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NOTE

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



RÉPUBLIQUE
FRANÇAISE

*Liberté
Égalité
Fraternité*

Paris, le 28 août 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises concernant le règlement relatif à l'écoconception des produits durables (« ESPR ») suite au groupe du 14 juillet 2023

A la suite du travail du 14 juillet sur la proposition de règlement sur l'écoconception des produits, les autorités françaises remercient la Présidence et souhaitent faire part des commentaires suivants.

1. Interdiction de l'obsolescence prématurée ; priorisation des produits ; traitement des produits de seconde main

a) Interdiction des pratiques menant à l'obsolescence prématurée

Les autorités françaises sont **très favorables à l'amendement 1 du Parlement** (selon la numérotation de la note de la présidence) **visant à interdire les pratiques de conception menant volontairement à une obsolescence prématurée des produits**. De plus, les autorités françaises considèrent que l'introduction de la définition d'« obsolescence prématurée » (article 2), d'un paramètre environnemental dédié (annexe I) et d'une disposition spécifique à la lutte contre l'obsolescence prématurée (article 5a), vont également dans le bon sens pour prolonger la durée de vie des produits.

b) Priorisation des produits

S'agissant de l'amendement 2 du Parlement (selon la numérotation de la note de la présidence), les autorités françaises sont **défavorables à l'insertion de catégories de produits prioritaires dans le règlement lui-même**, estimant que cette sélection doit se faire avec les parties prenantes. Le système actuel, basé sur la consultation des Etats membres et des parties prenantes, dans le cadre de la directive existante, fonctionne bien. Sur l'amendement 3 du Parlement (selon la numérotation de la note de la présidence) visant à inclure le secteur du ciment parmi les catégories de produits à étudier prioritairement dans le cadre du règlement écoconception au cas où le règlement « produits de construction » ne prendrait aucune disposition, les autorités françaises sont **défavorables à l'inclusion du ciment dans les secteurs prioritaires, même selon certaines conditions**. Elles estiment en effet que ce secteur doit être prioritairement régulé

par le règlement relatif aux produits de construction. Les autorités françaises tiennent par ailleurs à indiquer que les travaux dit de l'Acquis, visant à réviser les normes techniques harmonisées des produits de construction, sont déjà engagés concernant la famille des produits cimentiers.

Par ailleurs, les autorités françaises regrettent que le Parlement n'ait pas proposé un amendement visant à garantir la cohérence des mesures s'appliquant aux produits intermédiaires et aux produits finaux correspondants. En effet, les autorités françaises craignent que les exigences relatives aux produits intermédiaires n'affectent négativement la compétitivité des produits dans lesquels ils sont incorporés (dans le sens où les produits finaux produits hors de l'UE utilisant des produits intermédiaires visés, dans l'UE, par une mesure ESPR, n'auraient pas l'obligation d'utiliser des produits intermédiaires durables, contrairement aux mêmes produits finaux produits dans l'UE). Les autorités françaises défendent donc le principe selon lequel **l'inclusion d'un produit intermédiaire ne doit s'envisager que si des exigences équivalentes sont appliquées aux principaux produits finaux concernés.**

c) Traitement des produits de seconde main

Concernant les amendements 4 et 5 (selon la numérotation de la note de la présidence), les autorités françaises sont **favorables** aux dispositions qui prévoient que les produits de seconde main **en provenance de l'UE** ne doivent pas être considérés comme de nouveaux produits et ne devront ainsi pas faire l'objet d'exigences d'écoconception. En revanche, elles sont **défavorables à la possibilité d'exclure les produits de seconde main en provenance des pays hors UE des exigences d'écoconception**, en raison notamment de la difficulté de mettre en œuvre une telle exemption pour les autorités de surveillance du marché.

Par ailleurs, les autorités françaises estiment que l'amendement 6 est superflu en ce qu'il semble apporter une précision inutile. En effet, il est déjà compréhensible qu'il pourrait s'agir de tous types de produits d'occasion quel que soit le lieu de leur première mise sur le marché.

2. Clause de révision, y compris les aspects de diligence raisonnable; sanctions; instructions en format numérique

a) Clause de révision / aspects sociaux et de diligence raisonnable

S'agissant de l'amendement 7 (selon la numérotation de la note de la présidence) relatif à l'insertion d'une clause de revoyure quatre ans après l'entrée en vigueur du règlement portant notamment sur les aspects sociaux et de diligence raisonnable (devoir de vigilance), les autorités françaises sont favorables à cette proposition s'agissant de critères sociaux sur les produits, mais plus réservées s'agissant de l'introduction d'exigences de devoir de vigilance par le biais du règlement écoconception. S'agissant de cet aspect, une bonne articulation avec le texte sur le devoir de vigilance- projet de directive « CSDD » - doit primer.

b) Sanctions et conformité

Concernant l'amendement 8 (selon la numérotation de la note de la présidence) qui inclut une liste de critères à prendre en compte dans l'établissement des sanctions, les autorités françaises sont de l'avis qu'une telle liste pourra permettre une harmonisation des sanctions au niveau européen. En revanche, s'agissant de l'amendement 9 (selon la numérotation de la note de la présidence) qui liste trois types de sanctions à mettre en place par les Etats membres, **elles font part de leur opposition.** Les autorités françaises

estiment, en effet, que le texte doit laisser une marge de manœuvre aux Etats pour déterminer le régime et la nature des sanctions.

S'agissant de l'amendement 10 (selon la numérotation de la note de la présidence) qui prévoit au 1. qu'un manquement au règlement ESPR est considéré comme une non-conformité au sens de la directive 2019/771 et ouvrirait droit aux remèdes prévus par la garantie légale de conformité (GLC), et ce, sans limite de temps (« independently of the expiry of the time limits as defined by Article 10 of this Directive »), les autorités françaises pointent qu'un manquement aux obligations d'écoconception n'implique pas nécessairement une non-conformité au sens de la directive (UE) 2019/771, contrairement à ce que l'amendement propose.

Aussi en complément du recours possible à la GLC, quand les remèdes trouvent à s'appliquer, des sanctions propres au non-respect des critères de l'écoconception, plus ciblées, trouveraient leur utilité.

En tout état de cause, l'absence de limite de temps fait peser une obligation disproportionnée sur le vendeur et déroge au cadre général du régime de la garantie légale de conformité. Pour l'ensemble de ces raisons, **les autorités françaises considèrent qu'un tel amendement devrait être écarté.**

S'agissant du 2. qui fait du marketing ou de la mise en vente d'un produit non-conforme aux critères d'ESPR une pratique commerciale trompeuse au sens de l'article 5 de la directive 2005/29, les autorités françaises soutiennent là encore des sanctions spécifiques plutôt que le renvoi à une pratique commerciale trompeuse. Le non-respect d'une réglementation européenne sans allégation spécifique du professionnel ne permet pas de retenir à son encontre une pratique commerciale trompeuse.

c) Instructions en format numérique

Sur les amendements 11 à 14 (selon la numérotation de la note de la présidence) relatifs à la fourniture d'instructions, avec le produit, sur le montage, l'utilisation, l'entretien ou encore la réparation, en format numérique (avec possibilité de les obtenir en format papier sur demande du consommateur), **les autorités françaises sont défavorables.** En effet, il apparaît indispensable de maintenir un support papier pour les consommateurs qui ne sont pas familiers avec le numérique au risque d'accentuer encore la fracture numérique, d'autant plus lorsque ces instructions sont nécessaires pour utiliser le produit en toute sécurité. Les autorités françaises sont opposées à l'inversion du paradigme actuel à savoir format papier pour tous les consommateurs et format numérique pour ceux qui le souhaitent. Au surplus, l'amendement 13 limite à 6 mois après l'achat l'obtention sans frais d'instructions au format papier, ce qui n'est pas acceptable en matière de protection des droits des consommateurs. Enfin, si le consommateur ne reçoit plus de manuel en format papier, il n'est pas certain qu'il se donnera la peine de chercher ces informations en format numérique. Les autorités françaises indiquent leur forte préférence pour le texte de la Commission ou du Conseil.

S'agissant des contrôles douaniers relatifs au passeport de produit (article 13), les autorités françaises ne sont pas favorables à l'amoindrissement proposé dans l'orientation générale que le Parlement soutient. Les autorités françaises souhaitent que soient renforcés les contrôles douaniers relatifs au passeport produit dans des conditions garantissant la proportionnalité de l'obligation incombant aux autorités douanières (retour à la proposition initiale de la Commission). Il est suggéré de s'opposer à la suppression totale du point 4 de l'article 13. En effet, Il est nécessaire de prévoir un contrôle de cohérence automatisé entre les données figurant dans le passeport produit et celles figurant dans la déclaration de douane afin de renforcer de lutter efficacement contre la concurrence déloyale des produits importés qui ne respecteraient pas les exigences d'écoconception imposées par ESPR.

