



Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0095 (COD)**

Brussels, 23 August 2023

WK 10575/2023 ADD 1

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NOTE

From:	CZ, SE Delegation
To:	Working Party on Competitiveness and Growth (Internal Market – Ecodesign)
Subject:	ESPR: CZ, SE comments on EP amendments

CZ Comments on the EP Amendments on Ecodesign Proposal

The comments below present our position which is without prejudice to any eventual future change, and may be changed depending on the outcome of the negotiations with the EP on the most important issues for the Council. Moreover, these comments are complementary to those already raised during the IM WP on 14 July 2023.

The comments are divided in two parts, with the first covering the amendments already discussed at said WP, that is, AMs 9, 70, 72, 86, 91, 98, 131, 132, 138, 142-145, 148, 149, 156, 168, 170-173, 175, 185-190, 192, 193, 218, 219, 222, and 223, and the second covering the rest of the AMs which we found important to mention.

The comments concern mainly the AMs on Articles, however, they are applicable to the relevant amended recitals as well.

AMs discussed at the WP on 14 July:

1. Second-hand products (AMs 9, 70, 86)

Similarly, to the views of many MSs expressed at the WP on 14 July, we should avoid a situation when there is a safety loophole regarding marketing of used products from the third countries. Imported second-hand products shall be first placed on the market while fulfilling the requirements on the new product to ensure protection of consumers. In that regard, the **AM 9** seems not clear enough and thus we do not support it. That is also the case for somewhat complicated exemption mechanism suggested in **AM 70**. The text of the General Approach addresses better this issue, and so we prefer the wording of the General Approach in all related AMs.

In case the EP AMs were to be introduced, it should be clarified that second-hand products, not placed on the Union market when they were new, shall comply with product requirements set out in sectoral legislation (e.g. electrical safety). It also should be thoroughly pondered case-by-case whether a particular second-hand product is actually more environmentally friendly than a new one; a new product can be much more energy-efficient throughout the lifetime than a second-hand one.

2. Premature obsolescence (AMs 6, 54, 91, 229)

CZ remains to prefer GA in regards to the premature obsolescence where such matter is dealt with the parameters in the Annex I, instead of in Art. 5a (as suggested in **AM 91**). Moreover, the suggested drafting of said Article is dubious, as was remarked by many at the WP on 14 July.

3. Reparability (AMs 72, 98)

We are relatively flexible concerning the introduction of the reparability score since measuring the reparability itself is inherent to the main performance parameters in the ESPR.

4. Ban on destruction of unsold consumer products (AMs 32, 34, 156, 168,)

EP in its **AM 156** suggests that the economic operator shall disclose the number “and percentage” of unsold consumer products discarded per year, while the GA proposes “weight” instead. CZ might be flexible in this regard.

However, we cannot support the suggested **AM 168** on prohibiting directly in the text the destruction of unsold consumer products. We are repeatedly against such inclusions since their impact has not been properly measured. That would be gained only through a proper assessment after sufficient amount of data is collected. Regrettably, neither is the case so far and the data are yet to be obtained based on the ESPR. We find the text of the General Approach on the direct ban as a maximum that we can support and do not want to extend it to other product categories as suggested by the EP. Nevertheless, should this direct ban on specific product groups remain in the text, we would support a general and permanent exemption for SMEs. However, if the SMEs are used for circumventing such bans (which should be introduced after sufficient data is collected and subsequent research is conducted), such broad exemption might be revised.

5. Working plans (AMs 128, 130, 131, 132)

CZ strongly prefers adopting the working plans through implementing acts as envisaged in the General Approach in Art. 16(2). In that regard, we cannot support the wording suggested by the EP in **AMs 128 and 130**.

Concerning the inclusion of specific product groups directly in the Regulation as suggested by the EP in **AM 131**, we deem that such text would limit the Commission's flexibility to set the priorities according to its research and subsequent consultations with stakeholders and Member States. This approach is well explained in the Impact Assessment and its Annex XVI. Moreover, such flexibility is needed also because of the ever-possible need to change the priorities. We therefore support the wording of the General Approach which, among other things, obliges the Commission to inform the EP and the Council annually on the implementation of the working plan.

