereas the Union Product Compliance Network established by Regulation (EU) 2019/1020 is meant to address “general, horizontal issues of market surveillance”, the administrative cooperation group ('ADCO') established under Regulation (EU) 2019/1020 for the uniform application of this Regulation should, as part of or in addition to the tasks defined in Regulation (EU) 2019/1020, 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 with this Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States' action plans, 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-Making<sup>62</sup>. 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.

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<sup>62</sup> 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) setting the ecodesign requirements for classes of products, specifying the conformity assessment, requiring availability of technical specifications, requiring products to measure energy use or in-use data, requirements on markings and as regards incentives and green public procurement,** ~~(b)~~ **(a)**-specifying implementation arrangements for the interconnection of the registry referred to in ~~this~~ Article 12 and the EU Customs Single Window Certificates Exchange; ~~(be)~~ **(c)** establishing common requirements for the layout of labels; **(c) establishing the working plan of the Commission** ~~(de)~~ containing a list of self-regulation measures established as valid alternatives to a delegated act adopted pursuant to Article 4; ~~(ed)~~ setting out format for the disclosure of the information on unsold consumer products that have been discarded; **(x) setting out exceptions to the small and micro enterprise exemptions to the transparency obligation and prohibitions (xx) setting out exceptions to the direct prohibition against the destruction of unsold consumer products, (xxx) setting out further prohibitions against the destruction of unsold consumer products; (xxxx) setting out exceptions to the SME exemptions to the transparency obligation and prohibitions,** ~~(fe)~~ 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; **(y) establishing rules for Member States incentives; (yy) setting minimum mandatory requirements for green public procurement;** ~~(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 Council<sup>63</sup>

<sup>63</sup> 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 the fact that they comply 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 effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation.
- (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.
- (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. **Products that are already sufficiently regulated under other Union legislation, e.g., means of transport, should not be taken into account.** 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.

(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*

1. This Regulation establishes a framework to improve the environmental sustainability of products and to ensure free movement in the internal market by **for** setting ecodesign requirements that products shall **have to comply with to be placed on the market or put into service, with the aim to improve the environmental sustainability of products and to ensure free movement in the internal market.** fulfil to be placed on the market or put into service. Those ecodesign requirements, which shall be further elaborated by the Commission in delegated acts, relate to:

- (a) ~~product durability and reliability;~~
- (b) ~~product reusability;~~
- (c) ~~product upgradability, reparability, maintenance and refurbishment;~~
- (d) ~~the presence of substances of concern in products;~~
- (e) ~~product energy and resource efficiency;~~
- (f) ~~recycled content in products;~~
- (g) ~~product remanufacturing and recycling;~~
- (h) ~~products' carbon and environmental footprints;~~
- (i) ~~products' expected generation of waste materials.~~

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

2. This Regulation shall apply to **products with the exception of** 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.

*Article 2*  
*Definitions*

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

- (1) ‘product’ means any physical goods 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 end-users **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 **or 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 ~~end-user~~ **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 product is returned to nature as a waste product 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, ordered into successive steps to allow for product differentiation;
- (16) ‘remanufacturing’ means an industrial process **operation** in which a **new** product is ~~produced~~**manufactured** from objects that are **either** waste, products or components and in which at least one change is made to the product that affects ~~the~~ **its** safety, performance, purpose or type of the product ~~typically placed on the market with a commercial guarantee~~;
- (17) ‘upgrading’ means **actions carried out to** enhancing the functionality, performance, capacity, **safety** or aesthetics of a product;
- (18) ‘refurbishment’ means **actions carried out to preparing, cleaning, testing and preparing or modifying and, where necessary repairing** an object that is waste or a product **in order** to restore **either** its performance or functionality within the intended use; **and** range of performance ~~and maintenance~~ originally conceived at the design stage; **applicable at the time of its placing on the market.** ~~or to meet applicable technical standards or regulatory requirements with the result of making a fully functional product;~~
- (19) ‘maintenance’ means ~~an~~ **actions** carried out to keep a product in a condition where it is able to function as required **fulfil its intended use**;
- (20) ‘repair’ means **an action carried out that returns** ~~returning~~ a defective **object that is a waste or a** product or waste to a condition where it fulfils its intended use;
- (21) ‘durability’ means the ability of a product to function as required, under specified conditions of use, maintenance and repair, until a **condition after one or more** limiting ~~event~~**events** ~~prevents its functioning~~ **is reached**;

(22) ‘reliability’ means the probability that a product functions as required under given conditions, **including maintenance**, for a given duration without ~~a~~ limiting event;

**(22a) ‘limiting event’ means an occurrence with the result that a function, which fulfils the intended use, is no longer delivered;**

(23) ‘environmental footprint’ means a quantification of a product’s environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product Environmental Footprint method;

(24) ‘Product Environmental Footprint method’ means the life cycle assessment method to quantify the environmental impacts of products established by Recommendation (EU) 2021/2279~~f~~;

(25) ‘**product**-carbon footprint’ means the sum of greenhouse gas (GHG) emissions and GHG removals in a product system, expressed as CO<sub>2</sub> equivalents and based on a life cycle assessment using the single impact category of climate change; **as established by Recommendation (EU) 2021/2279;**

~~(26) ‘public contracts’ means public contracts as defined in Article 2(5) of Directive 2014/24/EU;~~

(27) ‘substance’ means a substance as defined in Article 3, point (1), of Regulation (EC) No 1907/2006;

**(27a) ‘mixture’ means a mixture as defined in Article 3, point (2), of Regulation (EC) 1907/2006**



(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, [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent, Bioaccumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption],
  - 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
- (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 **implementing 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;
- (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 a product for preparing for re-use 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 ~~as defined in Article 2, point (2), of Directive (EU) 2019/771;~~
- (37) ‘unsold consumer product’ means any consumer product that has not been sold or that has been 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, in view of the commercial guarantee for withdrawal provided by the **retailer/trader** regarding the product concerned.
- (38) ‘self-regulation measure’ means a voluntary agreement or codes of conduct, concluded by **economic operators or** industry sectors 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 ~~such~~ a product designed or manufactured, and markets that product under its name or trademark ~~or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product~~ or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product;
- (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;
- (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 **implementing 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 software, including a website, part of a website or an application, that allows customers to conclude distance contracts with economic operators for the sale of products covered by ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4;
- (56) ‘dealer’ means a retailer or any other natural or legal person who offers products for sale, hire or hire purchase, or displays products to customers **or installers** in the course of a commercial activity, **including through distance selling**, whether or not in return for payment;
- (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;

(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.

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 Council<sup>64</sup> 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/EC<sup>65</sup> shall also apply.

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<sup>64</sup> 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).

<sup>65</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

*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~~ **implementing delegated** acts adopted pursuant to Article 4 applicable to those products.
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~~ **implementing 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~~ **implementing 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~~ **implementing 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~~ **implementing delegated** acts.

3. **Notwithstanding p** Paragraph 2 ~~shall not prevent~~ 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 Council<sup>66</sup>.

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<sup>66</sup> 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).

4. Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products on grounds of non-compliance with national requirements relating to product parameters referred to in Annex I, for which a delegated act adopted pursuant to Article 4 provides that no performance, no information or neither performance nor information requirements are necessary. **Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products, for which a delegated act pursuant to Article 4, under exceptional circumstances, provides that no performance, no information or neither performance nor information requirements are necessary 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 **implementing 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.

## Chapter II - Ecodesign requirements

### Article 4

Empowerments to adopt ~~delegated~~ **delegated implementing** acts

**~~The Commission shall may adopt implementing acts establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those implementing acts should be established pursuant to Articles 5, 6, 7 and 7a.~~**



**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).** The Commission is empowered to adopt delegated acts in accordance with Article 66, after consulting the ecodesign expert group referred to in (new) article 17a and the ecodesign forum referred to in article 17, to supplement this Regulation by establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those requirements ~~delegated acts~~ shall include the elements ~~and respective ways of identifying them~~ listed in Annex VI. ~~Ecodesign requirements~~ and shall be established in accordance with Articles 5, 6 and 7 and Chapter III. ~~1~~ The empowerment to adopt ecodesign requirements includes the power to establish that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I. **The Commission is empowered to adopt delegated acts in accordance with Article 66, after consulting the Ecodesign Expert Group referred to in Article 17a and the Ecodesign Forum referred to in Article 17, to supplement this Regulation by establishing ecodesign requirements for product to improve their environmental sustainability. Those delegated acts shall include the elements and respective ways of identifying them listed in Article 7.a. 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 necessary for certain specified product parameters referred to in Annex I only in the exceptional circumstances where establishing a requirement related to that specific product parameter as referred to in Annex I would have a negative impact on the other ecodesign requirements considered for the product group or would prevent meeting the objectives of this Regulation.**

**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 requirement at all is necessary for a product group.**

When establishing ecodesign requirements in ~~delegated~~ **delegated implementing** acts referred to in the first subparagraph **of this Article**, the Commission shall also supplement this Regulation by **supplement this Regulation by** specifying the applicable conformity assessment procedures from **either among the the modules A set out in Annex IV to this Regulation and or one of the modules B to H 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 also supplement this Regulation by **When adopting implementing acts referred to in the first subparagraph the Commission may, as appropriate in view to the specificities of the product group, include any of the following requirements: Delegated acts referred to in the first subparagraph may, as appropriate in view to the specificities of the product group, include any of the following requirements:**

**(a) Where this is necessary for effective market surveillance:**

**(ai) 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 that the relevant product has been placed on the market or put into service in order to take taking into account of the nature of the product or requirements concerned;**

**(-aa-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;**

**(aiii) 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);~~

**(b) Where this is necessary in order to ensure energy-efficient use of products or to develop future ecodesign requirements:**

~~(ei)~~ 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);

~~(dii)~~ requiring manufacturers, their authorised representatives or importers to collect, **and** anonymise, ~~or report to the Commission the~~ in-use data referred to in point (c) **and report to the Commission**, in accordance with Article 31(3);

~~(eii)~~ requiring the use of ~~online~~ **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 regulations,** ~~(f)~~ specifying alternative rules on the declaration of conformity or markings, **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 regulations,** indicating conformity with ecodesign requirements by way of derogation from Articles 37 and 39, in accordance with Article 40;

**(d) In order to boost demand of environmentally sustainable products:**

~~(gi)~~ specifying rules to direct Member States incentives in accordance with Article 57 **of this Regulation taking into account the need for coherence with the incentives foreseen under Article 7(2) of Regulation (EU) 2017/1369;**

~~(hii)~~ establishing requirements applicable to public contracts awarded pursuant to Directive 2014/24/EU or Directive 2014/25/EU, <sup>2</sup>. Those requirements shall be based on the product parameters referred to in Annex I and established in accordance with Article 58.

*Article 5*  
*Ecodesign requirements*

1. The Commission shall, **taking into consideration all the following product aspects** as appropriate, to the relevant product groups **in order to address relevant adverse environmental impacts which arise in any** and with due consideration for all **of the** stages of the products' life cycle **or to further improve already existing beneficial environmental impacts**, establish ecodesign requirements **based on the product parameters in Annex I** to improve **the following product aspects when relevant to the product group concerned** the following product aspects:

- (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 ~~or~~ **and** energy efficiency;

**(ha) water use and water efficiency;**

(i) resource use ~~or~~ **and** resource efficiency;

**(ia) material use and material efficiency;**

(j) recycled content;

(k) possibility of remanufacturing **and recycling;**

**(ka) possibility of recycling;**

(l) possibility of recovery of materials;

**(-m) carbon and environmental footprint;**

**(m) environmental impacts, including carbon and environmental footprint contribution to climate change, pollution of water, air and soil, land use;**

(n) expected generation of waste materials.

**1a. The Commission shall select or develop one or several tools or methodologies as regards the setting of ecodesign requirements. When the Commission selects or develops one or several methodologies or tools to be used for the setting of ecodesign requirements it shall consult with the Expert Group referred to in Article 17.a.**

2. Ecodesign requirements shall be established for a specific product group. **A delegated act may exclude from the scope a subset of products belonging to the regulated product group or exempt them from some of the requirements, taking into account:**

**(a) patterns of use or typical real-life use;**

**(b) product characteristics, including material composition, size or ability to withstand specific conditions of use or specific environments**

**(c) applicable standards, methods, legislation and policies, or the lack thereof**

**(d) requirements for security, military, safety or medical purposes**

**(e) the specifics of the product's market, including the volume of sales and the way in which products are marketed; and**

**(f) bespoke products or products produced in very small quantities.**

**2a.** However, ~~where~~ Where two or more product groups display technical **one or more** similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common **ecodesign** requirements, **such ecodesign** requirements may be established horizontally for those product groups **(“horizontal requirements”)**.