3. Nouvelle obligation pour les fabricants ; mesures d'autorégulation ; réparabilité

a) Nouvelle obligation pour les fabricants

S'agissant de l'amendement 15 (selon la numérotation de la note de la présidence) visant à obliger les fabricants, d'une part, à mettre en place des canaux de communication avec les consommateurs et, d'autre part, à prendre des mesures adéquates en cas de non-conformité de leurs produits, les autorités françaises sont **réservées** : la formulation du premier paragraphe reste trop générale dans la mesure où il est fait référence à une « non-conformité potentielle », sans faire le lien avec écoconception, et en toute hypothèse il y a un **enjeu de bonne articulation avec d'autres textes qui fixent des obligations pour les fabricants** (RSGP, règlement surveillance du marché, etc.).

b) Mesures d'autoréglementation

Concernant les amendements 16 à 22 (selon la numérotation de la note de la présidence) qui viennent renforcer l'encadrement des mesures d'autoréglementation, les autorités françaises rappellent que la France souhaitait la suppression des possibilités d'autoréglementation car elle n'est pas convaincue de leur utilité au vu notamment de l'expérience dans le cadre de la directive actuelle. Cependant elle n'en avait pas fait une ligne rouge. Dans le cadre d'un maintien des articles permettant des mesures d'autoréglementation, les amendements du Parlement ne posent pas de difficultés en ce qu'ils viennent renforcer leur encadrement.

c) Réparabilité

Les autorités françaises **soutiennent fortement** les amendements 23 et 24 (selon la numérotation de la note de la présidence) visant à préciser les modalités d'un indice de réparabilité européen, notamment sa méthodologie, ses classes de performance et son champ. En effet, la France appelle de ses vœux la mise en place d'un indice de réparabilité européen pour les produits pertinents comme les produits électriques et électroniques. Les autorités françaises se réjouissent du fait que le Parlement vienne renforcer le règlement écoconception à cet égard. Elles font part d'une seule **réserve, au début de l'amendement 24, relative à l'utilisation des termes « le cas échéant »** (*where appropriate*). En effet, l'expérience positive d'indices de réparabilité, dans plusieurs Etats membres dont la France, semble montrer que la situation est mûre pour la mise en place d'un indice réparabilité obligatoire dans l'UE sur les produits pertinents, dont la mise en œuvre pourra être progressive.

De manière générale, les autorités françaises **soutiennent fortement le nouvel article 5a dédié à la durabilité et à la réparabilité des produits.**

4. Obligations des places de marché en ligne ; interdiction de la destruction des biens de consommation invendus

a) Obligations des places de marché en ligne

A l'amendement 25 du Parlement (selon la numérotation de la note de la présidence), les autorités françaises **sont défavorables au retrait des moteurs de recherche en ligne du champ de l'article 29** relatif aux obligations des places de marchés en ligne et des moteurs de recherche en ligne. En effet, ces derniers ont également un rôle important en matière de recherche commerciale en ligne.

A l'amendement 26 du Parlement (selon la numérotation de la note de la présidence), les autorités françaises font part de leur **préférence pour la version du Conseil du texte du paragraphe 1 de l'article 29** relatif aux obligations des marchés en ligne et des moteurs de recherche en ligne. Le texte proposé par le Parlement est trop réduit.

Les autorités françaises **sont défavorables à la suppression des alinéas 1, 2 et 3 du paragraphe 2 de l'article 29 relatif aux obligations des marchés en ligne et des moteurs de recherche en ligne** telle que proposée par le Parlement dans le cadre de ses amendements 27, 28 et 29 (selon la numérotation de la note de la présidence), qui réduit la portée des dispositions relatives aux obligations des places de marché et des moteurs de recherche en ligne, notamment le lien avec le règlement portant sur le marché unique des services numériques, l'accès aux informations sur les produits et la publicité.

Les autorités françaises sont **plutôt défavorables à l'amendement 31** du Parlement (selon la numérotation de la note de la présidence) qui propose que le point de contact que les places de marché en ligne devront mettre en place avec les autorités de surveillance du marché serve également aux échanges avec les consommateurs. Même si l'intention d'améliorer la communication entre les consommateurs et les places de marché en ligne est louable, le véhicule choisi n'est pas le bon. Le point de contact prévu à l'alinéa 1 du paragraphe 5 de l'article 29 concerne spécifiquement les autorités de surveillance du marché.

b) Interdiction de la destruction des biens de consommation invendus

Amendements 33 et 34(selon la numérotation de la note de la présidence)

Article 20

L'amendement 33 vise à imposer aux entreprises de communiquer non seulement le nombre, mais également le pourcentage des produits invendus détruits par an, différenciés par catégorie de produits.

Les autorités françaises sont **favorables** à un tel ajout permettant de connaître le volume des invendus détruits par rapport au total des marchandises vendues par une entreprise, **sous réserve du respect du secret des affaires**. De manière générale, les autorités françaises considèrent que **l'indication en volume par secteur est préférable** à la communication du nombre de produits détruits, dans la mesure où elle permet de mieux rendre compte de l'ampleur des destructions. Cette remarque s'applique également au paragraphe 3 de l'article 20 nouveau.

Les autorités françaises insistent également sur le fait que le devoir de transparence doit être suffisamment encadré : en effet, il ne faut pas permettre à quiconque de déduire le nombre réel de produits qu'une entreprise vend au cours de l'année, ce qui représente des informations commerciales sensibles et confidentielles qui ne peuvent être partagées publiquement sans mettre en danger la compétitivité et la stratégie commerciale d'une entreprise.

Article 20-NOUVEAU sur l'interdiction directe de destruction

L'amendement 34 vise à prévoir une interdiction au niveau européen, et dans un délai d'un an à compter de l'entrée en vigueur du règlement, de la destruction de certaines catégories de produits invendus :

- Textiles (comme le prévoit déjà le Conseil) ;
- Chaussures ;
- Produits électriques et électroniques.

L'amendement prévoit d'exempter les petites et moyennes entreprises.

Les autorités françaises sont très **favorables à l'ajout des produits électriques et électroniques** à la liste des produits concernés par une telle interdiction.

Cependant, les autorités françaises sont **défavorables à l'exclusion des PME**, et estiment qu'une dérogation portant uniquement sur les petites et microentreprises, comme le prévoit le Conseil, est plus adaptée. Elle permet, à terme, de soumettre par principe les moyennes entreprises détenant des invendus, y compris les équipements électriques et électroniques, à l'interdiction de destruction.

En outre, les autorités françaises rappellent que le recyclage doit être préféré à la valorisation énergétique et à l'élimination lorsque des invendus doivent être détruits. Des éléments en ce

sens pourraient être précisés dans les actes délégués adoptés par la Commission en vertu du paragraphe 2 ainsi que dans le considérant 46.

Enfin, les autorités françaises souhaitant que cette interdiction entre en vigueur le plus tôt possible, elles ne sont pas opposées à la mise en place de l'interdiction 1 an après l'entrée en vigueur du règlement, comme le propose le Parlement. Elles restent néanmoins favorables à la proposition du Conseil (3 ans).

5. Empreinte carbone (considérant 19)

Les autorités françaises ne sont pas favorables à ce qu'une méthode de calcul de l'empreinte carbone soit mise en avant et souhaitent revenir à une version plus neutre ; la méthode de calcul de l'empreinte carbone doit être abordée dans un second temps lors des travaux techniques, après adoption du règlement cadre, sans précision sur la méthode à ce stade. Elles soulignent que le Parlement n'a pas non plus orienté sa version du texte dans ce sens.

Les autorités française sont très hostiles au recours à des mécanismes de marché tels que les garanties d'origine qui ne sont pas adaptés et risquent de conduire à une décorrélation entre l'empreinte carbone réelle des produits et la valeur affichée.

Pour un meilleur bénéfice environnemental et pour une concurrence entre les entreprises, il faudrait que ces exigences soient calculées sans recours aux garanties d'origine mais uniquement sur la base de l'énergie consommée sur le site d'exploitation et en tenant compte du contenu carbone moyen national de cette énergie.

Les autorités françaises estiment que l'approche ajoutée dans l'orientation générale créerait un risque supplémentaire de fraude et ne prendrait pas en compte l'impact réel de la fabrication. De manière générale, il est préférable de ne pas préjuger de la méthode dans le règlement lui-même, qui devra être abordée lors des travaux techniques avec une analyse plus fine du marché.

Par ailleurs, les autorités françaises souhaitent que soit ajoutée une mesure horizontale prioritaire sur l'empreinte carbone, et regrettent que le Parlement n'ait pas proposé d'amendement en ce sens.