Prioritization of any single product is fairly problematic and non-systemic. Prioritising cement as suggested in **AM 132** is problematic as well, since this is already prioritized in the CPR Acquis process, where the new standardisation requests are being prepared based on the MS' needs including environmental characteristics. We would not like to see the work already done to be in vain. Strict collision rules under the ESPR might be too rigid as the cement is also strongly related to CPR. We therefore do not support this amendment and would rather stick to the General Approach.

6. Self-regulation measures (AMs 138, 139, 142, 143, 144, 145, 146, 148, 149)

In case of self-regulation measures, since we see the merit in their existence, we generally support those AMs which are moving in the same directions as the General Approach (**AMs 138, 139, 143, 145 and 146**). We might be flexible concerning **AMs 142 and 144**. However, we would prefer a degree of flexibility for the Commission in setting the deadline for the signatories of the self-regulation measure to revise and update such measure, thus, we do not support **AM 148**. Moreover, we do not support inclusion of an independent inspector as suggested in **AM 149** since this might be too burdensome.

7. Obligations of manufacturers (AMs 170, 171, 172, 173, 174, 175)

We do not support the suggestion of the EP to oblige manufacturers to provide the instructions in digital format (**AM 170**). The digital format should be supported, however, it should also be only complementary to the paper format because of the certain groups of citizens which might not be able to properly use the digital instructions. Moreover, we do not support the second part of **AM 170**. We deem that the period for which the digital instructions are accessible online should be for the life-cycle of the product concerned and should therefore not be limited in the delegated acts.

In that regard and for the same reasons as indicated above, we do not support **AMs 171 a 172**. However, in case that such AMs are accepted in the end, we would be supportive towards **AM 173**.

In case of **AM 174**, we deem that inclusion of “has” is grammatically incorrect, yet we might be flexible towards the rest of the AM.

Concerning **AM 175**, we might be flexible towards the first subparagraph on the communication channels if these channels did not have to be separate but already existing ones (e.g. under GPSR) could be used. This is essential in order not to overburden the economic operators. However, the second subparagraph on non-compliance is rather problematic as expressed by MSs at the WP on 14 July. The first sentence is redundant, the second one provides more administrative burden for the economic operators and should it remain in the text, a possibility to use registers under other legislation, such as GPSR, should be added.

8. Obligations of online marketplaces (AMs 185, 186, 187, 188, 189, 190, 191, 192, 193)

EP suggests in **AM 185** to delete “and online search engines” from the title of Art. 29. Since there are no obligations for the online search engines further down in the text, we might be flexible towards such change. Regarding the rest of suggested changes in Art. 29, that is **AMs 186 – 193**, the new provisions cannot violate the existing *acquis* and should be in line with it, especially with the Digital Services Act. We therefore prefer the text of the General Approach, however, we might be flexible in those cases where the suggested provisions might elevate the burden on the online marketplaces themselves (such as in **AMs 186, 187, 188, 189 and 191**).

9. Market Surveillance, sanctions and remedies (AMs 45, 203, 206, 208, 211, 218, 219, 223)

In general, we strongly disagree with provisions that are interfering with the market surveillance *acquis* because the market surveillance is an exclusive competence of the Member States. Moreover, it is not feasible to impose further administrative burden on the market surveillance authorities (this regards mainly **AMs 203, 206, 208 and 211**).

The provisions on sanctions as suggest by the EP in **AMs 218 and 219** are problematic as well, as raised by many MSs in the WP on 14 July, because they might too far-reaching. The provisions on sanctions should be generally worded and should respect the scope of such provisions in product legislation.

EP in its **AM 223** suggests a new Article on remedies, however, we do not support specifying remedies in such a horizontal text as the ESPR, especially since this matter is dealt with in another legal acts.

Because of the reasons stated above, we very much insist on the wording of the General Approach in these issues.

10. Evaluation (AM 222)

CZ does not support shortening of the evaluation period to six years as suggested by the EP in **AM 222**. We deem that eight years is a minimum amount of time necessary for the ESPR and its secondary legislation to take the proper effect.