**Horizontal ecodesign requirements shall effectively improve environmental sustainability with respect to the product aspect concerned.**

**When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, in particular its ability to address a large number of products, including product groups that have not been prioritised individually in the working plan referred to in Article 16.**

**A horizontal ecodesign requirement might be further adapted to the specificities of the product groups covered.**

**An horizontal ecodesign requirement established pursuant to the third subparagraph may cover products falling in the scope of a self-regulation measure listed pursuant to Article 18(3) established as a valid alternative pursuant to Article 18(3), where the Commission considers that in case that self-regulation measure does not address the product aspect covered by that horizontal ecodesign requirement or the ecodesign requirement addresses the same aspect in a more stringent manner.**

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; **or both**
- (c) or both.**

**When the setting of performance requirements or information requirements would not contribute to the objectives of this Regulation, ecodesign requirements may provide that no information requirements or no performance requirements or neither are necessary for specific product aspects.**

4. When preparing ecodesign requirements, the Commission shall:
- (a) take into account the following elements:
    - (i) Union climate, environmental and energy efficiency priorities and other related Union priorities;
    - (ii) relevant Union ~~legislation~~ **law**, including the extent to which it addresses the relevant product aspects listed in paragraph 1;
    - (iii) self-regulation measures, ~~as provided for in Article 18~~;
    - (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 European **Union** funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance **for the product concerned and in view of their potential to contribute to the overall improvement of the environmental sustainability of the product concerned. In addition, the Commission shall consider the interdependencies of parameters and avoid conflicting or duplicating requirements.** The establishment of ecodesign requirements on the most significant aspects of a product among those 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;

- (c) take into consideration relevant technical information used as a basis for or derived from Union ~~legislation~~ **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;
- (d) take into account the views expressed by the Ecodesign Forum referred to in Article 17 **and the Ecodesign Expert Group referred to in Article 17a and the results of the public consultation.**

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 **the purchase price, but also potential** access to second-hand products, durability and the **cost, including** 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**, at least **and in particular** of SMEs;
- (e) there shall be no proprietary technology imposed on manufacturers or other ~~economic~~ actors **in the value chain**;
- (f) there shall be no disproportionate administrative burden on manufacturers or other ~~economic~~ actors **in the value chain, in particular SMEs.**

~~6. In order to facilitate the verification of compliance with ecodesign requirements, the Commission shall, where appropriate, require, supply chain actors to:~~

- ~~(a) provide, upon request, manufacturers, notified bodies and competent national authorities with available relevant information related to their supplies or services that is relevant in order to verify compliance with ecodesign requirements;~~



(b) allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services in order to verify compliance with ecodesign requirements 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 and relevant for verifying compliance with ecodesign requirements.

**The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the need to avoid disproportionate burdens on SME's.**

7. **Ecodesign requirements shall be verifiable.** The Commission shall, where appropriate, identify appropriate means of verification for specific ecodesign requirements, including directly on the product or on the basis of the technical documentation. **The Commission shall specify, as a minimum, the content, the format, the manner, and the order in which the information necessary for the verification of compliance is to be made available.**
8. The Commission shall publish relevant studies and analyses used in the establishment of ecodesign requirements in accordance with this Regulation.
9. ~~In case the~~ **For each product group concerned contains substances by ecodesign requirements,** the Commission shall ~~establish~~ **determine,** where relevant, which substances ~~is a substance of concern within the meaning~~ **fall under the definition in Article 2 (28), point (c), of paragraph 28 of Article 28** taking into account **at least, whether:**
- (a) based on the state-of-the-art technologies, the substances make the re-use, ~~remanufacturing, repairing~~ or recycling process substantially 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 cosmetic, ~~or~~ aesthetic or olfactory properties of the recycled material, e.g. through its colour and smell.**

**The identification of such substances shall not be based on reasons relating primarily to chemical safety.**

*Article 6*  
*Performance requirements*

1. ~~Products shall comply with performance~~ **Performance** requirements **shall be set to improve** ~~relate~~ related to the **specific** product aspects listed in Article 5(1), ~~as laid down in the delegated acts adopted pursuant to Article 4.~~ **The performance requirements shall be tailored to the particular characteristics of the product group concerned. The performance requirements shall in order to improve the product group's environmental sustainability effectively address adverse environmental impacts of products throughout their lifecycle, or further improve already existing beneficial environmental impacts in relation to environmental sustainability.**
  
2. ~~Performance requirements referred to in paragraph 1 shall be based on the product parameters referred to in Annex I and shall as appropriate, include:~~
  - (a) ~~minimum or maximum levels in relation to a specific product parameter referred to in Annex I or a combination thereof~~ **or**;
  
  - (b) ~~non-quantitative requirements that aim to improve performance in relation to one or more product parameters;~~ **referred to in Annex I, or both.**
  
  - (c) ~~requirements related to the functional performance of a product.~~
  
3. **Performance requirements based on the product parameter set out in Annex I, point (f), shall, where relevant, restrict the presence of substances in products for reasons relating primarily to improve the environmental sustainability of the products.** ~~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.~~

4. When establishing performance requirements, the Commission shall follow the procedure set out in Annex II.

**5. Based on the outcome of its analysis in accordance with Annex II, the Commission shall choose one or several performance requirements to be imposed on the relevant product group. The Commission shall consider all the relevant and significant negative effects of the relevant products on the environment and the environmental sustainability of the product, and identify the most effective performance requirement(s) to reduce these negative effects.**

**When establishing each performance requirement for a specific aspect as listed in Article 5(1), the Commission shall assess the possible positive and negative impacts of this requirement on other aspects or parameters listed in Annex I.**

#### *Article 7*

##### *Information requirements*

1. ~~Products shall comply with information~~ **Information** requirements **shall require information to be provided on relate** related to the product aspects listed in Article 5(1), ~~as laid down in the delegated acts adopted pursuant to Article 4.~~
2. The information requirements ~~referred to in paragraph 1~~ 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; ~~and~~
  - (b) ~~as appropriate, require products to be accompanied by:~~

(b) **as appropriate, considering the technical feasibility and when such requirements will improve the environmental sustainability of the product group concerned, 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.
- (ii) information for **customers and other actors** consumers and other end-users on how to install, use, maintain and repair the product, **including its reparability**, in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or ~~dispose of the product at end-of-life~~ **handle the product at the end of its life, as relevant;**

~~(iii) information for treatment facilities on disassembly, **reuse**, recycling, or disposal at end-of-life, **as relevant;**~~

**(iii) information for treatment facilities on disassembly, reuse, recycling or disposal at end of life, as relevant**

- (iv) 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 product parameters referred to in Annex **II**.

**(v) the carbon footprint and environmental carbon footprint referred to in Article 5 (1) point m and Annex I;**

Where ~~aan~~ delegated **implementing 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.

**2a. The information requirements referred to in Article 7(2), point b, shall be tailored to the particular characteristics of the product groups concerned and the intended recipients of the information, such as customers, users or actors involved in value retaining operations.**

**The information requirements referred to in Article 7(2), point b, shall encourage sustainable product choices for customers and economic actors downstream, ensure appropriate use, facilitate value retaining operations such as repair, refurbishment, remanufacturing, upgrade, recycling and maintenance, and ensure correct treatment at end-of-life.**

**When a performance requirement is established for a specific parameter a corresponding information requirement may also be established, as appropriate. An information requirement can also be established without a corresponding performance requirement on that parameter.**

**2b. Based on its analysis, the Commission shall choose one or several information requirement(s) to be imposed on the relevant product group. The Commission shall choose the requirement(s) that have the highest likelihood of driving customers, users or other economic actors to adopt more environmentally sustainable behaviours while the costs associated with the requirement(s) fulfil the criteria in Article 5(5), points c), d) and f).**

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. **Such requirements can be based on classes of performance, on aggregated scores, in absolute terms or in any form that enables potential customers to choose the best performing products.**

Those classes of performance shall correspond to statistically significant improvements in performance levels.

5. **Unless otherwise provided for under the second paragraph of this Article, point c),** the information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern **throughout the life cycle of** products, unless such tracking is already enabled by another delegated **implementing 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;
- (b) **where relevant**, 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 ~~main~~ **relevant** components, or spare parts;
- (d) relevant instructions for the safe use of the product;
- (e) information relevant for disassembly-, **recycling, reuse and end of life management.**

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

Where the Commission sets out information requirements in ~~an~~ delegated ~~implementing~~ act adopted pursuant to Article 4, it shall **assess and where relevant:**

- (a) ~~where applicable,~~ establish which substances fall under the definition in Article 2(28), point (e), for the purposes of the product groups covered;
- (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) **where relevant,** 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 need to protect confidential business information or in other duly justified cases. Substances of concern falling under Article 2(28), within the meaning of point (a), paragraph 28 of Article 28 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.**
- (d) **where relevant,** **refer to existing information requirements under Union law, or if not possible, ensure consistency with those requirements.**

~~Exemptions referred to in the second subparagraph, point (c), may be provided based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information and in other duly justified cases.~~

~~Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1 % weight by weight.~~



6. Information requirements shall indicate the manner in which the required information shall ~~is~~ ~~to~~ be made available. The required information shall, as appropriate, be provided in the product passport, when available, and shall, when necessary as a complement, be provided in at least one or more of the following manners:

- (a) on the product itself;
- (b) on the product's packaging;
- ~~(c) in the product passport referred to in Article 8;~~
- ~~(d-c)~~ on a label referred to in Article 14;
- ~~(e-d)~~ in a user manual;
- ~~(f e)~~ on a free access website or application.

Information ~~ensuring~~ enabling the ~~traceability~~ 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 ~~consumers and other end-users~~, as determined by the Member State in which the product is to be made available on the market or put into service.

Article 7a

Content of the ~~implementing-delegated act~~

[Former Annex VI with adjustments]

The ~~implementing-delegated~~ acts adopted pursuant to Article 4 shall specify the following elements:

- (a) the definition of the product ~~group or~~ groups covered;
- (b) the ecodesign requirements for the product groups covered, ~~in line with Article 4 a~~
- (3) ~~where relevant, the parameters for which no ecodesign requirement is necessary;~~
- (ca) where relevant, the parameters for which the Commission explicitly states that no ecodesign requirements are necessary, pursuant to Article 4 third subparagraph.
- (c) the test, measurement or calculation standards or methods to be used pursuant to Article 32 (1); where relevant, requirements for the use of online tools pursuant to Article 32 (2);
- (d) 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;
- (e) the conformity assessment module to be used pursuant to Article 4, third subparagraph, of this Regulation as set out either in the modules A of Annex IV to this Regulation or in one of the modules B-H in Annex II to Decision 768/2008/EC. Where the module to be applied is different from the module set out in Annex IV, the factors leading to the selection of that specific procedure.

Where different conformity assessment modules [among the modules B-H] 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]~~ ~~delegated~~ ~~implementing~~ act adopted pursuant to Article 4 of this Regulation shall prevail for the ecodesign requirement concerned;

(f) ~~dates of application ensuring adequate appropriate time for implementation ensuring at least XX months after the entry into force of the delegated act, any staged or transitional measure or periods, taking into account possible impacts on market surveillance authorities SMEs or on specific product groups manufactured primarily by SMEs.~~

The time economic operators are given to comply with the requirements established in the delegated act shall take into account in particular the complexity of the ecodesign requirements, changes needed in the product design production process, the organisation of the supply chains, and the innovative cycle including contractual duration in the sector concerned. The time SME:s might need to comply shall in particular be taken into consideration.