6. Incitation (article 57)

Les autorités françaises souhaitent revenir à la rédaction initiale proposée par la Commission. Elles soulignent d'une part qu'il n'y a pas eu d'étude d'impact de la rédaction proposée dans le compromis du Conseil sur les politiques des Etats membres, d'autre part que le Parlement a maintenu la proposition de la Commission sur ce point. Les autorités françaises souhaitent assurer une certaine flexibilité pour la définition des règles d'incitations (comme proposé dans le projet de la Commission), afin d'éviter tout risque de conflit entre les différentes priorités environnementales, notamment au niveau national au moment de la définition des classes. Des règles cadre rigides et non adaptées aux spécificités d'un groupe de produits ne permettraient d'assurer cette flexibilité.

De plus, ce changement apporté à la version initialement proposée impacterait les politiques d'incitation comme par exemple celles pour la rénovation énergétique, avec la version proposée à l'issue du Conseil à l'attention des remplacements des équipements (radiateurs électriques à fonctions avancées ou poêle à bois) pour la qualité de l'air et à la rénovation énergétique ou participant à la flexibilité du réseau électrique.

Les autorités françaises identifient donc :

- un besoin de souplesse pour définir les règles d'incitation dans certains cas particuliers : les classes étant définies dans la législation secondaire sectorielle, il est plus pertinent de laisser une certaine souplesse pour définir les règles d'incitation : il serait peu pertinent d'avoir la règle d'incitation des deux classes supérieures qui s'appliquent de la même façon pour un paramètre avec deux classes définies et un autre avec 8 classes par exemple. Il faudrait au contraire regarder au cas par cas ce qui est pertinent pour chaque paramètre.

- un risque de conflit d'objectifs sur les priorités environnementales: en effet, imposer systématiquement les deux premières classes pour les incitations contraint fortement la marge de manœuvre et met à pied d'égalité tous les critères (par exemple émissions de particules, efficacité énergétique, bilan carbone, etc.), indépendamment des priorités des politiques publiques environnementales ; il est préférable de laisser la flexibilité suffisante en fonction des politiques publiques prioritaires, il est possible que des classes pour un paramètre soient définies uniquement à des fins d'information du consommateur sans forcément qu'elle soit utile pour définir les règles d'incitation.

7. Autres points

S'agissant de la définition de **l'empreinte environnementale** (article 2 – 23), les autorités françaises ne sont **pas favorables** à l'amendement 57 du Parlement (selon la numérotation du rapport adopté en plénière le 12 juillet – document P9_TA(2023)0272) qui propose que la possibilité de recourir à d'autres méthodes concerne des méthodes « élaborées par des organisations internationales, expérimentées à large échelle en collaboration avec divers secteurs industriels et reconnues par la Commission; ».

S'agissant de la définition de « **substances préoccupantes** » à l'article 2 (28), les autorités françaises ne sont pas favorables aux amendements 59 et 61 (selon la numérotation du rapport adopté en plénière le 12 juillet).

Amendement 59 :

Les autorités françaises souhaitent maintenir le critère de présence dans la liste SVHC (« identifiée conformément à l'article 59, paragraphe 1, ») pour plus de proportionnalité et de clarté.

Amendement 61 :

Les autorités françaises ne sont pas favorables à cet amendement. L'annexe XVII de REACH liste les restrictions de substances qui sont établies au cas par cas sur la base de la démonstration d'un risque inacceptable pour un ou des usages particuliers. L'impact de cet amendement n'est pas clair à ce stade.

En ce qui concerne l'amendement 60 :

Les autorités françaises soutiennent l'ajout des substances réglementées par le règlement (UE) 2019/1021 qui sont des polluants organiques persistants, d'autant plus que ce type de substances nécessite des dispositions particulières en matière de gestion des déchets.

S'agissant des modalités pour les **places de marchés en ligne** (article 29), les autorités françaises souhaitent le maintien des dispositions relatives aux règles sur les responsabilités des places de marché en ligne pour la conformité des produits, proposé par la Commission et maintenu par le Conseil. Ces règles devraient être même renforcées. Les places de marché en ligne devraient être tenues de vérifier, par le biais d'outils, selon des modalités à définir, que les produits vendus sur leur plateforme respectent les obligations prévues par le nouveau règlement sur l'écoconception. De même, il devrait être prévu que les outils de recherche soient développés de manière à faciliter l'identification et le référencement par l'utilisateur des produits concernés par un label ou une classe de performance. Par ailleurs, les autorités françaises sont d'avis que le rôle des moteurs de recherche en ligne faisant la promotion de produits ciblés suite à des recherches doit également être pris en considération.

Les autorités françaises sont **favorables** à l'amendement 106 du Parlement (selon la numérotation du rapport adopté en plénière le 12 juillet) qui précise, à l'article 7, que les **informations utiles à une décision d'achat éclairée sont communiquées aux consommateurs avant l'achat d'un produit**.

S'agissant des **délais de mise en œuvre**, les autorités françaises sont **favorables aux positions du Parlement**. Elles n'avaient accepté l'allongement des délais proposé dans le cadre de l'orientation générale que dans un esprit de compromis. En effet, la France estimait que la mise en œuvre des actes délégués est déjà suffisamment progressive (plan de travail, études d'impacts, etc.). Elle estimait également que le délai pour l'évaluation de la mise en œuvre du règlement était trop long.

Courtesy translation

Written comments from the French authorities on the Ecodesign for Sustainable Products Regulation (ESPR) following the group meeting of 14th July 2023

Following the meeting of the working party on environment of 14th July on the proposal for a regulation on the ecodesign of products, the French authorities would like to thank the Presidency and make the following comments.

1) Prohibition of premature obsolescence; prioritisation of products; treatment of second-hand products

a) Prohibition of practices leading to premature obsolescence

The French authorities are **very much in favour of Parliament's amendment 1** (as numbered in the Presidency note) **aimed at prohibiting design practices that deliberately lead to premature obsolescence of products**. In addition, the French authorities consider that the introduction of a definition of "premature obsolescence" (Article 2), a dedicated environmental parameter (Annex I) and a specific provision to combat premature obsolescence (Article 5a) are also a step in the right direction towards extending product life.

b) Prioritisation of products

With regard to Parliament's amendment 2 (as numbered in the Presidency note), the French authorities **are opposed to the inclusion of priority product categories in the regulation itself**, believing that this selection should be made in consultation with stakeholders. The current system, based on consultation with Member States and stakeholders under the existing directive, works well.

With regard to Parliament's amendment 3 (as numbered in the Presidency's note) aimed at including the cement sector among the product categories to be studied as a priority under the ecodesign regulation in the event that the "construction products" regulation makes no provision, the French authorities **are opposed to the inclusion of cement among the priority sectors, even under certain conditions**. They believe that this sector should be regulated primarily by the Construction Products Regulation. The French authorities would also like to point out that the work known as the Acquis, which aims to revise harmonised technical standards for construction products, has already begun with regard to cement products.

In addition, the French authorities regret that the Parliament did not propose an amendment to ensure consistency between the measures applying to intermediate products and the corresponding final products. Indeed, the French authorities fear that the requirements relating to intermediate products could adversely affect the competitiveness of the products in which they are incorporated (in the sense that final products produced outside the EU using intermediate products covered in the EU by an ESPR measure would not be obliged to use sustainable intermediate products, unlike the same final products produced in the EU). The French authorities are therefore defending the principle that **the inclusion of an intermediate product should only be considered if equivalent requirements are applied to the main final products concerned**.

c) Treatment of second-hand products

With regard to amendments 4 and 5 (as numbered in the Presidency note), the French authorities are **in favour of** the provisions stipulating that second-hand products **from the EU** should not be considered as new products and should therefore not be subject to

ecodesign requirements. On the other hand, they are **opposed to the possibility of excluding second-hand products from non-EU countries from ecodesign requirements**, notably because of the difficulty of implementing such an exemption for market surveillance authorities.

In addition, the French authorities consider that amendment 6 is superfluous in that it seems to provide an unnecessary clarification. In fact, it is already understandable that it could refer to all types of second-hand products, regardless of where they were first placed on the market.

2) Review clause, including due diligence aspects; penalties; instructions in digital format

a) Review clause / social and due diligence aspects

With regard to amendment 7 (as numbered in the Presidency's note) concerning the insertion of a review clause four years after the entry into force of the regulation, covering in particular social aspects and due diligence (duty of care), the French authorities are in favour of this proposal with regard to social criteria on products, but are more reserved with regard to the introduction of duty of care requirements through the ecodesign regulation. In this respect, a good coordination with the text on the duty of vigilance - the draft "CSDD" directive - must take precedence.

b) Penalties and compliance

With regard to amendment 8 (as numbered in the Presidency's note), which includes a list of criteria to be taken into account when setting penalties, the French authorities are of the opinion that such a list could enable penalties to be harmonised at European level. However, they **are opposed** to amendment 9 (as numbered in the Presidency note), which lists three types of sanctions to be introduced by the Member States. The French authorities believe that the text should leave Member States room for manoeuvre in determining the system and nature of sanctions.

