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**NOTE**

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From:	Permanent Representatives Committee (Part 1)
To:	Council
No. prev. doc.:	8967/23
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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 <i>General Approach</i> - Statement

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Delegations will find attached a statement by Italy on the abovementioned subject in view of the (Competitiveness) Council meeting on 22 May 2023. The statement will be entered into the minutes of the Council meeting.

*Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC*

*Statement by Italy*

The Commission's proposal for a Regulation on ecodesign requirements for products is fully consistent with the principles and objectives of the circular economy. It represents an opportunity for the European market, while at the same time providing a strong innovative push towards more sustainable production models and the creation of new green job opportunities.

Italy welcomed this initiative and has actively contributed to negotiations on the text. We supported the need to achieve an ambitious but also balanced general approach – both in terms of its objectives and the interests being protected – while also recognizing the limits of a framework regulation.

The proposed general approach being examined by the Member States does not, however, seem to fully reflect the balance between the different interests at stake.

In particular, Italy trusts that, during the forthcoming negotiations with the European Parliament, it will be possible to improve the text of the general approach, namely in the following areas:

## **1. Delegation of power to the European Commission (Article 4)**

Italy considers that Member States should be involved to a sufficient extent in the drafting of secondary legislation implementing the framework Regulation, in particular as regards the setting of ecodesign requirements. Indeed, we consider it essential to ensure the involvement and maximum active participation of national governments in legislative processes that are so critical and sensitive for production systems and the environment.

Italy therefore continues to attach importance to the use of implementing acts for the adoption of ecodesign requirements, under Article 4 of the Regulation.

## **2. Frontrunner approach (Article 69)**

The proposed approach provides for the automatic adaptation of ecodesign requirements triggered by the improvement of performance of the products being placed on the market. This would create an undesirable element of uncertainty in the timing of EU targets, which would inevitably result in greater difficulties for companies in terms of planning investments, and thus in higher costs. This uncertainty would affect in particular small and medium-sized enterprises. The real risk is that SMEs would be placed at an arbitrary competitive disadvantage vis-à-vis large companies. The latter benefit from wider and easier access to public and private funding for investment in research and development, irrespective of their location within the EU (to the detriment of the principle of a level playing field) or outside the internal market (European companies may be forced to adapt to ecodesign standards set by companies from third countries that perform better and are more efficient in these respects).

Italy objected to the inclusion – in the final stage of the negotiations, and in the absence of an impact assessment and the necessary examination at technical level – of the frontrunner approach.

We consider that this point should be examined properly and should possibly be removed, given the potential negative impact on the European production system and small and medium-sized enterprises.

### **3. Destruction of unsold consumer goods (Chapter VI)**

Italy supported the European Commission’s initial proposal, and objected to the inclusion in the Regulation of a direct prohibition against the destruction of unsold consumer goods, both in general terms and specifically in relation to individual product groups. In addition, and again in line with the Commission’s original proposal, we have consistently advocated the need to exempt SMEs from the obligations arising from Chapter VI.

The decision to introduce a direct prohibition against the destruction of unsold consumer products in the apparel and clothing accessories sector from 36 months after the entry into force of the Regulation (48 months for medium-sized enterprises), and to restrict exemptions from the obligations under Chapter VI to micro and small enterprises only, is highly problematic. This decision seems discriminatory against the specific product groups affected insofar as it is not based on robust data, in the absence of any impact assessment. Furthermore, it contradicts the mechanism under Article 20c, which establishes the framework according to which the Commission can introduce prohibitions against the destruction of unsold consumer products by economic operators. In this regard, it is worth noting that the research commissioned by the European Commission on this matter reached the same conclusion<sup>1</sup>.

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<sup>1</sup> Data on destruction of unsold consumer products, October 2022.

Furthermore, introducing a prohibition against destruction does not address the potential risk of that prohibition being circumvented by transferring unsold consumer goods to third countries with less restrictive environmental regulations.

Lastly, Italy considers that it is essential to ensure legal certainty for economic operators with regard to the priorities set by the European Commission under the Regulation. To that end, it is important that product groups for which an impact assessment is to be carried out, with a view to potentially introducing a prohibition against destruction (Article 20d), should also be included in the Commission working plan adopted under Article 16 of the proposed Regulation.

#### **4. Substances of concern (Article 2(28), Article 6, Article 7)**

The introduction of information requirements in relation to substances of concern, as well as the possibility of introducing restrictions on substances under Article 6, raises the matter of the relationship between this Regulation and European chemicals legislation.

We consider that the definition of substances of concern in Article 2(28) should be amended to narrow its scope, given that this definition currently serves as a reference for other legislation, such as the Directive on packaging and packaging waste (PPWD).

In light of the changes made in the general approach, we consider it necessary to make some amendments to Article 2(28) so as to remove ‘chronic hazard to the aquatic environment’ categories 3 and 4 and ‘specific target organ toxicity – single exposure’ categories 1 and 2. ‘Chronic hazard to the aquatic environment’ categories 3 and 4 cover less serious hazards and would not seem to be relevant for the purposes of the ESPR. In addition, the Chemicals Strategy for Sustainability considers substances that have a chronic effect with continuous exposure (i.e. they have an effect after repeated and continuous exposure) to be substances of concern. Therefore, it would seem inconsistent with the Chemicals Strategy for Sustainability to take substances falling under the category of ‘specific target organ toxicity – single exposure’ (STOT) into consideration in the ESPR.

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