(g) ~~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 regulations in force in their territory on the date of [application] of the implementing delegated act.~~

(h) ~~the date for the evaluation and possible revision of the implementing delegated act, taking into account technological progress.~~

**When setting the date for evaluation, the Commission shall take into consideration the need to adapt the requirements to technical progress, societal changes, availability of standards and methods, policy objectives, environmental issues, and other relevant elements. The time period after which the review should be carried out shall be fixed with regard to the need to ensure legal certainty and stability, the maturity of the market, the characteristics of the product group, and other relevant elements.**

## 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.~~
2. The requirements related to the product passport laid down in the delegated **implementing delegated** acts adopted pursuant to Article 4 shall, ~~as appropriate for the product groups covered,~~ **be based on the characteristics of the product groups covered and** specify the following:
  - (a) the information to be included in the product passport pursuant to Annex III;
  - (b) **one or more** ~~the types of data carriers~~ **which may** ~~to be used~~;

- (c) the layout in which the data carrier shall **is to** be presented and its positioning;
- (d) whether the product passport is to correspond to the model, batch, or item level, **and a definition of these levels;**
- (e) the manner in which the product passport shall **is to** be made accessible to customers before they are bound by **a contract for a sales, hire or hire purchase contract,** including in case of distance selling;
- (f) the actors that shall **are to** have access to information in the product passport and to what information they shall **are to** have access, including **such as** customers, end-users, manufacturers, importers and distributors, dealers, repairers, **refurbishers,** remanufacturers, recyclers, competent national authorities, public interest organisations and the Commission, or any organisation acting on their behalf;
- (g) the actors that may 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, including **such as** manufacturers, repairers, maintenance professionals, **refurbishers,** remanufacturers, recyclers, competent national authorities, **and the Commission,** or any organisation acting on their behalf;
- (h) the period for which the product passport shall **is to** remain available.

3. The requirements referred to in paragraph 2 shall:

- (a) ensure that actors along the value chain, in particular consumers, economic operators and competent national authorities, can access product information **which is understandable and** relevant to them;

- (b) facilitate the verification of product compliance by competent national authorities; **and**
- (c) improve traceability of products along the value chain; **and**
- (d) respect trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943.**

4. When establishing the requirements related to the product passport, the Commission may exempt product groups from the requirement **to have a Digital Product Passport whereset out in paragraph 1 of this Article 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*

1. A product passport shall meet the following conditions:
  - (a) it shall be connected through a data carrier to a unique product identifier;
  - (b) the data carrier shall be physically present on **or in** the product, its packaging or on documentation accompanying the product, as specified in the applicable ~~delegated~~ **implementingdelegated** act adopted pursuant to Article 4;
  - (c) the data carrier and the unique product identifier shall comply with **International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459:2015 standards referred to in point (l) in Annex III;**

- (d) all information included in the product passport shall be based on open, standards, developed with an inter-operable format and shall be machine-readable, structured, and searchable, **as appropriate, and** in accordance with the essential requirements set out in Article 10. **The information shall be transferable through an open interoperable data exchange network without vendor lock-in.**
- (e) the information included in the product passport shall refer to the product model, batch, or item as specified in the delegated **implementing-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 **implementing-delegated** act adopted pursuant to Article 4.

~~The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend the first subparagraph, point (c), of this Article **point (f) in Annex III**, in light of technical and scientific progress by replacing the standard referred to in that point **Annex** or adding other European or international standards with which the data carrier and the unique identifiers shall comply 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 added to the information to be included in the product passport pursuant to the applicable delegated **implementing** act adopted pursuant to Article 4. **pursuant to the applicable delegated act adopted pursuant to Article 4.**
3. The economic operator placing the product on the market shall provide dealers with a digital copy of the data carrier to allow the dealer to make it accessible to customers where they cannot physically access the product. The economic operator shall provide that digital copy, **or its webpage link where it is available**, free of charge and within 5 working days of the dealer's request.

*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 ~~implementing-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) consumers, economic operators and other relevant actors shall have free access to the product passport based on their respective access rights set out in the applicable ~~delegated~~ ~~implementingdelegated~~-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 operators authorised to act on their behalf;
- (d) if the data included in the product passport is stored or otherwise processed by operators authorised to act on their behalf, those operators 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;
- (e) the product passport shall remain available for the period specified in ~~delegated~~ ~~implementingdelegated~~ 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 **implementingdelegated** acts adopted pursuant to Article 4;

**(fa) with specific consideration shall be taken to ensure of the protection of information that constitutes trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943 or intellectual property rights;**

- (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.

#### *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 ~~ISO/IEC standard 15459:2015.~~ **standards referred to in in Annex III point (l).**
2. 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.

3. 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. The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend paragraph 1 of this Article in light of technical and scientific progress by replacing the standard referred to in that paragraph or adding European or international standards with which unique operator identifiers referred to in Annex III, points (g) and (h), and unique facility identifiers referred to in Annex III, point (i), may comply for the purposes of meeting the conditions set out in this Article.~~

- 5. The Commission shall adopt an implementing act setting out the procedure to create or obtain the unique product identifier, the unique operator identifier and the unique facility identifier. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).**

#### **Article 11a**

#### **Update of the standards applicable to the digital product passport**

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

*Article 12*  
*Product passport registry*

1. ~~By [2 years from entering into force of this Regulation], the~~ The Commission shall set up and ~~manage~~ maintain a **digital** registry (**“the registry”**) **storing in a secure manner at least the unique product identifiers, the economic operator identifiers and the facility identifiers.** ~~storing information included in the product passports required by delegated acts adopted pursuant to Article 4.~~

~~The registry referred to in the first subparagraph shall at least include a list of the data carriers and unique product identifiers referred to in Article 9(1).~~

~~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~~ **implementing delegated** acts adopted pursuant to Article 4, specify the information which, in addition to being included in the product passport, shall be stored in the registry ~~referred to in paragraph 1~~, 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~~ **implementing delegated** acts adopted pursuant to Article 4;
  - (c) the need to avoid disproportionate administrative burden for economic operators.

3. In relation to its responsibility to establish **set up** and manage the registry referred to in paragraph 1 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 referred to in paragraph 1, **the identifiers referred to in paragraph 1 and** the information referred to in paragraph 2.
5. The Commission, competent national authorities and customs authorities shall have access to the registry referred to in this Article for carrying out their duties pursuant to Union legislation **law**.

#### ***Article 12a***

#### ***[Webportal for information in the digital product passport]***

**The Commission shall set up and maintain a web portal allowing stakeholders to search for information included in product passports. The web portal shall be designed to guarantee that stakeholders can search for the information in line with their respective access rights pursuant to Article 10.1.b.**

#### ***[Article 13***

#### *Customs controls relating to the product passport*

1. The Commission shall interconnect the registry referred to in Article 12(1) 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 (**EU2022/2399**<sup>67</sup>.../.....

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<sup>67</sup> **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**

The Commission shall adopt an implementing act specifying the details of the implementation arrangements of the interconnection referred to in the first subparagraph.

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

The interconnection referred to in the first subparagraph shall be ~~in place~~ **operational** within four years from the date of ~~adoption~~ **entry into force** of the implementing act referred to in the second subparagraph.

~~Paragraphs 3 to 6 of this Article shall apply as from the moment the interconnection is in place.~~ **Paragraphs 3 to 5a of this Article shall apply as from the moment the interconnection is operational.**

2. Declarants as defined in Article 5, point (15), of Regulation (EU) 952/2013 shall include the unique product identifier referred to in Article 9(1), point (a), in the customs declaration for release for free circulation of any product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4.

This paragraph shall apply from the moment the registry ~~referred to in Article 12(1)~~ is in place.

3. ~~Before allowing the release for free circulation, e~~Customs authorities shall **control** ~~verify,~~ **through the interconnection referred to in paragraph 1 of this Article,** whether the unique product identifier indicated by the declarant in accordance with paragraph 2 matches a unique product identifier included in the registry ~~referred to in Article 12(1)~~.

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

4. ~~Where information included in the product passport is also stored in the registry referred to in Article 12(1), the Commission may, specify, in the delegated acts adopted pursuant to Article 4, that customs authorities shall, in addition to the verification referred to in paragraph 3 of this Article, verify consistency between the information stored in the registry and the customs declaration before allowing the release for free circulation. In such case, the Commission shall take into account at least the following criteria:~~

- ~~(a) the need to improve compliance of products placed on the Union market with ecodesign requirements;~~
- ~~(b) the need to avoid disproportionate burden for customs authorities.~~

~~Where customs authorities establish further to the verification laid down in this paragraph that there are discrepancies between the information stored in the registry and the customs declaration, customs authorities shall refuse the release of that product for free circulation. Customs authorities may take any other actions they deem appropriate in accordance with market surveillance legislation and customs legislation, and also registering the refusal in the registry referred to in Article 12(1) and notifying competent national authorities of the refusal.~~

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

5. The **control verification** referred to in paragraphs 3 and 4 shall take place electronically and automatically via the EU Single Window Environment for Customs.
6. Customs authorities may retrieve and use the information included in the product passport and the registry referred to in Article 12(1) for carrying out their duties pursuant to Union legislation, including for risk management in accordance with Articles 46 and 47 of Regulation (EU) No 952/2013.

**6a This Article is without prejudice to any other Union legislation, in particular the Union Customs Code and its Articles 46, 47 and 134 and Chapter VII of Regulation (EU) 2019/1020 on market surveillance and compliance of products.**

## 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 ~~(d-c)~~, the ~~delegated~~ **implementing** **delegated** acts adopted pursuant to Article 4 shall specify:
  - (a) the content of the label;
  - (b) the layout of the label taking account 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~~ **where needed**, 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 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, only** 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 established pursuant to Regulation (EU) 2017/1369 **and where this information is considered to be more relevant 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 about this **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 referred to in Article 8.
5. The Commission ~~may~~ **shall** adopt implementing acts establishing common requirements for the layout of the labels required pursuant to Article 7(6), point (~~d~~**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 display labels which, by mimicking the labels provided for in Article 14, are likely to mislead or confuse customers.**



**Where products are not required to have a label in accordance with delegated implementing acts adopted pursuant to Article 4 do not require products to have a label, or where products are not covered by delegated implementing acts adopted pursuant to Article 4, those products may shall not be placed on the market or put into service if they supply or display labels which, by mimicking the labels provided for in Article 14, are 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 ~~in accordance with this Regulation~~, the Commission shall **analyse** ~~take into account their~~ **the** potential contribution **of those products** to achieving Union climate, environmental and energy efficiency objectives; **and to fostering the Union economic resilience and competitiveness**, as well as **taking into account at least** 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 environmental impacts, energy use and waste generation across the value chain, ~~in particular whether they take place within the Union;~~
- (d) the need to regularly review and adapt delegated ~~implementing delegated~~ acts adopted pursuant to Article 4 in light of technological and market developments **also reflecting societal changes and trends.**

**1a. When prioritising aspects to be covered by a horizontal requirements in accordance with this Regulation, the Commission shall also take into consideration the added value in having horizontal requirements imposed on a range of products and product groups.**

2. **Based on the analysis referred to in paragraph 1 and 1.a. of this Article, the** ~~The~~ Commission shall, **by [12 months after the entry into force of this Regulation],** adopt **an implementing act establishing** and regularly update a working plan, covering a period of at least 3 years, setting out an **indicative** list of product groups **which will be considered priorities** for ~~which it intends to establish~~ **the establishment of** ~~ecodesign requirements in accordance with this Regulation~~ **and regularly update it.** That **indicative** list shall include products aspects referred to in Article 5(1) **which will be considered priorities for the establishment of** for which the Commission intends to ~~adopt~~ horizontal ~~ecodesign requirements established pursuant to~~ **in accordance with** Article 5(2), second subparagraph. **The indicative list shall also indicate which products may be considered for such horizontal requirements.**

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

~~By [2 years 12 months after the entry into force of this Regulation]], at the latest, the Commission shall adopt the working plan. Before the end of the covered period, the Commission shall update the working plan, unless it duly justifies to the Ecodesign Forum and the Ecodesign Expert Group the reasons for not updating the working plan in the covered period, and sets the date of the next update.~~

When **Before** adopting or updating the working plan referred to in the first subparagraph **referred to in the first subparagraph**, the Commission shall ~~take into account the criteria set out in paragraph 1 of this Article and shall~~ **take into account the criteria set out in paragraph 1 of this Article and shall** consult the Ecodesign Forum referred to in Article 17 **and the Ecodesign Expert Group referred to in Article 17a**.

**3. The Commission shall inform the European Parliament and the Council annually of the progress made in the implementation of the working plan. In the case of delays in the implementation of the working plan, the Commission shall give an explanation of the main causes of the delays and how it intends to ensure progress in the implementation.**

#### *Article 17*

#### *Ecodesign Forum*

The Commission shall **establish an expert group referred to as the Ecodesign Forum with** ensure that when it conducts its activities, it observes a balanced participation of **experts designated by** Member States' ~~representatives~~ and **of** all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups, **actors involved in circular economy activities, European Standardisation Organisations** and consumer organisations (**"Ecodesign Forum"**). These parties ~~The Ecodesign Forum~~ shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures **and preparing developing in its early preparation implementing acts on prohibitions of destruction of unsold consumer products**.

~~To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the 'Ecodesign Forum'.~~

Article 17a  
Ecodesign Expert Group

**1.** The Commission shall establish an expert group composed of experts designated by the Member States ('Ecodesign Expert Group').