With regard to amendment 10 (as numbered in the Presidency's note), which provides in point 1 that a failure to comply with the ESPR Regulation is considered to be a non-conformity within the meaning of Directive 2019/771 and would give rise to entitlement to the remedies provided by the legal guarantee of conformity, and this "independently of the expiry of the time limits as defined by Article 10 of this Directive", the French authorities **point out** that a failure to comply with the ecodesign obligations does not necessarily imply a non-conformity within the meaning of Directive (EU) 2019/771, contrary to what the amendment proposes.

In addition to possible recourse to the legal guarantee of conformity, when remedies are applicable, more targeted sanctions specific to non-compliance with ecodesign criteria would also be useful.

In any case, the absence of a time limit places a disproportionate obligation on the seller and derogates from the general framework of the legal guarantee of conformity. For all these reasons, **the French authorities consider that such an amendment should be rejected.**

With regard to 2. making the marketing or offering for sale of a product that does not comply with the ESPR criteria a misleading commercial practice within the meaning of Article 5 of Directive 2005/29, the French authorities again support specific penalties rather than referring to a misleading commercial practice. Failure to comply with a European regulation without any specific allegation on the part of the professional does not constitute a misleading commercial practice.

c) Instructions in digital format

The French authorities are opposed to amendments 11 to 14 (as numbered in the Presidency's note) relating to the provision of instructions, together with the product, on assembly, use, maintenance or repair, in digital format (with the possibility of obtaining them in paper format at the consumer's request). Indeed, it seems essential to maintain a paper format for consumers who are not familiar with digital technology, at the risk of further accentuating the digital divide, especially when these instructions are necessary to use the product safely. The French authorities are opposed to reversing the current paradigm, i.e. paper format for all consumers and digital format for those who want it. Furthermore, amendment 13 limits the period for obtaining paper instructions free of charge to 6 months after purchase, which is unacceptable in terms of protecting consumer rights. Finally, if consumers no longer receive a manual in paper format, it is not certain that they will bother to look for this information in digital format. The French authorities have indicated their strong preference for the Commission or Council text.

With regard to customs controls relating to the product passport (Article 13), the French authorities are not in favour of the reduction proposed in the general approach that Parliament supports. The French authorities would like to see customs controls relating to the product passport strengthened under conditions guaranteeing the proportionality of the obligation incumbent on the customs authorities (return to the Commission's initial proposal). It is suggested to oppose the total deletion of point 4 of Article 13. It is necessary to provide for an automated consistency check between the data contained in the product passport and that contained in the customs declaration in order to effectively combat unfair competition from imported products that do not comply with the eco-design requirements imposed by ESPR.

3) New obligation for manufacturers; self-regulation measures; repairability

a) New obligation for manufacturers

With regard to amendment 15 (as numbered in the Presidency's note) aimed at obliging manufacturers on the one hand to set up channels for communicating with consumers and on the other hand to take appropriate measures in the event of non-compliance of their products, the French authorities have reservations : the wording of the first paragraph remains too general insofar as it refers to "potential non-conformity", without making the link with eco-design, and in any event **there is an issue of proper coordination with other texts that set out obligations for manufacturers** (GPSR, market surveillance regulation, etc.).

b) Self-regulation measures

With regard to amendments 16 to 22 (as numbered in the Presidency note), which strengthen the framework for self-regulatory measures, the French authorities point out that France wanted to abolish the possibilities of self-regulation because it is not convinced of their usefulness, particularly in the light of experience with the current directive. However, it had not made this a red line. If the articles allowing self-regulation are retained, the Parliament's amendments do not pose any difficulties in that they strengthen the framework for self-regulation.

c) Repairability

The French authorities **strongly support** amendments 23 and 24 (as numbered in the Presidency's note) aimed at specifying the details of a European reparability index, in particular its methodology, performance classes and scope. France indeed calls for a European reparability index to be set up for relevant products such as electrical and

electronic products. The French authorities welcome the fact that Parliament has strengthened the ecodesign regulation in this respect. **They have just one reservation, at the beginning of amendment 24, concerning the use of the words "where appropriate".** The positive experience of reparability indices in several Member States, including France, seems to show that the situation is ripe for setting up a mandatory reparability index in the EU for relevant products, which could be implemented gradually. Generally speaking, the French authorities **strongly support the new Article 5a on the durability and reparability of products.**

4) Obligations of online marketplaces; ban on the destruction of unsold consumer goods

a) Obligations of online marketplaces

In Parliament's amendment 25 (as numbered in the Presidency note), the French authorities **are opposed to removing online search engines from the scope of Article 29** on the obligations of online marketplaces and online search engines. Indeed, the latter also play an important role in online commercial research.

In Parliament's amendment 26 (as numbered in the Presidency note), the French authorities express their preference for the Council's version of the text of paragraph 1 of Article 29 on the obligations of online markets and online search engines. The text proposed by the Parliament is too reduced.

The French authorities **are opposed to the deletion of subparagraphs 1, 2 and 3 of paragraph 2 of Article 29 on the obligations of online marketplaces and online search engines** as proposed by the Parliament in its amendments 27, 28 and 29 (according to the numbering in the Presidency note), which reduces the scope of the provisions on the obligations of online marketplaces and online search engines, in particular the link with the regulation on the single market for digital services, access to product information and advertising.

The French authorities **are rather opposed to Parliament's amendment 31** (as numbered in the Presidency note), which proposes that the contact point that online marketplaces will have to set up with market surveillance authorities should also be used for exchanges with consumers. While the intention to improve communication between consumers and online marketplaces is laudable, the vehicle chosen is not the right one. The contact point provided for in Article 29(5)(1) specifically concerns market surveillance authorities.

b) Ban on the destruction of unsold consumer goods

Amendments 33 and 34 (as numbered in Presidency note)

Article 20

The purpose of amendment 33 is to require companies to communicate not only the number but also the percentage of unsold products destroyed per year, differentiated by product category.

The French authorities are **in favour** of such an addition making it possible to know the volume of unsold goods destroyed in relation to the total goods sold by a company, **subject to respect for business confidentiality**. Generally speaking, the French authorities consider that **the indication of volume by sector is preferable** to the communication of the number of products destroyed, insofar as it gives a better idea of the scale of the destruction. This comment also applies to paragraph 3 of the new Article 20.

The French authorities also insist that the duty of transparency must be sufficiently circumscribed: indeed, no one should be allowed to deduce the actual number of products a company sells over the course of the year, which represents sensitive and confidential

commercial information that cannot be shared publicly without jeopardising a company's competitiveness and commercial strategy.

Article 20 - NEW - Direct ban on destruction

Amendment 34 aims to introduce a Europe-wide ban on the destruction of certain categories of unsold products within one year of the entry into force of the regulation:

- Textiles (as already provided for by the Council);
- Footwear;
- Electrical and electronic products.

The amendment provides for an exemption for small and medium-sized enterprises.

The French authorities are **very much in favour of adding electrical and electronic products** to the list of products affected by such a ban.

However, the French authorities are not in favour of excluding SMEs, and believe that a derogation covering only small and micro-enterprises, as proposed by the Council, is more appropriate. In the long term, this would make it possible to subject medium-sized businesses holding unsold goods, including electrical and electronic equipment, to the destruction ban as a matter of principle.

In addition, the French authorities point out that recycling should be preferred to energy recovery and disposal when unsold products have to be destroyed. Elements along these lines could be specified in the delegated acts adopted by the Commission under paragraph 2 and in recital 46.

Finally, as the French authorities want the ban to come into force as soon as possible, they are not opposed to setting up the ban 1 year after the entry into force of the regulation, as proposed by the Parliament. However, they remain in favour of the Council's proposal (3 years).

5) Carbon footprint (recital 19)

The French authorities are not in favour of putting forward a method for calculating the carbon footprint and would like to revert to a more neutral version; the method for calculating the carbon footprint is to be addressed at a later stage during the technical work, once the framework regulation has been adopted, without specifying the method at this stage. They point out that the Parliament has not oriented its version of the text in this direction either.

The French authorities are strongly against the use of market mechanisms such as guarantees of origin which are not appropriate and risk to lead to a discrepancy between the real carbon footprint of products and the advertised value. For better environmental benefits and competition between companies, these requirements should be calculated without recourse to guarantees of origin, but solely on the basis of the energy consumed on the operating site, taking into account the national average carbon content of this energy.

The French authorities believe that the approach added in the general approach would create an additional risk of fraud and would not take into account the real impact of manufacturing. Generally speaking, it is preferable not to prejudge the method in the regulation itself, which will have to be addressed during the technical work with a more detailed analysis of the market.

In addition, the French authorities would like to see the addition of a priority horizontal measure on the carbon footprint, and regret that Parliament has not proposed an amendment to this effect.