We are rather sceptical towards the suggested exemption for imported second-hand products because of the position stipulated above, however, should such an exemption be included in the final text, a revision clause might be needed.

On the social sustainability, we are, together with many MSs who expressed their views on the WP on 14 July, critical because of its unclear relation with the CSDD and a position that the ESPR is not a right place to deal with such issue.

AMs not discussed at the WP on 14 July

1. Availability of critical raw materials (AMs 3 and 232)

We are rather sceptical to these AMs due to the administrative burden in contrast with actual benefits such provisions could bring.

2. Distinguishing between micro-enterprises and SMEs (AMs 31, 34, 71, 87, 88, 89, 151, 152, 153, 154, 168, 242) and their support (AM 154)

Micro-enterprises are generally included in the concept of SMEs so they should not be explicitly mentioned should there be no specific requirements for them. This applies even for **AM 168** where there are specific requirements suggested for the medium-sized enterprises but not for the micro-enterprises only.

Concerning the support measures for the micro, small and medium-enterprises to help them implement ecodesign requirements, and the suggested **AM 154**, we prefer the wording of the General Approach since the GA tasks the Commission with providing support in implementation of these support measures, whereas the EP AM does not.

3. Implementing vs. Delegated Acts (AMs 147, 149, 208, 210)

We understand that the discussion on whether to use the implementing or delegated acts is a problematic and a delicate one. Yet, we cannot accept the attempts made by the EP to change almost every implementing act in the proposal to a delegated one. This is the case for **AMs 147, 149, 208, 210**.

4. Horizontal requirements (AM 76)

Although the suggested changes in the **AM 76** are relatively similar to the ones in GA, we deem the text of the General Approach clearer and thus preferable.

5. Digital Product Passport (AMs 108, 111, 118)

EP in **AM 108** suggests to include a provision obliging that “the information included in the product passport shall be accurate, complete and up to date”. This might be an understandable obligation at the time of placing on the market or putting into service, however, it might impossible to achieve throughout the whole life-cycle of the product. Thus a clear distinction between these situations should be made in case this amendment is accepted.

In a similar fashion and concerning **AM 111**, we might have concerns on actual feasibility of “both-way linkage” between product passports of the original and updated products.

As regards the interoperability of the DPP with the existing product databases, although it might desirable, such a requirement should not lead to technically impossible obligations towards the Commission. Thus, **AM 118** might be redundant.

6. Obligations of suppliers (AM 183)

The suggested inclusion of a new Article 25a in **AM 183** is somewhat similar to the Art. 31a as suggest in the General Approach. We might be supportive towards this Article since the aims of both versions are rather similar, however, the text of GA is more elaborated.

7. Information obligations of economic operators (AM 194)

EP suggests to include a picture among the information for identifying the product which is rather similar to the provision in Art. 19 of GPSR and therefore acceptable.

8. Green Public Procurement (AM 201)

It is questionable whether the ESPR should specify the details on who will provide assistance to the national contracting authorities while upskilling and reskilling staff in charge of green public procurements.



21 August 2023
KN2023/00036

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Swedish initial comments on amendments adopted by the European Parliament on the proposal for a regulation on Ecodesign requirements for Sustainable products

Sweden thanks the Spanish Presidency for inviting to comment on the ESPR amendments adopted by the European Parliament on 12 July. We are still in the process of scrutinizing the amendments but would like to provide our initial comments below.

Sweden has welcomed the Commission's proposal as an important piece of legislation to achieve a circular economy in the EU where sustainable products will be the norm and where products are sustainable all along their lifecycle. There should be good possibilities for the Council and the European Parliament to reach an agreement by the end of this year. We intend to show constructiveness and flexibility to support the Presidency in that endeavour.

Overall approach

Sweden would like to see a regulation that assures high climate and environmental standards in a cost-effective manner while strengthening the Single market. The regulation should ensure availability on information on chemical content and safe use by introducing information requirements tracking the presence of substances of concern through the life cycle of materials and products, in line with the commitments of the Chemicals Strategy for Sustainability. The regulation should allow requirements in the delegated acts to be set in a dynamic manner, to effectively promote the best performing products. It is also of importance that the regulation effectively disincentivises overproduction and prevent the destruction of unsold

consumer goods, as these habits are in contradiction to making sustainable products the norm.