The Commission shall consult the Ecodesign Expert Group on:

- a) setting priorities and planning,
- b) developing ecodesign requirements, and assessing and b) developing ecodesign requirements,
- c) evaluating self-regulation measures pursuant to Article 18,
- d) c) — developing priorities as regards prohibitions of destruction of unsold consumer products pursuant to Article 20, and  
(d) measures to enhance compliance with the Regulation, such as education and information campaigns, exchange of best practices between Member States, or support to SMEs.
- e) reviewing the effectiveness of the market surveillance mechanisms in place.

**2.** The consultation with the Ecodesign Expert Group under Article 17a shall take place after the consultation pursuant to Article 17. The consultation referred to in Article 66(4) shall at least include consultation with the Expert Group.

The Commission shall take into account the views of the Ecodesign Expert Group:

The Commission shall regularly, at least every 6 months, inform the Ecodesign Expert Group on its progress on actions presented in the working plans and on the work of the Ecodesign Forum.

**[The members of the Ecodesign Expert Group shall receive the invitation to the meeting and the draft agenda not less than 30 calendar days before the meeting. They shall receive the draft delegated acts and any other relevant documents sufficiently in advance of the meeting of the Expert Group and not less than 14 calendar days before the date of the meeting. In urgent or exceptional cases, this time limit may be reduced to 5 calendar days before the date of the meeting.]**

*Article 18*

*Self-regulation measures*

1. ~~Two or more economic~~ **Economic** operators may submit **to the Commission** a self-regulation measure establishing ecodesign requirements for products ~~to the Commission as an alternative to a delegated act adopted pursuant to Article 4~~ **not falling within the scope of a delegated implementing-delegated act adopted pursuant to Article 4**. Those operators shall provide evidence that the criteria referred to in paragraph 3, points (a) to (e), are fulfilled. With respect to paragraph ~~32~~, point ~~(ae)~~, that evidence shall consist 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.
2. The **submitted** self-regulation measure 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;**
- (e) an explanatory note explaining how the submitted self-regulation measure would meet the objectives of this Regulation more quickly or at lesser expense than mandatory requirements under Union law, supported by evidence.**

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

3. The Commission shall assess **the submitted** ~~the proposed~~ self-regulation measure, and, where necessary, shall seek scientific advice from Union decentralised agencies. **In the assessment the Commission** ~~On the basis of that assessment, it shall~~ **verify whether** ~~establish whether it is a valid alternative to a delegated act adopted pursuant to Article 4 where~~ the following criteria are fulfilled:

- (a) the self-regulation measure contributes to improving the environmental sustainability of products and ensuring the free movement in the internal market **more** quickly or at a lesser expense than **would** a delegated **implementingdelegated** 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 product covered by the self-regulation measure does not fall within the scope of a delegated act adopted pursuant to Article 4;~~

(e) the self-regulation measure is in line with Union legislation law and international trade commitments of the Union.

**(f) the independent inspectors referred to in point (c) of paragraph 2 have been selected and properly empowered as regards the self-regulation measure in accordance with Annex VII (6).**

**(g) the self-regulation measure does not contain a label that can be confused with the Ecodesign label or the Energy label.**

**The Commission may, if appropriate given the market structure for the product(s) in question, adjust the percentage provided in point b) downwards if the 80 % threshold results in the exclusion of or a disadvantage to SMEs.**

**The Commission shall during the assessment consult the Ecodesign Forum and the Ecodesign Expert Group, in said order, on the submitted self-regulation measure.**

The Commission shall adopt an implementing act containing a list of self-regulation measures **which fulfil the criteria of this paragraph** established as valid alternatives to a delegated act adopted pursuant to Article 4. That implementing act shall be adopted in accordance with the **examination** ~~advisory~~ procedure referred to in Article 67(~~32~~).

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 or where it has reason to believe that the criteria set out in paragraph 3 are no longer fulfilled. **The Commission shall set a deadline, appropriate for the product group in question, for the submission of such a revised and updated version.**

5. Once a self-regulation measure has been listed in an implementing act adopted pursuant to paragraph 3, ~~second~~ **third** 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. Those reports shall also be made available on a publicly **and freely** accessible website.
6. Where the Commission considers, ~~based on information received pursuant to paragraphs 4 or 5,~~ 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 paragraph 3 **or where the signatories of the self-regulation measure concerned did not meet the deadline referred to in paragraph 4**, it shall delete it from the list referred to in that paragraph. ~~In, 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 examination procedure referred to in Article 67(3).**

#### Article 19

##### *Micro, small and medium-sized enterprises*

1. In the context of programmes from which SMEs can benefit, the Commission shall ~~take into account~~ **make sure there are** initiatives which help SMEs to integrate environmental sustainability ~~aspects~~ including energy efficiency in their value chain.
2. When adopting ~~delegated~~ **implementing delegated** acts pursuant to Article 4 the Commission shall, ~~where appropriate,~~ accompany those acts with guidelines **and digital tools** covering specificities of SMEs active in the product or product group sector affected for facilitating the application of this Regulation by SMEs. **The Commission shall provide specific support for SME's for the implementation of requirements regarding product passports.**



3. Member States shall take appropriate measures to help SMEs apply ecodesign requirements set out in delegated **implementing delegated** acts adopted pursuant to Article 4.

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 to adapt to requirements. **The Commission shall may provide support in the implementation of those measures.**

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

### SECTION I – GENERAL

#### Article 20aa

#### General principle to prevent discarding

Economic operators shall take necessary measures which can reasonably be expected to prevent the need to discard unsold consumer products that are fit for use.

#### Article 20a

#### Policy of management of unsold consumer products

An economic operator that ~~repeatedly~~ discards unsold consumer products, or has unsold consumer products discarded on their behalf, shall set up:

a) — A policy for minimizing waste generation of unsold consumer products and promoting and supporting sustainable production and consumption models

b) — A a policy ~~limiting~~ preventing the ~~number~~ destruction of unsold consumer products ~~and waste generation of unsold consumer products~~, including an implementation strategy. Such economic operators shall also provide a description of the status of the implementation and results achieved by the policy, updated on a yearly basis.

The information referred to above shall be disclosed at least on an easily accessible page of the economic operators' 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 include the information referred to above in that sustainability reporting [, provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].

This article shall not apply to small and microenterprises.

## **SECTION 2 – TRANSPARENCY**

### *Article 20*

#### **Disclosure of information on ~~Destruction of~~ unsold consumer products**

1. An economic operator, **which is not an SME**, that discards unsold consumer products directly, **or on behalf of another economic operator or has unsold consumer products discarded on their behalf**, shall disclose:
  - (a) the number **and weight amount (in tons)** of unsold consumer products discarded per year, differentiated per type or category of products;
  - (b) the reasons for the discarding of products;
  - (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, for example**, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC .

**Unsold consumer products that have become non-compliant with national or EU legislation after being placed on the market or put into service due to the coming into force of new or changed legislation, are exempted from the requirements in paragraph 1.**

The economic operator shall disclose that information ~~on a freely~~, **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 include the information referred to above in that sustainability reporting ], provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive.**

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 publically available for a period of 5 years. The first disclosure shall cover **unsold consumer** products ~~rejected-discarded~~ during the first full financial year of this regulation being in force.

The economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate the delivery and reception of the products as disclosed pursuant to paragraph 1(c). Such information and documentation shall be provided in paper or electronic form within **30 days** of receipt of the request.

- 1a. **The obligation in paragraph 1 of this Article shall not apply to small and micro enterprises.** ~~The~~ However, Commission shall be empowered to adopt implementing acts to specify that **a specific SME is small or microenterprises, are** to comply with the reporting obligation referred to in paragraph 1, in any of the following situations:
- (i) where, ~~for medium-sized enterprises,~~ there is sufficient evidence that they account for a substantial **proportion-number** of unsold consumer products being **destroyed discarded; or**
  - (ii) where, ~~for microenterprises or small enterprises or medium-sized enterprises,~~ there is sufficient evidence that, by handling unsold consumer products directly, or on behalf of one or several economic operators, they allow such economic operators, subject to the obligation referred to in paragraph 1, to circumvent it.
2. The Commission ~~shall~~ **may 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, with consideration given to the need to protect sensitive information and trade secrets**, for the disclosure of the information referred to in paragraph 1 **by economic operators not disclosing them in their management report as referred to in paragraph 1, fourth subparagraph.**

**The first implementing act shall be adopted no later than [OJ note: 6 12 months after entry into force of this regulation].**

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

~~3. The Commission shall be empowered to adopt delegated **implementing** acts in accordance with Article 66 to supplement this Regulation by prohibiting economic operators to destroy unsold consumer products in the Union, where the destruction of unsold consumer products falling within a certain product group has significant environmental impact. **setting out the prohibition of destroying unsold consumer products by specifying:**~~

~~(ia) the type of unsold consumer products for which economic operators are prohibited to destroy unsold consumer products in the Union,~~

~~(iib) the exemptions applicable to this prohibition of unsold consumer products~~

~~(iiic) the reporting obligation of the economic operators on the compliance with this prohibition of unsold consumer products, as well as on the compliance with the exemptions if applicable.~~

~~(d) the implementing date, and where appropriate, any staged or transitional measure or period regarding the application of the prohibition of destroying unsold consumer products shall be fixed taking account, in particular, of possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.~~

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

3a. The implementing act referred to in paragraph 3 shall meet the following criteria respect the following principles:

- (a) the destruction of unsold the considered type of unsold consumer products falling within is prevalent, without reasonable justifications,
- (b) certain product group has significant the prohibition of destroying the considered type of unsold consumer products is likely to reduce the negative environmental impact, without causing disproportional administrative burdens.

3.b. The prohibition referred to in paragraph 3 shall not apply to SMEs, except:

- (ia) where, for medium-sized enterprises, there is sufficient evidence that they account for a substantial proportion of unsold consumer products being destroyed;
- (iib) for microenterprises, small enterprises or medium-sized enterprises, there is sufficient evidence that, by discarding unsold consumer products directly, or on behalf of one or several economic operators, they allow such economic operators, subject to the obligation referred to in paragraph 3 they are used to circumvent it the prohibition referred to paragraph 3.

~~3.c. The exemptions referred to in point (c) of paragraph 1 shall respect the following principles:~~

~~(a) The exemption shall apply to all or part of the prohibition.~~

~~(b) The exemption shall be adapted to the specificities of the type of unsold consumer products~~

~~[(c) where appropriate, the exemption shall be temporary or permanent]~~

~~(d) The exemption shall allow recycling or energy recovery as appropriate, in the event that any preparation for re-use is not appropriate.~~

~~The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:~~

~~(i) health and safety concerns;~~

~~(ii) damage to products as a result of their handling or detected after a product has been returned by a consumer;~~

~~(iii) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;~~

~~(iv) refusal of products for donation, preparing for re-use or remanufacturing;~~

~~(v) non-compliant products, counterfeit products, or products rendered unsaleable due to infringement of intellectual property rights.~~

4. When ~~prioritising unsold consumer products to be covered by~~ preparing a delegated ~~an~~ ~~implementing act referred~~ adopted pursuant to ~~in~~ paragraph 3, the Commission shall:

- (a) ~~assess the prevalence and environmental impact of the destruction of specific consumer products, including the resource and energy waste resulting from such destruction;~~
- (b) ~~take into account the information disclosed by economic operators pursuant to~~ paragraph 1;
- (c) ~~consult the Ecodesign Forum referred to in Article 17~~ ~~and the Ecodesign Expert Group referred to in Article 17a~~, and take account of ~~their~~ its views on ~~the~~ ~~prioritisation of products subject to possible~~ prohibitions of destruction of unsold consumer products referred to in paragraph 3

4.a. ~~When preparing a draft implementing act referred to in paragraph 3, the Commission shall:~~

- ~~(ca) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary;~~
- ~~(db) carry out appropriate consultation with stakeholders, the Ecodesign Forum referred to in Article 17a and the Ecodesign Expert Group referred to in Article 17a;~~



5. Where ~~When~~ unsold consumer products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose ~~at least~~ on a freely ~~an easily~~ accessible ~~page of their~~ website, ~~if such exists~~ or otherwise make publicly available:

- (a) ~~the number of unsold consumer products~~ units destroyed;
- (b) ~~the reasons for their destruction, referring to the applicable exemption;~~
- (c) ~~the~~ proportion of the delivery of the products destroyed to each of the following activities: recycling, other recovery, e.g. energy recovery and disposal operations in accordance with the exemption and the waste hierarchy as defined by Article 4 of Directive 2008/98/EC;

The details and format for the disclosure of information ~~shall be~~ provided in the ~~implementing act adopted pursuant to paragraph 23.~~ shall apply to the information to be disclosed pursuant to this paragraph, unless the delegated act adopted pursuant to paragraph 3 provides otherwise.