6) Incentives (article 57)

The French authorities wish to revert to the initial wording proposed by the Commission. They point out on the one hand that there has been no study of the impact of the wording proposed in the Council compromise on Member States' policies, and on the other hand that the Parliament has maintained the Commission's proposal on this point. The French authorities wish to ensure a degree of flexibility in the definition of incentive rules (as proposed in the Commission's draft), in order to avoid any risk of conflict between different environmental priorities, particularly at national

level when defining classes. Rigid framework rules that are not adapted to the specific characteristics of a group of products would not provide this flexibility.

Furthermore, this change to the version initially proposed would have an impact on incentive policies such as those for energy renovation, with the version proposed at the end of the Council focusing on equipment replacements (electric radiators with advanced functions or wood-burning stoves) for air quality and energy renovation or contributing to the flexibility of the electricity network.

The French authorities have therefore identified :

- a need for flexibility in defining incentive rules in certain specific cases: as the classes are defined in the sectoral secondary legislation, it is more appropriate to allow a certain amount of flexibility in defining the incentive rules: it would be inappropriate to have the incentive rule for the two highest classes apply in the same way for a parameter with two defined classes and another with 8 classes, for example. Instead, it would be necessary to look at what is relevant for each parameter on a case-by-case basis.
- a risk of conflicting objectives with regard to environmental priorities: systematically imposing the first two classes for incentives severely restricts the room for manoeuvre and puts all criteria on an equal footing (e.g. particulate emissions, energy efficiency, carbon footprint, etc.), regardless of the priorities of environmental public policies; it is preferable to leave sufficient flexibility depending on the priority public policies, it is possible that classes for a parameter are defined solely for consumer information purposes without necessarily being useful for defining the incentive rules.

7) Other points

With regard to the definition of the **environmental footprint** (Article 2 - 23), the French authorities are **not in favour** of Parliament's amendment 57 (according to the numbering of the report adopted in plenary on 12 July - document P9_TA(2023)0272), which proposes that the possibility of using other methods should concern methods "developed by international organisations, tested on a large scale in collaboration with various industrial sectors and recognised by the Commission".

With regard to the definition of "**substances of concern**" in Article 2 (28), the French authorities are not in favour of amendments 59 and 61 (according to the numbering of the report adopted in plenary on 12 July).

Amendment 59: The French authorities wish to maintain the criterion of presence on the SVHC list ("identified in accordance with Article 59(1)") for greater proportionality and clarity.

Amendment 61: The French authorities are not in favour of this amendment. Annex XVII of REACH lists the restrictions on substances that are established on a case-by-case basis on the basis of the demonstration of an unacceptable risk for one or more particular uses. The impact of this amendment is not clear at this stage.

Concerning amendment 60: The French authorities support the addition of substances regulated by Regulation (EU) 2019/1021 that are persistent organic pollutants, especially as this type of substance requires special waste management provisions.

With regard to the arrangements for **online marketplaces** (Article 29), the French authorities would like to see the provisions relating to the rules on the responsibilities of online marketplaces for product conformity, proposed by the Commission and maintained by the Council, retained. These rules should even be strengthened. Online marketplaces should be required to use tools to check, according to procedures to be defined, that products sold on their platform comply with the obligations set out in the new ecodesign regulation. Similarly, it should be provided that search tools are developed in such a way as to make it easier for users to identify and reference the products concerned by a label or a performance class. In addition, the French authorities

believe that the role of online search engines in promoting targeted products following searches should also be taken into consideration.

The French authorities are **in favour** of Parliament's amendment 106 (according to the numbering of the report adopted in plenary on 12 July), which specifies, in article 7, **that consumers must be provided with the information they need to make an informed purchasing decision before buying a product.**

As far as **implementation deadlines** are concerned, the French authorities are **in favour of Parliament's positions.** They had only accepted the extension of the deadlines proposed in the general approach in a spirit of compromise. France considered that the implementation of delegated acts was already sufficiently progressive (work plan, impact studies, etc.). It also considered that the deadline for assessing the implementation of the regulation was too long.

“ECODESIGN” REGULATION

PT PRELIMINARY COMMENTS TO EP AMENDMENTS (P9 TA(2023)0272)

AMENDMENT 91 | Article 5 a (new)

Practices of premature obsolescence can widely differ considering specificities of different product groups.

In this sense, we would prefer using a more generic language.

AMENDMENT 131 | Article 16 – paragraph 2 – subparagraph 2 b (new)

Considering that the JRC Technical Report “Ecodesign for Sustainable Products Regulation - preliminary study on new product priorities (2023)” provides a preliminary proposal of end-use products, intermediate products and horizontal measures that should be addressed in the 1st ESPR Working Plan (2024-2027), but indicates that those results were considered as preliminary, requiring further analysis to be refined, it is considered precipitate to rank product groups to be object of future ESPR Delegated Acts, as foreseen in this amendment.

Nevertheless, we have noted that several product groups (iron & steel, aluminium, chemicals, textiles, notably garments and footwear, furniture, including mattresses, tyres, detergents, paints and lubricants) out of the 11 product groups proposed by the EP were taken from the list of 19 (12 end-use products and 7 intermediate products) product groups identified in the JRC Technical Report. However, no reasoning was given for the presentation of the select product groups.

On the other hand, both article 16(1a) of ESPR lists some criteria that must be taken into account when prioritizing products to be included in the 3 year Working Plan and article 17a foresees the consultation of the Ecodesign Expert Forum.

Therefore, this amendment **cannot be supported**.

AMENDMENT 132 | Article 16 – paragraph 2 – subparagraph 2 c (new)

The inclusion of cement as a priority product category in the next Working Plan by 2027, without going through a thorough impact assessment to evaluate the impacts and improvement potential on the basis of the parameters the ESPR is setting up, such as environmental sustainability and circularity, economic weight, existing policy coverage, proportionality of costs, and impact to the EU competitiveness, **cannot be supported**.

Also, as there is a specific legislation targeting construction products, it reinforces the view that the inclusion of cement as a priority product to be addressed under ESPR should not be supported.

AMENDMENT 9 | Recital 12a (new)

The proposed new recital 12a is somehow aligned with the concerns which lead to the revised text of recital 14, as changed in the text of the General Approach.

However, the latest is more explicit in what concerns the cases where a second-hand product can or cannot be considered a new product, and consequently be subject to ecodesign requirements if they fall within the scope of a specific Delegated Act.

As regards the text stating that “*Second-hand products imported from third countries should comply with ecodesign requirements, but it should be possible to exempt them provided that certain conditions are met*”, we underline that the principle of ESPR is not to distinguished between products manufactured in or outside the EU.

AMENDMENT 70 | Article 4 – paragraph 1 – subparagraph 1a (new)

References to “*substantial share that it represents on the relevant Union second-hand product market*” or “*genuine consumer demand*” seems too open to support any robust result from an impact assessment exercise.

AMENDMENT 86 | Article 5 – paragraph 5 – point c

We do not see any benefits of adding the reference to “*including imported second-hand products*” in the text, as imported second-hand products should not benefit in comparison with EU second-hand products.

The rationale behind this proposal should be required.

On the other hand, the Blue Guide aiming for a better understanding of EU product rules and facilitation of their uniform application across sectors throughout the Single Market, clearly states the following:

The Union harmonisation legislation applies to newly manufactured products but also to used and second-hand products, including products resulting from the preparation for re-use of electrical or electronic waste, imported from a third country when they enter the Union market for the first time. This applies even to used and second-hand products imported from a third country that were manufactured before the legislation became applicable.

AMENDMENT 222 | Article 69 – paragraph 1

Maintain General Approach.

Further Clarification is needed regarding the inclusion of social sustainability and due diligence requirements within the scope of this Regulation.

AMENDMENT 218 | Article 68 – paragraph 1 a (new) - Maintain General Approach.

AMENDMENT 219 | Article 68 – paragraph 1b (new) - Maintain General Approach.

AMENDMENT 170 | Article 21 – paragraph 7

Product instructions should not be restricted only to the digital format, as there might be some type of consumers without access to digital means.

AMENDMENT 171 | Article 21 – paragraph 7a (new)

The proposed amendment, that foresees the possibility that when having downloaded the product instructions, the consumer/end-user can save it on an electronic device so that it can always have access to the information seems a great benefit and should be supported.

AMENDMENT 172 | Article 21 – paragraph 7b (new)

The proposed amendment safeguards the interest of consumers or other end-users, when it foresees in respect of product instructions that *“at the time of the purchase or up to 6 months after that purchase, the manufacturer shall provide the instructions in paper format free of charge”*.

AMENDMENT 173 | Article 21 – paragraph 7c (new)

For the reasons stated above, we agree in well-justified cases, that the Delegated Act establishing ecodesign requirements might require certain instructions information to be provided in paper format.

AMENDMENT 175 | Article 21 – paragraph 8a (new)

Provisions regarding the establishment of publicly available communication channels foreseen in this proposed amendment seem to have been already included in the text of the General Approach, in paragraph 6 of article 21, such as the need to disclose the manufacturer postal address and, where available, electronic means of communication, both *“on the public part of the product passport and on the product or, where this is not possible, on its packaging, or in a document accompanying the product”*.