Furthermore, it is of great importance that the regulation is in line with the market surveillance regulation, especially when it comes to the powers conferred to the competent authorities. The powers shall be conferred and exercised in accordance with Union and national law, including the principles of the Charter of Fundamental Rights of the European Union, as well as with principles of national law relating to freedom of expression and the freedom and pluralism of the media.

Comments on amendments discussed at WP 14 July

Premature obsolescence (am. 91)

Sweden could be flexible as regards this amendment.

Prioritization of products (am. 131-132)

Sweden prefers the Council's mandate, as a certain flexibility for the Commission is important for the prioritisation of those delegated acts' that have the largest potential to contribute to the Union climate, environmental and energy objectives.

Treatment of second-hand products (am. 9, 70, 86)

Sweden shares the view expressed by many delegations at the WP 14 July that the approach taken by the EP deviates from how second-hand products are regulated in general, that there is a risk for a loophole and that there would be challenges in securing compliance.

Review (am. 222)

Sweden could support the first part of the amendment, i.e. a review within 6 years.

Sweden would be less favourable towards a review on the possible inclusion of social sustainability and due diligence requirements within 4 years.

Penalties (am. 218-219)

Sweden will likely oppose amendment 219. When it comes to specific penalties (amendment 219) it shall be up to the MS to determine what penalties are appropriate, as long as they are effective, proportionate and

dissuasive. Sweden will also be reluctant to support amendment 218 as MS should have flexibility to shape the legislation according with their national conditions.

With that starting point, Sweden is still scrutinizing these amendments to see where there might be room for some of the suggested text proposals.

Remedy (am. 223)

Sweden sees some issues with the Parliament proposal and would like the Presidency to seek clarity from the Parliament on the rationale, e.g.: why would non-compliance with the eco-design product requirements be considered as non-conformity with the sales contract, why would the seller be responsible for something that the manufacturer is responsible for and why would there be a timeless right to a remedy?

New obligation for manufacturers (am. 170-173; 175)

Sweden prefers the Council's mandate but could be flexible.

Self-regulation measures (am. 138; 142-145; 148-149)

Reparability (am 72, 90)

Sweden finds that the amendments would make the regulation more robust and could therefor basically support them.

Online marketplaces (am. 185-190; 192-193)

Sweden is still scrutinizing these amendments. We would in general advocate to make use of agreed text from relevant pieces of legislation recently negotiated.

Unsold consumer products (am 156, 168)

Sweden is in favour of comprehensive provisions to effectively prevent the destruction of unsold consumer goods. We could therefor support the immediate prohibition of electric and electronic equipment in accordance with am. 168. In addition, Sweden would strongly prefer that medium sized enterprises are phased in as soon as possible, to assure a level playing field and not create a huge loophole.

With that standpoint clarified, we share the view expressed by many delegations at the WP 14 July that there are good reasons for the Council to keep close to its mandate in this delicate matter.

Comments on other amendments and other parts

Entry into force of delegated acts (art. 7a)

Sweden will pay close attention to the negotiations on this amendment made by the Council. We share the view that possible impacts on market surveillance authorities, SMEs or on specific product groups manufactured primarily by SMEs, should be taken into account. However, we believe that this regard should be taken when adopting the delegated act and be adapted to the specific circumstances of that act.

Information requirements for substances of concern (e.g. am. 73, 99, 100, 105, 183)

Sweden will pay close attention to the negotiations on amendment proposed by the Parliament related to information requirements for substances of concern. At a first glance, the purpose and the implications of a number of these do not seem clear to us. It would be useful if the Presidency could seek further clarity from the Parliament, to facilitate a proper analysis.

The relation to the Market Surveillance regulation (recital 60 and article 29.3)

To eliminate any ambiguity when it comes to the applicability of the market surveillance regulation (MSR) in relation to article 29.3 ESPR it is important that the reference in the article to the complete article 14 is supported by a reference to the complete article 14 in recital 60 and not only to article 14.4.