6. — This Article shall not apply to SMEs.

However, the Commission may, in the delegated acts adopted pursuant to paragraph 3, provide that the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4 shall apply to:

(a) medium-sized enterprises, where there is sufficient evidence that they account for a substantial proportion of unsold consumer products being destroyed;

(b) microenterprises, small enterprises or medium-sized enterprises, where there is sufficient evidence that they may be used to circumvent the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4

**6. — When unsold consumer products are destroyed under an exemption referred to in paragraph 3, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate**

**(i) — the applicability of an exemption from a prohibition to destroy, and**

**(ii) — the delivery and reception of the products as disclosed pursuant to paragraph 5(c)**

**Such information and documentation shall be provided within [30 days] of receipt of a request by a competent national authority.**

### **SECTION 3 - PROHIBITION**

#### **Article 20b**

**Prohibition against the destruction of unsold consumer products that are apparel or clothing accessories**

- 1. From [24 months after entry into force of this Regulation], destruction of unsold consumer products that are apparel or clothing accessories, listed in Chapters 61 and 62 of the TARIC established in Council Regulation (EEC) No 2658/87<sup>68</sup>, is prohibited.**
- 2. The Commission shall [OJ note: 12 months after entry into force of this Regulation] adopt implementing acts specifying the relevant exemptions from the prohibition against destruction of unsold consumer products that are apparel or clothing accessories based on the principles laid down in Article 20c paragraph 4 and on the justifications laid down in Article 20c paragraph 5.**
- 3. When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the responsible economic operator shall disclose information as laid down in Article 20c paragraph 6.**

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<sup>68</sup> 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).

**4. When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate:**

**(i) the applicability of an exemption from the prohibition against destruction, and**

**(ii) the delivery and reception of the products as disclosed pursuant to paragraph 3(c)**

**Such information and documentation shall be provided within 30 days of receipt of a request by a competent national authority.5. Paragraph 1 shall not apply to small or microenterprises.**

**5. The Commission shall be empowered to adopt implementing acts to specify that the prohibition against destruction of unsold consumer products that are apparel or clothing accessories shall apply to small and microenterprises, where the Commission finds that there is sufficient evidence that they:**

**a) account for a substantial number of unsold consumer products that are apparel or clothing accessories being destroyed; or**

**b) by destroying unsold consumer products that are apparel or clothing accessories directly, or on behalf of one or several economic operators, they allow such economic operators subject to the obligation referred to in paragraph 1, to circumvent it.**

**6. Implementing acts referred to in this article shall be adopted in accordance with the examination procedure referred to in Article 67(3).**

**Article 20c**

***Empowerment to the Commission to adopt implementing acts setting out prohibitions against destruction of unsold consumer products***

- 1. Notwithstanding Article 20b, the Commission shall be empowered to adopt implementing acts setting out prohibitions against destruction of unsold consumer products by economic operators when the following criteria are fulfilled:**
  - (a) destruction of the type of unsold consumer products has a negative environmental impact;**
  - (b) a prohibition would not lead to significant disproportionate administrative burden.**
  
- 2. The implementing acts shall specify:**
  - (a) the type of unsold consumer products that shall fall into the scope of the act, ensuring products are not treated in a discriminatory manner;**
  - (b) the applicable exemptions;**
  - (c) the details and format of the reporting obligation of economic operators when destroying unsold consumer products under an exemption;**
  - (d) the date of application, and where appropriate, any tiered or transitional measures or periods. Such dates shall be fixed taking account, in particular, possible impacts on SMEs.**
  
- 3. When preparing an implementing act referred to in paragraph 1, the Commission shall:**
  - (a) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary;**
  - (b) carry out appropriate consultation with stakeholders, the Ecodesign Forum referred to in Article 17 and the Ecodesign Expert Group referred to in Article 17a;**

**4. Exemptions from the prohibition shall respect the following principles:**

**(a) The exemption shall apply to all or part of the prohibition;**

**(b) The exemption shall be adapted to the specificities of the type of unsold consumer products in the scope;**

**(c) The exemption shall apply for a limited or unlimited time.**

**5. The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:**

**a) health and safety reasons;**

**b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20a;**

**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 which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;**

**f) products exceeding their expiry date;**

**g) products for which destruction is the option with the least negative environmental impact**

**6. When unsold consumer products are destroyed under an exemption referred to in paragraph 4 and 5, the responsible economic operator shall disclose:**

**(a) the number and weight of unsold consumer products units destroyed;**

**(b) the reasons for their destruction, referring to the applicable exemption;**

**(c) the proportion of the delivery of the products destroyed to each of the following activities: recycling, other recovery, e.g. energy recovery and disposal operations in accordance with the exemption and the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.**

**The information referred to above shall be disclosed at least on an easily accessible page of the economic operator's 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 include the information referred to above in that sustainability reporting ], provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].**

**7. The details and format for the disclosure of information provided in the implementing act adopted pursuant to Article 20 paragraph 2 shall apply to the information to be disclosed pursuant to paragraph 6, unless the implementing act adopted pursuant to paragraph 1 provides otherwise.**

**8. When unsold consumer products are destroyed under an exemption referred to in paragraphs 4 and 5, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate**

**(i) the applicability of an exemption from a prohibition against destruction, and**

**(ii) the delivery and reception of the products as disclosed pursuant to paragraph 6(c)**

**Such information and documentation shall be provided within [30 days] of receipt of a request by a competent national authority.**

**9. This Article shall not apply to small and microenterprises. However, the Commission shall be empowered to adopt implementing acts to specify or may, in the implementing acts adopted pursuant to paragraph 1, provide that the prohibition against destruction of unsold consumer products referred to in paragraph 1 shall apply to small or microenterprises:**

**(a) where there is sufficient evidence that they account for a substantial number of unsold consumer products being destroyed;**

**(b) where there is sufficient evidence that by discarding unsold consumer products directly or indirectly on behalf of one or several economic operators, they allow such economic operators to circumvent the prohibition to destroy unsold consumer products referred to in the implementing act.**

**10. Implementing acts according to this Article shall be adopted in accordance with the examination procedure referred to in Article 67(3).**

#### ***Article 20d***

##### ***Prioritisation of unsold consumer products for setting a prohibition against destruction***

**1. The Commission shall, no later than [OJ Office: 36 months after entry into force of this Regulation] and once every 12 months thereafter, publish an indicative list of products groups for which it intends to carry out impact assessments under Article 20c, taking into account:**

**(a) the prevalence of the destruction of specific consumer products;**

**(b) comparative environmental impact resulting from such destruction;**

**(c) the information available including the information disclosed by economic operators pursuant to Article 20.**

**[2. The Commission shall, when carrying out an impact assessment as referred to in Article 5(4), assess whether a prohibition against destruction of the relevant product group should be established, pursuant to Article 20c.]**



## Chapter VII - Obligations of economic operators

### Article 21

#### Obligations of manufacturers

1. When placing products covered by a ~~delegated~~ **implementing 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 ~~Article 6~~ the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4;
  - (b) those products are accompanied by the information required by ~~the~~ Article 7 and the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 **and**;
  - (c) a product passport is available in accordance with Article 8 and the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4.
2. Before placing a product covered by a ~~delegated~~ **implementing 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~~ **implementing delegated** acts adopted pursuant to Article 4 and draw up the required technical documentation, or have it carried out on their behalf.

Where compliance of a product covered by a ~~delegated~~ **implementing 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 **(cf)**, the manufacturer shall ~~draw up a conformity declaration and~~ 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 the last item of the a product model covered by a delegated implementing 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 implementing delegated act. ~~Delegated acts adopted pursuant to Article 4 may specify a period longer or shorter than 10 years in order to take account of the nature of the products or requirements concerned.~~
4. Manufacturers shall ensure that procedures are in place for products covered by a delegated implementing 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 ~~specified in the delegated acts adopted pursuant to Article 4~~, or have it carried out on their behalf.
5. Manufacturers shall ensure that their products covered by a delegated implementing 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 indicate, ~~on their~~ **for products covered by a delegated implementing delegated act adopted pursuant to Article 4, indicate** their name, registered trade name or registered trade mark, ~~and the~~ postal address and, ~~where available,~~ electronic means of communication, where they can be contacted:

**a) on the public part of the product passport, when applicable, where available, and**

**b) on the product** or, where this is not possible, on its packaging, **or** in a document accompanying the product ~~or, where available, in a product passport.~~

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 ~~that~~ a product covered by a delegated **implementing delegated** act adopted pursuant to Article 4 is accompanied by instructions that enable **customers and other relevant actors** ~~consumers and other end-users~~ to safely assemble, install, operate, store, maintain, repair and dispose of the product in a language that can be easily understood **by customers** ~~consumers and other end-users~~, 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), and as** specified in the delegated **implementing delegated** acts adopted pursuant to Article 4 ~~and pursuant to Article 7(2)(b), point (ii).~~

8. Manufacturers who consider or have reason to believe that a product covered by a delegated **implementing delegated** act adopted pursuant to Article 4 that they have **been** placed on the market or put into service is not in conformity with the requirements set out in ~~those that~~ **delegated implementing delegated** acts shall immediately take the necessary corrective **measures action to bring that product into conformity,** ~~to~~ withdraw **it that** product or recall it, **if as** 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 **measures action** taken.

9. Manufacturers shall, **for products covered by a delegated ~~implementing 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 ~~the 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 ~~either~~ paper or electronic form. ~~The relevant documents shall be made available~~ within 10 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~~ **implementing delegated** act adopted pursuant to Article 4 by which the product in question is covered.

#### *Article 22*

##### *Authorised representatives*

1. 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 ~~the last item of~~ a product ~~model~~ covered by a ~~delegated~~ **implementing** 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~~ **implementing 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, ~~make available~~ **provide** relevant documents within 10 days of the receipt of such a request **and**;
- (e) terminate the mandate if the manufacturer acts contrary to its obligations under this Regulation ~~and the delegated act adopted pursuant to Article 4.~~

### *Article 23*

#### *Obligations of importers*

1. Importers shall, ~~with regard to only place on the market~~ products covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, ~~only place on the market products~~ that comply with the requirements set out in the applicable ~~delegated~~ **implementing delegated** acts.
2. Before placing a product covered by a ~~delegated~~ **implementing 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~~ **implementing delegated** acts adopted pursuant to Article 4;
  - (c) a product passport is available in accordance with ~~Article 8 and the~~ ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4, ~~and~~;
  - (d) that the manufacturer has complied with the requirements set out in Article 21(5) and (6).**

The importer shall further ensure that ~~the a~~ product **covered by a delegated implementing delegated act adopted pursuant to Article 4** bears the required CE marking referred to in Articles 38 and 39, or the alternative conformity marking as laid down in a ~~delegated~~ **implementing 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~~ **implementing 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 ~~indicate on the a~~ product **for products covered by an delegated implementing delegated act adopted pursuant to Article 4, indicate** their name, registered trade name or registered trade mark, ~~and the postal address and, where available, electronic means of communication, where they can be contacted:~~

**a) on the public part of the product passport, when applicable where available, and**

**b) on the product** or, where this is not possible, on the packaging, **or** in a document accompanying the product ~~or, where available, in a product passport.~~

The contact details shall be clear, understandable and legible.

4. Importers shall ensure that ~~the a~~ product **covered by a delegated implementing delegated act adopted pursuant to Article 4** is accompanied by instructions that enable the **customer and other relevant actors** ~~consumer~~ to **safely** assemble, install, operate, store, maintain, repair and dispose of the product, in a language that can be easily understood **by customers** ~~consumers and other end-users~~, 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 implementing delegated** acts adopted pursuant to Article

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~~ **implementing delegated** act adopted pursuant to Article 4 by which it is covered.

6. Importers who consider or have reason to believe that a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, which they have placed on the market ~~or put into service~~, is not in conformity with the requirements set out in that ~~delegated~~ **implementing delegated** act shall immediately take the necessary corrective ~~measures~~ **action necessary to bring that product into conformity**, to withdraw ~~it~~ **that product** or recall it, ~~if as~~ 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 ~~measures~~ **action** taken.