However, the need to take into account the accessibility needs for persons with disabilities and the obligation for manufacturers to keep a register of complaints and concerns only as long as it is necessary for the purpose of ESPR and make it available upon request from a market surveillance authority, should be supported.

AMENDMENT 138 | Article 18 – paragraph 1

We are flexible to consider the proposed amendment, as it does not make sense to establish a self-regulation measure, which is a voluntary approach, when a mandatory ecodesign measure is foreseen to be established for a specific product group, as it is the case of the product groups listed in the Working Plan.

AMENDMENT 142 | Article 18 – paragraph 2 – subparagraph 1 – point d a (new)

We support this amendment, as, even if self-regulation measures remain as a voluntary approach, signatories should be compelled to commit with their provisions.

AMENDMENT 143 | Article 18 – paragraph 2 – subparagraph 1 – point d b (new)

The text of this amendment is the same as the new point e) of Article 18, paragraph 2, subparagraph 1 of the text of the General Approach, which has our support.

AMENDMENT 144 | Article 18 – paragraph 2 – subparagraph 2

Considering that paragraph 5 of article 18 of both texts of the Commission and General Approach already foresees that signatories of a specific self-regulation measure shall report to the Commission, at regular intervals set out in the implementing act, on the progress towards achieving its objectives, we think that somehow, any changes to the self-regulation measure will need to be notified to the Commission.

AMENDMENT 145 | Article 18 – paragraph 3 – subparagraph 1 – introductory part

In the text of the General Approach a similar provision was already added:

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

AMENDMENT 148 | Article 18 – paragraph 4

Even if we consider as positive to set a deadline for signatories to submit a revised and updated version of the measure upon request made by the Commission, 3 months might be short for the revision exercise.

We would prefer to keep the deadline flexible, as already foreseen the text of the **General Approach**:

The Commission shall set a deadline, appropriate for the product group in question, for the submission of such a revised and updated version.

AMENDMENT 149 | Article 18 – paragraph 5

We would prefer any self-regulation measure to be established through an implementing act, as there might exist specificities in Member States that require further discussions and consensus within its representatives.

AMENDMENT 72 | Article 4 – paragraph 3 – point c a (new)

The text of the proposed amendment seems **too specific** to be considered within article 4, as a reparability score might not be considered in respect of several categories of product groups that will be covered by a Delegated Act establishing ecodesign requirements.

AMENDMENT 98 | Article 7 – paragraph 4 a (new)

For the reasons stated above, we do **not support** this amendment.

AMENDMENT 185 | Article 29 – title

The reasoning regarding this amendment is not clear. However, it should be noted that reference to “*online search engines*” is made in paragraph 2 of article 29.

AMENDMENT 187 | Article 29 – paragraph 2 – subparagraph 1

AMENDMENT 188 | Article 29 – paragraph 2 – subparagraph 2

AMENDMENT 189 | Article 29 – paragraph 2 – subparagraph 3

Further information needed on the reasoning for the deletion of the text, as proposed in amendments 187, 188 and 189.

Regarding amendment 189 - We do **not agree** with the deletion of this subparagraph. Indeed, energy labelling regulations already provide a requirement for information to be provided in the case of distance selling through Internet where it is mandatory for energy labels to be available on the display mechanism in proximity of the price of the product. Therefore, this deletion is counterproductive and do not contribute to a coherent regulatory acquis.

AMENDMENT 156 | Article 20 – paragraph 1 – subparagraph 1 – point a

This amendment can be supported.

AMENDMENT 168 | Article 20 a (new) - Maintain General Approach.

Written Comments from the Irish Delegation on ESPR amendments adopted by the European Parliament – August 2023

Commission Text		EP Amendment	Irish Position/Observations
	91	<p>Proposal for a regulation Article 5 a (new)</p> <p>Article 5a Durability and reparability of products</p> <p>1. When setting the ecodesign requirements pursuant to Article 5(1), the Commission shall ensure that manufacturers do not limit the durability of a product making it prematurely obsolete, in particular as a result of the design of a specific feature, the use of consumables, spare parts, or nonprovision of software updates or accessories within an appropriate period of time.</p> <p>2. When setting the ecodesign requirements pursuant to Article 5(1), the Commission shall ensure that manufacturers do not limit the reparability of products by impeding the disassembly of key components or limiting access to repair information and spare parts exclusively to authorised repairers</p>	<p>Durability and reparability are very important concepts and ensuring that premature obsolescence is avoided is suitable and in line with the aims and objectives of ESPR. We could support that. However, a definition of “obsolescence” is required.</p>
	131	<p>Proposal for a regulation Article 16 – paragraph 2 – subparagraph 2 b (new)</p> <p>Article 16 – paragraph 2 – subparagraph 2 b (new)</p> <p>For the period 2024-2027, the Commission shall consider prioritising the following product groups in the first working plan that is to be adopted no later than ... [insert the date 3 months after the entry into force of this Regulation]. If any of the</p>	<p>These seems to be a broadly acceptable list of product priorities and is in line with those discussed before.</p> <p>The proposed groups could be broken down into 1. Product Groups (garments footwear, energy related products, tyres, paints etc.) and 2. Intermediates (Iron Steel and Aluminium). ICT products and other electronics are already included in energy related products.</p>

Commission Text		EP Amendment	Irish Position/Observations
		<p>following product groups is not included in the working plan, the Commission shall provide a justification for its decision in the working plan: - iron, steel - aluminium - textiles, notably garments and footwear - furniture, including mattresses - tyres - detergents - paints - lubricants - chemicals - energy related products, the implementing measures for which need to be revised or newly defined - ICT products and other electronics.</p>	<p>We would note that detergents would be included in an overall definition of 'chemicals', no different to paints, lubricants, iron, steel and aluminium. It may be more useful to list specific groups of chemicals/chemical products that are the initial priorities rather than saying 'chemicals' in a broad sense, if priority is required. We would ask what the scope of 'chemicals' is meant to mean in this sense?</p> <p>In addition, it should be noted that there is currently a proposal for a revision of the Detergents Regulation going through the Technical Harmonisation (Dangerous Substances – Chemicals) Working Party, and at the presentation of the proposal on May 16th, the Commission and the SE Presidency both indicated that the proposal will be developed to be consistent with ESPR.</p>
	132	<p>Proposal for a regulation Article 16 – paragraph 2 – subparagraph 2 c (new)</p> <p>Any absence of adequate performance and information requirements on the environment and carbon footprint for cement under [the forthcoming Regulation laying down harmonised 3 conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (2022/0094 COD)] by 2027 shall trigger the inclusion of cement as a priority product category in the next working plan of this Regulation.</p>	<p>We are interested in ensuring an effective carbon footprint for the cement industry. (It is responsible for around 5% of Irish GHG emissions) We believe that this is best done through the Construction Products regulation (CPR) and not ESPR.</p>
	9	<p>Proposal for a regulation Recital 12 a (new)</p> <p>(12a) The second-hand sector plays a specific role in promoting sustainable production and consumption, including in the development of new</p>	<p>This is a change to the recital and not the articles.</p>

Commission Text		EP Amendment	Irish Position/Observations
		<p>circular business models. Due to the specificities of this sector, which is based on prolonging the lifetime of a product and avoiding it becoming waste, second-hand products, in particular products that undergo refurbishment or repair, originating from within the Union should not be considered as new products that are placed on the market or put into service and should therefore not have to comply with ecodesign requirements. Second-hand products imported from third countries should comply with ecodesign requirements, but it should be possible to exempt them provided that certain conditions are met.</p>	<p>We can support this amendment, but we should be cognisant that there could be market surveillance implications if second-hand products are exempt.</p>
	70	<p>Proposal for a regulation Article 4 – paragraph 1 – subparagraph 1 a (new)</p> <p>The empowerment to adopt ecodesign requirements shall include the power to establish that no ecodesign requirements apply for imported second-hand products or product groups, for a limited period of time, where on the basis of the impact assessment conducted under Article 5(4)(b) the Commission concludes that: (a) it is relevant to exempt a given imported second-hand product or product group on account of the substantial share that it represents on the relevant Union second-hand product market and the genuine consumer demand that it responds to; and (b) such an exemption would not undermine the achievement of the objectives of this Regulation and the broader application of ecodesign requirements on the relevant Union product market; and (c) the resource savings due to the placing on the market of the imported second-hand product or product</p>	<p>The proposal for exemptions for second hand goods that originate in the Union and have undergone repair. Existing non-compliant energy using products currently on the market can achieve an exemption by simply being repaired/refurbished and placed back on the market. This loophole should be closed.</p>

Commission Text		EP Amendment	Irish Position/Observations
		group outweigh the benefits of the ecodesign requirements for new products or product groups.	
there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account access to second-hand products, durability and the life cycle cost of products;	86	Proposal for a regulation Article 5 – paragraph 5 – point c there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account access to second-hand products, including imported second-hand products , durability and the life cycle cost of products;	The text needs to elaborate on what constitutes “significant negative impact”.
No sooner than [8 years after the date of application of this Regulation], 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.	222	Proposal for a regulation Article 69 – paragraph 1 No later than [6 years after the date of application of this Regulation], and every 6 years thereafter, the Commission shall carry out an evaluation of this Regulation and of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. The Commission shall also evaluate the use of exemptions for imported second-hand products or product groups provided for in delegated acts adopted pursuant to Article 4 this Regulation. No later than [insert the date 4 years after the date of application of this Regulation], the Commission shall consider the inclusion of social sustainability and due diligence requirements within the scope of this Regulation. The Commission shall present a report on the main findings to the European Parliament, the Council, the European	Not sure whether social sustainability should be incorporated in this here. This may be challenging to do and not add a lot of value – the focus should of the evaluation should be on the “functioning of the internal market and the improvement of the environmental sustainability of products” as per the Commission regulation.