7. Importers shall, ~~for 10 years or the period specified by a delegated act adopted pursuant to Article 4,~~ 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 the last item of a product model covered by a delegated implementing 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 implementing delegated act.**

8. 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 implementing 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 ~~either~~ paper or electronic form, ~~The relevant documents shall be made available~~ within 10 days of receipt of a request by the competent national authority ~~of a Member State~~.

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~~ **implementing delegated** act adopted pursuant to Article 4 by which the product in question is covered.

*Article 24*

*Obligations of distributors*

1. When making a product covered by a ~~delegated~~ **implementing 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~~ **implementing delegated** act adopted pursuant to Article 4 available on the market, distributors shall verify that ~~the following~~:
  - (a) the product bears the CE marking in accordance with Articles 38 and 39 or ~~alternative~~ **the** conformity marking adopted pursuant to **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~~ **implementing delegated** acts;
  - (b) the product is accompanied by the required documents and by instructions, ~~to that~~ enable the **customer consumer** to **safely** assemble, install, operate, store, maintain, **repair** and dispose of the product, in a language that can be easily understood by **customers consumers and other end-users**, 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 ~~laid down specified~~ in the ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 **and**;
  - (c) the manufacturer and the importer have complied with the requirements set out in Article 21(5) and (6) and Article 23(3).



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 **implementing 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 **implementing delegated** act adopted pursuant to Article 4.

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 **implementing delegated** act adopted pursuant to Article 4 shall make sure that the **necessary corrective measures action necessary to bring that product into conformity is taken**, to ~~withdraw it or recall it, if as 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 **measures action** taken.

5. 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 ~~either~~ paper or electronic form, **within 10 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 **implementing 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 **implementing 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 **specified** in Article 8(2), point (e), and **specified in the** delegated **implementing 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, **including for online distance selling**, labels provided in accordance with Article 26(1), point (b)<sup>2</sup> or **26(1), point (c)**<sup>3</sup>; ~~and;~~
  - (b) make reference to the information included in labels provided in accordance with Article 26(1), point (b)<sup>2</sup> or **26(1), point (c)**<sup>3</sup> in visual advertisements or in technical promotional material for a specific model, in accordance with delegated **implementing 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.

Article 26

Obligations related to labels

1. Where a ~~delegated~~ **implementing 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 ~~or digital copies of the label~~ in accordance with that ~~delegated~~ **implementing delegated** act. **As an alternative to supplying the label with the product, delegated acts referred to in Article 4 may provide that it is sufficient for the economic operator to ensure that digital copies of the label are provided in the digital product passport/database, in accordance with that delegated act.;**
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 placing the product on the market or putting it into service shall~~
  - b) ~~deliver~~ **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;
3. ~~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~~
  - 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.
4. ~~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:~~

**2. Where an implementing 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:**

- a)** 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 **implementing delegated** act adopted pursuant to Article 4;
- b)** 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 **implementing delegated** act adopted pursuant to Article 4, the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the products' compliance with ~~the requirements set out in~~ that delegated **implementing 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 ~~and shall be subject to the obligations of a manufacturer under Article 21,~~ where they:

- (1) place a product covered by a delegated **implementing 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 **but not yet put into service** in a way that affects compliance with the requirements set out in delegated **implementing delegated** acts adopted pursuant to Article 4 by which the product is covered.

**This Article shall not apply to used products that undergo modifications that do not result in the products being considered new.**

Article 29

*Obligations of online marketplaces and online search engines*

1. The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to **the providers of** online marketplaces and for the purposes of this Regulation, include in particular:
  - (a) cooperating to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures;
  - (b) informing the market surveillance authorities of any action taken **with regard to non-compliance or suspected non-compliance** concerning products covered by a **delegated implementing delegated** act adopted pursuant to Article 4;
  - (c) establishing a regular and structured exchange of information on **offers content** that **have has** been removed **on the basis of this Article** by online marketplaces **as referred to in paragraph 3**;

- (d) allowing online tools operated by market surveillance authorities to access their interfaces in order to identify non-compliant products **and**;
- (e) upon request of the market surveillance authorities, when online marketplaces, or online **sellers** have put in place technical obstacles to the extraction of data from their online interfaces, allowing those authorities to scrape such data for product compliance purposes based on the identification parameters provided by the requesting market surveillance authorities.
2. For the purpose of the requirements of ~~{Article 22(7)}~~ **Article 31(1)** of Regulation (EU) **2022/2065** ~~{the Digital Services Act}~~, online marketplaces shall design and organise their online interface in a way that enables dealers to fulfil their obligations set out in Article 25 **of this Regulation** and allows economic operators to fulfil their obligations under Article 30(1) of this Regulation.

The information shall ~~be able to~~ be provided for each product offered and displayed or otherwise made easily accessible **by for** customers on the product listing.

In particular, where ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 require online visual advertising for certain products to be accompanied by online electronic information to be displayed on the display mechanism, online marketplaces shall enable dealers to show it. This obligation shall also apply to online search engines and other online platforms that provide online visual advertising for the products concerned.

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~~ **implementing delegated** act adopted pursuant to Article 4, to order an online marketplace to ~~remove act against one or more specific items of illegal~~ 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. from its online interface, disable access to it or display an explicit warning to end-users when they access it.** **Market surveillance authorities may, in accordance with Article 9 of Regulation (EU) 2022/2065, issue s**Such orders ~~shall comply with [Article 8(1)] of Regulation (EU) [the Digital Services Act]~~.
4. ~~Online marketplaces shall take the necessary measures to receive and process the orders referred to in paragraph 2 in accordance with [Article 8] of Regulation (EU) .../... [the Digital Services Act].~~
5. 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 ~~and the delegated acts adopted pursuant to Article 4.~~

This contact point may be the same contact point as the one referred to in [Article 20(1)] of Regulation (EU) .../... [the General Product Safety Regulation] or ~~[Article 10(1)]~~ **Article 11(1)** of Regulation (EU) **2022/2065** ~~[the Digital Services Act]~~.

## Article 30

### Information obligations of economic operators

1. ~~Where products~~ **When making a product covered by a** ~~delegated~~ **implementing delegated act adopted pursuant to Article 4** ~~are made available on the market online or through other means of distance selling, sales by the relevant economic operators, the relevant product offer 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 ~~or~~ **and** ~~electronic~~ **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 to identify the product, including its type and, ~~where available, batch or serial number and any other~~ **a** product identifier.
2. 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~~ **implementing 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 implementing delegated act. That information shall be provided in paper or electronic form within 10 days of receipt of a request by the market surveillance authority.** ~~When adopting delegated acts pursuant to Article 4, the Commission may specify a period of more or less than 10 years to take account of the nature of the relevant products or requirements.~~

3. 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;**
  - (c) **the need to protect the economic operators' trade secrets and intellectual property rights.**

The Commission shall specify the manner in which the relevant parts of the technical documentation shall **are to** be made available **in the relevant delegated implementing act.** ~~Where available, t~~ Technical documentation shall be made available through the product passport, **where available.**

*Article 31* **Article 31**

*Monitoring and reporting of in-use data by obligations of economic operators*

~~1. 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.~~

~~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.~~

**1a. The Commission shall, as appropriate to the product group concerned, require products to measure and report in-use-data in accordance with paragraph 2 and 3 when this is necessary to ensure energy-efficient usage of products or to develop new product ecodesign requirements;**

2. 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 (c), the Commission shall take into account the following criteria:
- (a) the usefulness of in-use data for **customers** ~~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) anonymisation of data, given the need to ensure privacy of data in line with the Regulation [GDPR].**

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

3. When requiring manufacturers, their authorised representatives or importers to collect, anonymise ~~or~~ **and** report to the Commission in-use data referred to in paragraph 2, pursuant to Article 4, third subparagraph, point (d), the Commission shall take into account the following criteria:
- (a) the usefulness of in-use data for the Commission when reviewing ecodesign requirements or assisting market surveillance authorities with statistical information for their risk-based analysis **and**;
  - (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)~~(i) collecting **and anonymising** the in-use data if it can be accessed remotely via the internet, unless the **customer** ~~end-user~~ expressly refuses to make that data available;
- ~~(b)~~ ~~(ii)~~ **after** anonymising the data collected under point (a), ~~and report~~ **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~~**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 **anonymised** in-use data as referred to in the second subparagraph, point (b-), **in the relevant delegated implementing 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**

**[The below text is the previous Article 5(6), amended and transformed into a separate Article]**

**In order to facilitate the verification of compliance with ecodesign requirements, the Commission shall, where appropriate, require supply chain actors to:**

- (a) provide, upon request, 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.**

**The requirement under the first paragraph should be non-discriminatory, not give rise to disproportionate administrative burden and take into consideration economic actors legitimate needs to protect trade secrets. The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the needs of SMEs including SME's difficulties in accessing information.**

## 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** ~~and other~~ **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 ~~requirements~~ **methods** set out in the relevant ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4.
2. ~~Where necessary to ensure compliance with ecodesign requirements set out in delegated acts adopted pursuant to Article 4, third subparagraph, point (e), the Commission may require the use of online tools for the calculation of the performance of products in relation to the relevant product parameter referred to in Annex I reflecting the applicable calculation requirements.~~

~~Where~~ **When** setting **the requirement to** such requirements for the use of online **digital** tools **pursuant to Article 4, third subparagraph, point (e)**, the Commission shall take into account the following criteria:

- (a) the need to ensure the harmonised application of calculation requirements;
- (b) the need to minimise administrative burden imposed on economic operators ~~complying with the relevant requirements.~~

Online tools shall be freely accessible for economic operators ~~complying with the relevant requirements.~~

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.**

1. Products falling within the scope of a delegated **implementing 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 **implementing 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.

2. Economic operators placing **on the market or putting into service** a product covered by a delegated **implementing 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 **implementing 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 **implementing 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 **implementing delegated** acts adopted pursuant to Article 4 by which the products are covered ~~or their functional performance from the perspective of the user.~~
4. Software or firmware updates shall not worsen product performance in relation to any of the product parameters regulated in delegated **implementing 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** ~~end-user~~ prior to the update. No ~~performance~~ 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 **implementing delegated** acts adopted pursuant to Article 4 applicable at the time of the placing on the market or putting into service of the product.



## Article 34

### 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 **implementing delegated** acts adopted pursuant to Article 4 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 **implementing 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 **an delegated implementing delegated** act adopted pursuant to Article 4, which have been awarded the EU Ecolabel pursuant to Regulation (EC) No 66/2010 **or nationally, or regionally officially recognised EN ISO 14024 type I environmental labels as referred to in that Regulation**, shall be presumed to comply with the ecodesign requirements set out in that delegated **implementing delegated** act in so far as **the criteria established by those labels are covered by and are at least as strict as those requirements** those requirements are covered by the EU Ecolabel criteria established according to Article 16(2) of Regulation (EC) No 66/2010.

Article 35

Common specifications

*[The changes map the non-paper on common specification of Article 17 of the Machinery proposal to be aligned after negotiations have been completed The changes mirror the document 5424/1/23 “Proposal for a Regulation of the European Parliament and of the Council on machinery products - Analysis of the final compromise text with a view to agreement”]*

1. The Commission may adopt implementing acts ~~laying down~~ **establishing** common specifications for 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, in the following situations: **for products covered by implementing delegated delegated acts adopted pursuant to Article 4 where the following conditions have been fulfilled:**

- (a) **the Commission has requested, pursuant to Article 10(1) of Regulation No 1025/2012, one or more European standardisation organisations to draft a harmonised standard for it has requested, pursuant to Article 10(1) of Regulation 1025/2012, one or more European standardisation organisations to draft a harmonised standard in relation to 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 that is not covered by a harmonised standard or part thereof, the references of which have been published in the Official Journal of the European Union and there are either undue delays in the standardisation procedure or and the request has not been accepted or the European standardisation deliverables addressing that request the request has not been accepted by any of the European standardisation organisations or the harmonised standard addressing that request is not delivered within the deadline set in accordance with Aarticle 10(1) of Regulation 1025/2012; and**

**(-b) no reference to harmonised standards for an ecodesign requirement or method is published in the *Official Journal of the European Union* in accordance with Regulation with Regulation (EU) No 1025/2012 and no such reference is expected to be published within a reasonable period;**

~~(b) the Commission has decided in accordance with the procedure referred to in Article 11(5) of Regulation (EU) No 1025/2012 to maintain with restriction or to withdraw the references to the harmonised standards or parts thereof by which an ecodesign requirements or method is covered.~~

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 referred to in paragraph 1, 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. ~~In the~~ When preparing the draft implementing act establishing the common specification, the early preparation of the draft implementing act establishing the common specification, the Commission shall take into account ~~gather~~ the views of the Ecodesign Forum and the Ecodesign Expert Group. Based on that consultation, the Commission shall prepare the draft implementing act.**

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 **implementing delegated** acts adopted pursuant to Article 4 to the extent that those requirements are covered by such common specification or parts thereof.

3. Products which are in conformity with common specifications or parts thereof shall be presumed to be in conformity with ecodesign requirements set out in the ~~delegated~~ **implementing 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 publication of 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 assess whether to 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.**
- 5. When a Member State considers 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 with a 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,** ~~product parameters referred to in Annex I on which the relevant ecodesign requirements are based, in particular whether performance in relation to those product parameters can be verified on the product itself;~~
  - (c) where third party involvement is mandatory, the need for the manufacturer to have a choice between **the quality assurance and product certification** modules set out in Annex II of Decision No 768/2008/EC.
  
2. ~~Where relevant, records~~ **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 **implementing 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 **implementing 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 **implementing 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**.
3. For a product in the ~~conformity assessment~~ **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*

#### *Alternative conformity declarations and Specifying rules on markings*

When specifying ~~alternative rules on the declaration of conformity or 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 ~~conformity declarations and~~ markings applicable to a specific product;
- (c) the need to prevent confusion about the meaning of ~~conformity declarations and~~ 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~~ **implementing 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 ~~or notified 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, **which shall safeguard confidentiality of the information received.**
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.
7. A notifying authority shall have a sufficient number of competent personnel and sufficient funding at its disposal for the proper performance of its tasks.

~~The Commission may adopt implementing acts laying down a minimum number of full-time equivalents considered sufficient for the proper monitoring of notified bodies, where appropriate in relation to specific conformity assessment tasks. Where monitoring is carried out by a national accreditation body or a body referred to in Article 42(3), this minimum number shall apply to that body.~~

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

*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.

**However, a body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.**

This shall not preclude the conformity assessment body from carrying out conformity assessment activities for competing manufacturers.

4. 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.

~~The~~ **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 ~~may not be delegated to a subcontractor or a subsidiary.~~

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.
6. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it under the relevant ~~delegated~~ **implementing 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. ~~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;~~
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the ~~of these~~ **transparency and the ability of reproduction of those** procedures ~~and the ability to reproduce them. This shall include a qualification matrix that matches~~ **including a description of how** relevant personnel, their ~~respective~~ status and tasks ~~within the conformity assessment body with~~ **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 **implementing** **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.**

8. 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 **implementing 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~~ **of**, the relevant standardisation activities ~~and apply as general guidance~~ ~~the administrative decisions and documents produced as a result of the work of that group.~~

#### *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. ~~The relevant notified bodies shall~~ **monitor** ~~establish procedures for the on-going monitoring of the competence, activities and performance of its subcontractors or subsidiaries, taking into account the qualification matrix referred to in Article 45(6).~~

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~~ **implementing 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, ~~the qualification matrix referred to in Article 45(6),~~ 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~~ **implementing 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.



*Article 49*  
*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.
5. 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.

6. ~~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 **and inform the relevant notifying authority of the reasons for not publishing that notification.**~~

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*

1. 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.

2. 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.

*Article 52*  
*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.
4. 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.**

~~adopt an implementing act requiring the notifying Member State to take the necessary corrective action **measures**, including withdrawal of the notification if necessary. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).~~

~~The Commission shall update the list of notified bodies referred to in Article 50(2) within 2 weeks of the implementing act being adopted **corrective action being notified pursuant to Article 49(7).**~~

*Article 53*  
*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~~ **implementing delegated** acts adopted pursuant to Article 4.
2. Conformity assessments shall be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators. **Notified bodies** ~~Conformity assessment 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 second and final conformity assessment, unless the deficiencies cannot be remedied, in which case~~ **and** 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 ~~or approval decision~~ **in accordance with the conformity assessment procedures provided for in a delegated ~~implementing delegated~~ act adopted pursuant to Article 4**, 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.

6. ~~**When taking conformity assessment decisions, including when deciding on the need to suspend or withdraw a certificate or approval decisions in light of possible non-compliance, notified bodies shall apply clear and pre-determined criteria.**~~
7. ~~Notified bodies shall ensure rotation among the personnel carrying out different conformity assessment tasks.~~

*Article 54*  
*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 ~~products~~ **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 ~~unless there is a legitimate reason for not doing so.~~
4. 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~~ **implementing 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*

1. 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 **implementing 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 **implementing delegated** acts adopted pursuant to Article 4. ~~In doing so, the groups shall follow as general guidance any relevant documents produced by the administrative cooperation group set up pursuant to Article 30(2) of Regulation (EU) 2019/1020.~~

## Chapter X - Incentives

*Article 57*  
*Member State incentives*

1. Member States incentives relating to products covered by a delegated **implementing delegated** act adopted pursuant to Article 4 that determines classes of performance in accordance with Article 7(4), in relation to a product parameter referred to in Annex I, shall concern the highest two classes of performance that are populated at Union level or, where relevant, products with an EU Ecolabel **including products fulfilling equivalent requirements** ~~unless otherwise specified in that delegated act.~~

**1a. The Commission is empowered to adopt implementing acts specifying the product parameters referred to in Annex I for the products covered by a delegated act adopted pursuant to Article 4 which can be subject to Member States incentives in order to boost demand of environmentally sustainable products. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(3).**

**2. The implementing acts referred to in paragraph 1a shall comply with the following criteria:**

**2. a)** Where a delegated **implementing delegated** act adopted pursuant to Article 4 determines classes of performance pursuant to Article 7(4), in relation to more than one product parameter referred to in Annex I or where classes of performance are established both under Regulation (EU) 2017/1369 and under this Regulation-, the Commission ~~may further~~ **may, in order to boost demand of environmentally sustainable products,** specify in ~~the delegated implementing~~ acts ~~adopted pursuant to Article 4, third subparagraph, point (g),~~ which product parameters the Member States incentives shall concern **and that the highest two classes of performance for each parameter can be incentivised.**

~~When doing so, the Commission shall take into account the following criteria:~~

~~(a) — the number of products in each class of performance;~~

~~(b) — the relative **need to ensure** affordability of the products in each class of performance; **to avoid significant negative impact on consumers;**~~

~~(c) — the need to ensure sufficient demand for more environmentally sustainable products.~~

**3. b)** Where a delegated **implementing delegated** act adopted pursuant to Article 4 does not determine classes of performance, the Commission may specify **in an implementing act that** ~~in the delegated acts adopted pursuant to Article 4, third subparagraph, point (g),~~ requirements **on performance** related to product parameters that products concerned by Member State incentives shall meet.



**When deciding which product parameter requirements regarding incentives shall concern, the Commission shall, as appropriate for the product group concerned, consider where there is potential in boosting demand of more well-performing products, and the likelihood that incentives would help achieve this goal.**

**3.** When **preparing the implementing acts referred to in paragraph 2** ~~doing so~~, the Commission shall take into account **the following criteria** ~~the following criteria~~:

**(a) the number of products in each class of performance;**

~~(a)~~ **(b) the need to ensure** ~~relative affordability of the products meeting those requirements,~~ **to avoid significant negative impacts on consumers.**

~~(b) the need to ensure sufficient demand for more environmentally sustainable products.~~

**4. The implementing acts adopted under paragraphs 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 67(3).**

*Article 58  
Green public procurement*

**1.** ~~Requirements pursuant to Article 4, third subparagraph, point (h) for~~ **The Commission is empowered to adopt implementing acts shall in the implementing act pursuant to Article 4 a specifying minimum mandatory requirements for** public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, **in order to incentivise the supply and demand for environmentally sustainable products falling in the scope of those implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).**

**1a. The requirements referred to in paragraph 1 shall be set on products which are covered by delegated acts setting out ecodesign requirements as appropriate in view of the specificities of to the product group concerned:**

**(a) — Where classes of performance have been defined for the products in accordance with Article 7(4), require products to fulfil one of the highest two classes of performance that are populated at Union level.**

**(ab) Include requirements shall on the product parameters for which ecodesign requirements have been set referred to in Annex I considering in particular product groups' (i) lifetime extension, (ii) energy consumption, (iii) end of life management, (iv) criteria applicable to refurbished/remanufactured,**

**(ba) Where classes of performance have been defined for the products in accordance with Article 7(4), require products to fulfil one of the highest two classes of performance that are populated at Union level.;**

The requirements **shall, as appropriate to the product group concerned,** take the form of, mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate;

**(i) technical specifications within the meaning of paragraph 1 of Annex VII of Directive 2014/24/EU and of Article 60 of Directive 2014/25/EU,**

**(ii) selection criteria within the meaning of Article 58 of Directive 2014/24/EU and of Article 80 of Directive 2014/25/EU,**

**(iii) contract performance clauses within the meaning of Article 70 of Directive 2014/24/EU and of Article 87 of Directive 2014/25/EU,**

**(iv) targets.**

~~(v) — [Where applicable,] compliance by the class of products, which is the subject of the considered public contract, with the ecodesign requirement, whole or parts thereof, at an earlier stage than the application dates foreseen in the implementing act referred to in Article 4 establishing those specific ecodesign requirements.~~

2. When establishing **requirements pursuant to paragraph 1** requirements pursuant to Article 4, ~~third subparagraph, point (h), for public contracts,~~ the Commission shall take into account the following criteria:

- (a) the value and volume of public contracts awarded for ~~that given~~ **the relevant** product group or for the services or works using the given product group;
- ~~(b) — the need to ensure sufficient demand for more environmentally sustainable products;~~
- (c) the economic feasibility for contracting authorities or contracting entities to buy more environmentally sustainable products, without entailing disproportionate costs;
- (d) the market situation at Union level, including the competitive pressure, of the relevant product group.**

**(e) the effects of the requirements on competition.**

**3. Contracting authorities and contracting entities referred to in paragraph 1 may, in duly justified cases, derogate from the mandatory requirements specified in an implementing act referred to in paragraph 1 on the grounds of public security and public health. Contracting authorities may also, in duly justified cases, derogate from the mandatory requirements, when those would lead to disproportionate technical difficulties.**

## Chapter XI - Market surveillance

### Article 59a

#### Market Surveillance Regulation

**Regulation (EU) 2019/1020 should apply to products subject to ecodesign requirements according to this Regulation.**

### *Article 59*

#### *Market surveillance action plans*

1. Without prejudice to Article 13 of Regulation (EU) 2019/1020, ~~e~~ Each Member State shall, **at least every 2-4 years, as part of the overarching national market surveillance strategy according to Article 13 of Regulation (EU) 2019/1020,** draw up an action plan outlining the market surveillance activities planned to ensure that appropriate checks are performed on an adequate scale in relation to this Regulation and the delegated **implementing delegated** acts adopted pursuant to Article 4. Each Member State shall draw up the first such action plan by [16 July 2024 **6 months of entry into force of this Regulation**].

The action plan referred to in paragraph 1 shall at least include:

- (a) the products or requirements identified **by the Member States** as priorities for market surveillance, taking into account **paragraph 3 of Article 11 of Regulation (EU) 2019/1020, and the potential environmental impacts of non-compliance** the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a), **and in accordance with the implementing acts referred to in paragraph 5;**
- (b) the market surveillance activities planned in order to reduce non-compliance for those products or requirements identified as priorities, ~~including the nature and minimum number of checks~~ **planned** 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, **where such information is easily available**:
- (a) the levels of non-compliance observed in the **national or Union** market;
  - (b) the environmental impacts of non-compliance;
  - (c) the number of relevant products made available on national markets; and
  - (d) the number of relevant economic operators active on those markets.

~~3. The nature and number of checks planned pursuant to paragraph 1, point (b), shall be proportionate to the objective criteria used to identify the priorities in line with paragraph 2.~~

~~4. Member States shall communicate their action plans to the Commission and other Member States through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020.~~

~~5. The Commission may adopt implementing acts listing the products or requirements that Member States shall at least consider as **take into consideration when setting** priorities for market surveillance pursuant to paragraph 1, point (a).~~

~~Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).~~

*Article 60*  
*Minimum number of checks*

1. ~~The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by laying down the minimum number of checks to be performed by the market surveillance authorities of each Member State on specific products covered by delegated acts adopted pursuant to Article 4 or in relation to specific requirements set out in such delegated acts. The delegated act may, where relevant, specify the nature of the checks required and methods to be used.~~

The minimum number of checks shall be established on the basis of the following criteria:

- ~~(a) the criteria listed in Article 59(2);~~
- ~~(b) the activities planned in Member States' action plans;~~
- ~~(c) the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a);~~
- ~~(d) where relevant, the priorities included in the implementing acts referred to in Article 59(5).~~

2. ~~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.~~

*Article 61*  
*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.~~

2. The Commission shall, every ~~2~~ **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: ~~two~~ **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 ~~two~~ **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 two~~ **four** previous calendar years in relation to products covered by delegated acts adopted pursuant to Article 4 of this Regulation;
  - (c) **an evaluation** ~~a comparison~~ of this information **in relation to** ~~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~~.
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 public a summary of the report.