Commission Text		EP Amendment	Irish Position/Observations
		Economic and Social Committee, and the Committee of the Regions, and make it publicly available. Member States shall provide the Commission with the information necessary for the preparation of that report.	
	218	<p>Proposal for a regulation Article 68 – paragraph 1 a (new)</p> <p>When determining the type and level of penalties to be imposed in the event of infringements, the competent authorities of the Member States shall give due regard to the following criteria: (a) the nature, gravity and duration of the infringement, including the number of units of non-complying products placed on the Union market; (b) where appropriate, the intentional or negligent character of the infringement; (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible; (d) the economic benefits derived from the infringement by the natural or legal person held responsible, insofar as they can be determined; (e) the damage to human health or the environment caused by the infringement, insofar as it can be determined; (f) any action taken by the natural or legal person held responsible to mitigate or remedy the damage caused; (g) the level of cooperation of the natural or legal person held responsible with the competent authority; (h) previous infringements by the natural or legal person held responsible; (i) any action aiming to circumvent or obstruct administrative controls and (j) any other</p>	<p>Ireland strongly favours the Council General Agreement text here and cannot support the Parliament’s intention to proscribe sanctions in the framework regulation.</p> <p>These proposals for sanctions and penalties seem to be very detailed. Is that in line with the market surveillance regulations? Can those be enforced?</p> <p>In Ireland, the type and level of penalties is determined by the Courts who have their existing rules. The MSA has no role or jurisdiction in this regard.</p> <p>We have serious concerns as to the legality and how they compare to the current Irish court rules and procedures.</p>

Commission Text		EP Amendment	Irish Position/Observations
		aggravating or 7 mitigating factor applicable to the circumstances of the case.	
	219	Proposal for a regulation Article 68 – paragraph 1 b (new) The Member States shall at least be able to impose the following penalties in the event of infringements of this Regulation: (a) fines; (b) confiscation of revenues gained by the natural or legal person from a transaction related to the infringement; (c) exclusion from public procurement procedures.	As above we would query these amendments on these provisions and have serious concerns as to their legality.
	223	Proposal for a regulation Article 69 a (new) Article 69a Remedies for lack of compliance 1. In the event of non-compliance of a product with ecodesign requirements, the product shall be considered to be in nonconformity with the sales contract, in the meaning of the Article 5 of the Directive (EU) 2019/771, and shall give consumers the right to a remedy under the conditions set out in Article 13 of this Directive, independently of the expiry of the time limits as defined by Article 10 of this Directive. 2. The marketing or offering for sale of a product which is non-compliant with ecodesign requirements shall be considered an unfair commercial practice in accordance with Article 5 of Directive 2005/29/EC and therefore give consumers the right to a remedy under Article 11a of this Directive.	We understand the reasoning here regarding remedies (compensation) for end users who have to return non-compliant product. However, we consider that this is best captured in Consumer Protection Legislation and not Market Surveillance Legislation. The texts of these legislative instruments need to be amended to give the Consumer Protection regulators the powers to require traders to recompense consumers for sale of non-compliant product.
Manufacturers shall ensure that that a product covered by a delegated act adopted pursuant to	170	Proposal for a regulation Article 21 – paragraph 7	First part of the amendment – instructions in digital format seems appropriate and acceptable to us. Indeed,

Commission Text		EP Amendment	Irish Position/Observations
<p>Article 4 is accompanied by instructions that enable 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 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 specified in the delegated acts adopted pursuant to Article 4 and pursuant to Article 7(2)(b), point (ii).</p>		<p>Manufacturers shall ensure that a product covered by a delegated act adopted pursuant to Article 4 is accompanied by instructions in digital format that enable 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 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 specified in the delegated acts adopted pursuant to Article 4 and pursuant to Article 7(2)(b), point (ii). The delegated acts adopted pursuant to Article 4 shall also specify the period during which such instructions shall be made accessible online. Such period shall not be less than 10 years after placing the product on the market.</p>	<p>we are aware of some manufacturers that are trying to move to only having digital instructions in order to save on wastepaper/packaging.</p> <p>The second part of the amendment – ten years seems to be a very long time to ensure that instructions must remain accessible online.</p>
	171	<p>Proposal for a regulation Article 21 – paragraph 7 a (new)</p> <p>7a. When providing the instructions referred to in paragraph 7, the manufacturer shall present them in a format that makes it possible to download them and save on an electronic device so that the consumer or other end-user can access them at all times.</p>	<p>We welcome these provisions. However, if the manufacturer is based outside the EU, then these provisions should also apply to an importer (Article 23). Article 23 should be amended accordingly.</p>
	172	<p>Proposal for a regulation Article 21 – paragraph 7 b (new)</p> <p>7b. Upon request of the consumer or other end-user at the time of the purchase or up to 6 months after that purchase, the manufacturer shall provide the instructions in paper format free of charge.</p>	<p>We welcome these provisions. However, if the manufacturer is based outside the EU, then these provisions should also apply to an importer (Article 23). Article 23 should be amended accordingly.</p>

Commission Text		EP Amendment	Irish Position/Observations
	173	<p>Proposal for a regulation Article 21 – paragraph 7 c (new)</p> <p>7c. The delegated acts adopted pursuant to Article 4 may specify, in welljustified cases, that certain concise information forming part of the instructions provided for in paragraph 7 of this Article may be provided in paper format.</p>	<p>We welcome these provisions. However, if the manufacturer is based outside the EU, then these provisions should also apply to an importer (Article 23). Article 23 should be amended accordingly.</p>
	175	<p>Proposal for a regulation Article 21 – paragraph 8 a (new)</p> <p>8a. Manufacturers shall establish publicly available communication channels such as a telephone number, electronic address or dedicated section of their website, taking into account the accessibility needs for persons with disabilities, in order to allow end-users to submit complaints or concerns regarding the potential non-conformity of products. Manufacturers shall take appropriate measures when they consider that there is a case of non-compliance with the requirements set out in this Regulation, and inform market surveillance authorities. Manufacturers shall keep a register of complaints and concerns only as long as it is necessary for the purpose of this Regulation and make it available upon request from a market surveillance authority.</p>	<p>These seem to be appropriate. Important to ensure proper market surveillance and that data be made available to an MSA as needed.</p> <p>We welcome these provisions. However, if the manufacturer is based outside the EU, then these provisions should also apply to an importer (Article 23). Article 23 should be amended accordingly.</p>
<p>Two or more economic operators may submit a self-regulation measure establishing ecodesign requirements for products to the Commission as an alternative to a 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</p>	138	<p>Proposal for a regulation Article 18 – paragraph 1</p> <p>Two or more economic operators may submit a self-regulation measure establishing ecodesign requirements for products to the Commission as an alternative to a delegated act adopted pursuant to Article 4, if the products are not included in the working plan. Those operators shall provide</p>	

Commission Text		EP Amendment	Irish Position/Observations
respect to paragraph 3, point (a), 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.		evidence that the criteria referred to in paragraph 3, points (a) to (e), are fulfilled. With respect to paragraph 3, point (a), 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	
	142	Proposal for a regulation Article 18 – paragraph 2 – subparagraph 1 – point d a (new) (da) rules on the consequences of the non-compliance of a signatory;	
	143	Proposal for a regulation Article 18 – paragraph 2 – subparagraph 1 – point d b (new) (db) an explanation as to how the self-regulation measure submitted pursuant to paragraph 1 improves the environmental sustainability of products in line with the objectives of this Regulation and ensures the free movement in the internal market more quickly or at a lesser expense than a delegated act adopted pursuant to Article 4.	
The information referred to in this paragraph shall be kept up-to-date and be available on a publicly accessible website	144	Proposal for a regulation Article 18 – paragraph 2 – subparagraph 2 The information referred to in this paragraph shall be kept up-to-date and be available on a publicly accessible website of the Commission. The economic operators shall notify without delay the Commission of any changes to the self-regulation measure, in particular any changes to the signatories.	

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<p>The Commission shall assess the proposed self-regulation measure, and, where necessary, shall seek scientific advice from Union decentralised agencies. On the basis of that assessment, it shall establish whether it is a valid alternative to a delegated act adopted pursuant to Article 4 where the following criteria are fulfilled:</p>	145	<p>Proposal for a regulation Article 18 – paragraph 3 – subparagraph 1 – introductory part</p> <p>The Commission shall assess the proposed self-regulation measure, and, where necessary, shall seek scientific advice from Union decentralised agencies. The Commission shall also consult the Ecodesign forum on the self-regulation measure submitted pursuant to paragraph 1. On the basis of that assessment, it shall establish whether it is a valid alternative to a delegated act adopted pursuant to Article 4 where the following criteria are fulfilled:</p>	<p>We can accept this amendment as we believe that the Ecodesign forum has an important role to play and it can assist in relation to self-regulation also.</p>
<p>The Commission may at any point in time request the signatories of a self-regulation measure 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.</p>	148	<p>Amendment 21 Proposal for a regulation Article 18 – paragraph 4</p> <p>4. The Commission may at any point in time request the signatories of a self-regulation measure 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 signatories shall submit a revised and updated version of that measure within three months of the request made by the Commission.</p>	<p>No issues with the proposed amendment</p>
	72	<p>Proposal for a regulation Article 4 – paragraph 3 – point c a (new)</p> <p>(ca) specifying the methodology to assess the reparability of a product, define the classes of performance to be displayed by the reparability score, and define the product categories to which the reparability score shall apply;</p>	

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	98	<p>Proposal for a regulation Article 7 – paragraph 4 a (new)</p> <p>Where appropriate, based on the evidence provided in the impact assessment referred to in Article 5(4), point (b), information requirements on the performance of the product related to reparability shall take the form of a reparability score to enable end-users to easily compare the performance of products. The methodology to assess the reparability of products shall be developed according to the specificities of product categories and laid down in the relevant delegated act adopted under Article 4. That delegated act shall also define the content and layout of the label containing the reparability score, as appropriate, in accordance with Article 14, using clear and easy-to-understand language and pictograms, to avoid overload of information for consumers. When available, the methodology to assess the reparability of products may include other relevant aspects of a product, such as durability, reliability or robustness, and be further specified in the relevant delegated act taking into account specificities of the product category.</p>	
Obligations of online marketplaces and online search engines	185	<p>Proposal for a regulation Article 29 – title</p> <p>Obligations of online marketplaces</p>	<p>EP proposals in relation to online marketplaces do not appear to align with the Digital Services Act. For this reason, the Irish position is to stick with the Council General Approach text on Article 29 which both Commission and Council Legal Services have said fully aligns with the DSA.</p>

Commission Text		EP Amendment	Irish Position/Observations
<p>The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to online marketplaces and for the purposes of this Regulation, include in particular: 1. Online marketplaces shall cooperate, for the purposes of this Regulation, with the market surveillance authorities, at the request of the market surveillance authorities and in specific cases, to facilitate any action taken to eliminate or, if that is not possible, to mitigate the risks presented by a product that is or was offered for sale online through their services. (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; (c) establishing a regular and structured exchange of information on offers that have been removed on the basis of this Article by online marketplaces; (d) allowing online tools operated by market surveillance authorities to access their interfaces in order to identify non-compliant products; (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.</p>	186	<p>Proposal for a regulation Article 29 – paragraph 1 – introductory part</p> <p>Online marketplaces shall cooperate, for the purposes of this Regulation, with the market surveillance authorities, at the request of the market surveillance authorities and in specific cases, to facilitate any action taken to eliminate or, if that is not possible, to mitigate the risks presented by a product that is or was offered for sale online through their services.</p>	<p>We believe that this (General Approach) text should be retained as it strengthens the hand of the MSA when dealing with online marketplaces.</p>
<p>For the purpose of the requirements of [Article 22(7)] of Regulation (EU) .../... [the Digital Services Act], online marketplaces shall design and organise their online interface in a way that</p>	187	<p>Proposal for a regulation Article 29 – paragraph 2 – subparagraph 1</p> <p>Deleted</p>	<p>We believe that this (General Approach) text should be retained as it strengthens the hand of the MSA when dealing with online marketplaces.</p>

Commission Text		EP Amendment	Irish Position/Observations
enables dealers to fulfil their obligations set out in Article 25 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 customers on the product listing	188	Proposal for a regulation Article 29 – paragraph 2 – subparagraph 2 Deleted	We believe that this (General Approach) text should be retained as it strengthens the hand of the MSA when dealing with online marketplaces.
In particular, where 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.	189	Proposal for a regulation Article 29 – paragraph 2 – subparagraph 3 Deleted	We believe that this (General Approach) text should be retained as it strengthens the hand of the MSA when dealing with online marketplaces.
As far as powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by a relevant delegated act adopted pursuant to Article 4, to order an online marketplace to remove specific illegal content referring to a non-compliant product from its online interface, disable access to it or display an explicit warning to end-users when they access it. Such orders shall comply with [Article 8(1)] of Regulation (EU) .../... [the Digital Services Act].	190	Article 29 – paragraph 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, as regards specific content referring to an offer of a non-compliant product with the requirements of this Regulation, to issue an order requiring the providers of online marketplaces to remove such content from their online interface, disable access to it or display an explicit warning to end-users when they access it. Such orders shall comply with [Article 8(1)] of Regulation (EU) .../... [the Digital Services Act]	

Commission Text		EP Amendment	Irish Position/Observations
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.	192	<p>Proposal for a regulation Article 29 – paragraph 5 – subparagraph 1</p> <p>Online marketplaces shall establish or appoint an existing contact point as 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 and enable consumers to communicate directly and rapidly with them in relation to ecodesign requirements.</p>	
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)] of Regulation (EU) .../... [the Digital Services Act].	193	<p>Proposal for a regulation Article 29 – paragraph 5 – subparagraph 2</p> <p>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 11 of Regulation (EU) 2022/2065.</p>	
(a) the number of unsold consumer products discarded per year, differentiated per type or category of products;	156	<p>Proposal for a regulation Article 20 – paragraph 1 – subparagraph 1 – point a</p> <p>(a) the number and percentage of unsold consumer products discarded per year, differentiated per type or category of products;</p>	
	168	<p>Proposal for a regulation Article 20 a (new)</p> <p>Article 20a 1. One year after ... [insert the date of the entry into force of this Regulation], the destruction of unsold consumer products by economic operators shall be prohibited for the following product categories: (a) textiles and footwear; (b) electrical and electronic equipment. 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation to set out certain</p>	<p>As discussed at previous working group meetings, we believe that appropriate Impact Assessments should be carried out first before deciding on the priority products/categories.</p> <p>We question the applicability and appropriateness of spelling out the first product categories to be considered under prevention of destruction of unsold goods, in what is only a framework instrument. No such provisions</p>

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	<p>exemptions from the prohibitions referred to in paragraph 1 where it is appropriate 19 taking into account the following: (a) health, hygiene and safety concerns; (b) damage to products that cannot be repaired in a cost-effective manner as a result of their handling or detected after a product has been returned; (c) refusal of products for donation, preparing for re-use or remanufacturing; (d) counterfeit products. 3. Where unsold products are destroyed under an exemption referred to in paragraph 2, the responsible economic operator shall disclose on a freely accessible website or otherwise make publicly available: (a) the number and percentage of unsold products destroyed; (b) the reasons for the destruction of the unsold products, referring to the applicable exemption; (c) the delivery of the products destroyed to recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC. The details of and format for the disclosure of information provided for in the implementing act adopted pursuant to Article 20(2) shall apply to the information to be disclosed pursuant to this paragraph, unless the delegated act adopted pursuant to paragraph 2 provides otherwise. 4. This Article shall not apply to SMEs. However, the Commission may, in the delegated acts adopted pursuant to paragraph 2, provide that the prohibition of the destruction of unsold consumer products referred to in paragraph 1 or the disclosure obligation referred to in 20 paragraph 3 shall apply to: (a) medium-sized enterprises, where there is sufficient evidence that they account for a substantial proportion of unsold consumer</p>	<p>exist in the current framework 2009/125//EC. We believe this a policy issue not and legal issue.</p> <p>Irish customs authority, Revenue, have noted the new Article 20(a) which excludes counterfeit goods from the prohibition on destruction of unsold consumer goods. Revenue as the competent authority for enforcing Intellectual Property Rights at the external border of the EU supports this amendment.</p>

Commission Text		EP Amendment	Irish Position/Observations
		products being destroyed; (b) micro-enterprises and small or medium-sized enterprises, where there is sufficient evidence that they may be used to circumvent the prohibition on the destruction of unsold consumer products referred to in paragraph 1 or the disclosure obligation referred to in paragraph 3	

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