#### *Article 62*

##### *Market surveillance coordination and support*

1. 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 action plans 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.~~



~~2. 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 **conformity assessment and compliance verification**;
- (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.

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 Article 32 of Regulation (EU) 2019/1020 **where such tasks relate to this Regulation** and this Article.

## Chapter XII - Safeguard procedures

### Article 63

#### *Procedure for dealing with products presenting a risk at national level*

1. Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by a ~~delegated~~ **implementing 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~~ **implementing delegated** act. ~~The relevant economic operators shall cooperate as necessary with the market surveillance authorities.~~

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~~ **implementing 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 the actions listed in Article 16(3) of Regulation (EU) 2019/1020.

~~The~~ **Where appropriate, 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.

4. 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. ~~[To be aligned with the Machinery Regulation]~~

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~~ **implementing 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 **or manufacturer** concerned, such as withdrawal of the product from their market, without delay.

*Article 64*  
*Union safeguard procedure*

1. 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).

2. 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 **ensure that appropriate restrictive** ~~take~~ the measures, **such as withdrawal, are taken in respect of** ~~necessary to ensure that~~ the non-compliant product **within the scope of this Regulation 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.

- 4.** 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. **1**

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 **implementing 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 4**, ~~Article 11a~~, Article 9(1), second subparagraph **and** Article 11(4), ~~and Article 20(3)~~, ~~and Article 61(1)~~ shall be conferred on the Commission for a period of six years from *[one month after the 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 six-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 11a**, ~~Article 4~~, **Article 4**, Article 9(1), second subparagraph **and** 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 11a**, ~~Article 4~~, **Article 4**, Article 9(1), second subparagraph, **and** Article 11(4), ~~and 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, ~~taking into account the extent of non-compliance and the number of units of non-complying products placed on the Union market.~~

Member States shall notify the Commission of those provisions by [~~one~~ **two** years after the date of application **entry into force** of this Regulation] at the latest and shall notify it without delay of any subsequent amendment affecting them.

### *Article 69 Evaluation*

No ~~sooner~~ **later** than [**5 8** years after the date of application of this Regulation] **and every 5 8 years thereafter**, the Commission shall carry out an evaluation of this Regulation and of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Member States shall provide the Commission with the information necessary for the preparation of that report.

**The Commission shall however carry out its first evaluation of the prohibition to destroy consumer goods as laid down in Article 20.b and 20.c within 4 years after the date of application of this Regulation.**

Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.

*Article 70*  
*Repeal and transitional provisions*

1. Directive 2009/125/EC is repealed.
2. 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.
3. **Notwithstanding paragraph (1) of this Article,** Article 1(3), Article 2, Article 3(1), Articles 4, 5 and 8, Article 9(3), Article 10 and Annexes IV, V and VI of Directive 2009/125/EC, as applicable on [OP: *please insert the day before the date of application of this Regulation*] shall continue to apply to implementing measures adopted pursuant to Article 15 of that Directive.
4. Articles 3, 33 and Articles 59 to 65 of this Regulation shall apply to implementing measures adopted pursuant to Article 15 of Directive 2009/125/EC.
5. 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.
6. **Member States shall [OJ note: by 12 months after entry into force of this Regulation] adapt national legislation and take other necessary measures to make sure they comply with the provisions related to Market Surveillance.**

*Article 71*  
*Entry into force **and application***

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

**It shall apply from [the date of entry into force of this Regulation] unless otherwise provided.**

**However, Article 20(1) and Article 20a shall apply from {6 months after the entry into force of this Regulation}.**

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**Product parameters**

The following parameters **shall** ~~may~~, as appropriate **to the relevant product groups**, ~~and where necessary supplemented by others~~, be used 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 and delivery time of spare parts, modularity, compatibility with commonly available 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 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;
- (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) 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, 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, 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;
- (g) **use or** consumption of energy, water and other resources, **including critical raw materials** 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;**
- (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 through yield, technical lifetime, ability to reuse, repair, and manufacture, mass-resource efficiency, interoperability;**

- (l) the environmental footprint of the product, expressed as a quantification, in accordance with the applicable delegated **implementing 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 **and environment** footprint of the product;
- (n) microplastic release **as expressed through the release during relevant product lifecycle stages including manufacturing, transport, end-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 inter alia ability in performing its intended use, precautions of use, skills required, compatibility with other products or systems, etc.;**
- (r) 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, and optimisation of manufacturing, production and assembly processes with respect to material savings, recycling and other circularity aspects, and waste reduction.**

Procedure for defining performance requirements

Performance requirements shall be set as follows:

- (1) 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.

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.

**The Commission shall also take into consideration the net environmental balance between the environmental benefits and burdens; impact on innovation, aesthetics and design choices whether there is a method or metrics for expressing the product parameter for which the performance requirement is established, and whether the compliance with the product parameter, for which the performance requirement is established, is verifiable or measurable by Market surveillance authorities.**

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.

- (2) For the development of the technical, environmental and economic analyses, relevant information available in the framework of other Union activities 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.

- ~~(3) The date of entry into force of the performance requirements shall, where relevant, take into account the time needed to adapt the product design and production processes.~~



### **Elements to be taken into consideration for information requirements**

**When deciding which information requirements, other than requirements on the digital product passport and substances of concern, are appropriate for the product group concerned the Commission shall, apart from Article 5 and 7, take into consideration the following elements:**

- a) the potential for improvement and relative effectiveness in delivering a better environmental sustainability**
- b) the technical feasibility of such information requirements**
- c) the needs of various economic operators, including SMEs**
- d) the need for potential customers to make informed choices**
- e) the need to verify compliance with the requirements**
- f) the legitimate need to protect confidential business information, intellectual property rights and trade secrets**
- g) the need to provide information on the performance of the products for each aspect covered by a performance requirement**
- h) the added value in providing information on the performance of the products for aspects not covered by performance requirements.**

**The Commission will include information requirements in its analysis and impact assessment related to performance requirements referred to in Article 6 and this Annex. In particular, the Commission will assess the type of information and the manner in which it should be made available to ensure that it is relevant and understood by the target group.**

**Digital Product Passport****(referred to in ~~Article~~Articles 8, 9, 10 and 11)**

The requirements related to the product passport laid down in the ~~delegated~~ **implementing** **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 Articles 7(2) **point (b)** and ~~8(2)~~**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 2658/87<sup>69</sup>;
- (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;
- (g) information related to the manufacturer, such as its unique operator identifier and the information referred to in Article 21(7);

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<sup>69</sup> 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).

- (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.**

The ~~delegated~~ **implementing 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.

**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.

**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 EU fertilising 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.

(10) Additional information:

Signed for and on behalf of:

(place and date of issue):

(name, function) (signature):





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**Contents of delegated acts**

**(referred to in Article 4)**

The delegated acts adopted pursuant to Article 4 are to specify the following technical elements:

- (1) ~~the definition of the product groups covered;~~
- (2) ~~the ecodesign requirements for the product groups covered, in line with Article 4 and based on the parameters referred to in Annex I;~~
- (3) ~~where relevant, the parameters referred to in Annex I for which no ecodesign requirement is necessary;~~
- (4) ~~the test, measurement or calculation standards or methods to be used pursuant to Article 32(1); **where relevant, requirements for the use of online tools pursuant to Article 32(2);**~~
- (5) ~~where relevant, the transitional methods, harmonised standards, the reference numbers of which have been published in the *Official Journal of the European Union*, or common specifications to be used;~~
- (6) ~~the conformity assessment module to be used pursuant to Article 4, second subparagraph, as set out under Annex II to Decision 768/2008/EC. Where the module to be applied is different from the module set out in Annex IV, the factors leading to the selection of that specific procedure.~~

~~Where different conformity assessment modules, referred to 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 shall prevail for the ecodesign requirement concerned;~~

- ~~(7) 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;~~
- ~~(8) implementation dates ensuring at least 18 months after the entry into force of the delegated act, any staged or transitional measure or periods, taking into account possible impacts on market surveillance authorities, SMEs or on specific product groups manufactured primarily by SMEs;~~
- ~~(9) 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 regulations in force in their territory on the date of adoption of the delegated acts adopted pursuant to Article 4;~~
- ~~(10) the date for the evaluation and possible revision of the delegated act, taking into account technological progress.~~
- ~~(11) other environmental labels who are equivalent to the ecodesign requirements pursuant to Article 34.~~

## ANNEX VII

### Criteria for self-regulation measures

(referred to in Article 18)

The following non-exhaustive list of ~~indicative~~ criteria ~~shall~~ ~~may~~ be used to assess self-regulation measures in accordance with Article 18 ~~as an alternative to a delegated act adopted pursuant to Article 4 of this Regulation:~~

#### 1. **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.

#### 2. **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 interests of consumers, health, environment, quality of life and economic interests.

#### 3. **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.

#### 4. **Quantified and staged objectives**

The objectives defined by the signatories in their self-regulation measures must be set in clear 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.

#### 5. **Involvement of civil society**

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

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

#### 6. **Monitoring and reporting**

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 has not complied with the requirements of the self-regulation measure, it must take corrective action.

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

7. **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.

Correlation table

| <b>Directive 2009/125/EC</b> | <b>This Regulation</b>   |
|------------------------------|--------------------------|
| <b>Article 1</b>             | <b>Article 1</b>         |
| <b>Article 2</b>             | <b>Article 2</b>         |
| <b>Article 3</b>             | -                        |
| <b>Article 4</b>             | <b>Article 23</b>        |
| <b>Article 5</b>             | <b>Articles 37-39</b>    |
| <b>Article 6</b>             | <b>Article 3</b>         |
| <b>Article 7</b>             | <b>Articles 63 to 65</b> |
| <b>Article 8</b>             | <b>Articles 21, 36</b>   |
| <b>Article 9</b>             | <b>Article 34</b>        |
| <b>Article 10</b>            | -                        |
| <b>Article 11</b>            | <b>Article 5(6)</b>      |
| <b>Article 12</b>            | <b>Article 62</b>        |
| <b>Article 13</b>            | <b>Article 19</b>        |
| <b>Article 14</b>            | <b>Article 7</b>         |
| <b>Article 15</b>            | <b>Articles 4 and 5</b>  |
| -                            | <b>Article 8-15</b>      |
| <b>Article 16</b>            | <b>Article 16</b>        |
| <b>Article 17</b>            | <b>Article 18</b>        |
| <b>Article 18</b>            | <b>Articles 17</b>       |
| -                            | <b>Article 20</b>        |
|                              | <b>Article 22</b>        |
|                              | <b>Articles 24-33</b>    |
|                              | <b>Article 35</b>        |
|                              | <b>Article 40-61</b>     |
|                              | <b>Article 66</b>        |
| <b>Article 19</b>            | <b>Article 67</b>        |
| <b>Article 20</b>            | <b>Article 68</b>        |
| <b>Article 21</b>            | <b>Article 69</b>        |
| <b>Article 22</b>            | -                        |

| <b>Directive 2009/125/EC</b> | <b>This Regulation</b>        |
|------------------------------|-------------------------------|
| <b>Article 23</b>            | -                             |
| <b>Article 24</b>            | <b>Article 70</b>             |
| <b>Article 25</b>            | <b>Article 71</b>             |
| <b>Article 26</b>            | -                             |
| <b>ANNEX I</b>               | <b>Articles 5, 7, ANNEX I</b> |
| <b>ANNEX II</b>              | <b>ANNEX II</b>               |
| -                            | <b>ANNEX III</b>              |
| <b>ANNEX III</b>             | -                             |
| <b>ANNEX IV</b>              | <b>ANNEX IV</b>               |
| <b>ANNEX V</b>               | -                             |
| <b>ANNEX VI</b>              | <b>ANNEX V</b>                |
| <b>ANNEX VII</b>             | <b>ANNEX VI</b>               |
| <b>ANNEX VIII</b>            | <b>ANNEX VII</b>              |
| <b>ANNEX IX</b>              | -                             |
| <b>ANNEX X</b>               | <b>ANNEX VIII</b>             |

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