



Council of the European Union
General Secretariat

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

Brussels, 04 September 2023

WK 10575/2023 ADD 5

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NOTE

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



MINISTERUL ECONOMIEI, ANTREPRENORIALITĂȚII
ȘI TURISMULUI

Direcția Politici Industriale și Competitivitate

**RO comments on EP amendments regarding the
proposal for a Regulation establishing the framework for the development of ecodesign
requirements for sustainable products and repealing Directive 2009/125/EC**

- RO supports the following amendments of the European Parliament: 53, 54, 64, 65, 85, 91, 93, 94, 98, 105, 108, 111, 113, 120, 144, 158, 223, 228, 237, 241.
- Regarding **amendment 131**, article 16 paragraph 2.2. RO consider inappropriate to insert in text of the Regulation a list of products. This list should be part of the working plan that shall be adopted at 12 month after the entry into force of this Regulation, 3 months is much too soon. Also, it is possible that the list of products could be other.
- **Amendment 156**, RO considers that disclosure of the number and percentage of unsold consumer products destroyed is very concerning from a competition risk perspective as any competitor could obtain the total number of products placed on the market and understand how well other brands are selling. The text should be revised as
« (a) the ~~number and percentage~~ of unsold consumer products discarded per year, differentiated per type or category of products; »
- Regarding **amendment 168**, RO maintain its point of view that an appropriate Impact Assessments should be carried and appropriate consultations first before deciding on the priority products/categories.
- With regard to **amendment 201**, by which a new paragraph 1a is introduced to article 58), we propose to amend it, as follows:

”Member states , together with Commission, shall provide assistance to **contracting authorities and contracting entities** to upskill and reskill staff in charge of public procurement with competences regarding green public procurement.”

Motivation:

- The directive in the field of public procurement (Directive 2014/24/EU) is applicable to "contracting authorities", the concept of "national contracting authorities" not being defined.
- We also consider that the staff of the contracting entities, which apply the provisions of Directive 2014/25/EU on sectoral procurement, need to have competences in terms of ecological public procurement. Therefore, we believe that this provision should also be addressed to contracting entities.
- Moreover, according to art. 58 of the proposed Regulation, both contracting authorities and contracting entities are obliged to apply it.
- In addition, in practice there are no persons who have powers only for the award of green procurement contracts and therefore we believe that the persons who are responsible for the award of public procurement contracts should also have the necessary competences in relation to green public procurement

- Regarding **amendment 219**, by which a new paragraph 1b), letter c, is introduced to Article 68, we do not support the introduction of the sanction of "exclusion from public procurement procedures" because:
- Both Directive 2014/24/EU and Directive 2014/25/EU clearly provide in art. 57, respectively in art. 80, the reasons for exclusion and selection of economic operators.
 - The Regulation proposal does not provide the maximum period during which the economic operator is excluded and if the exclusion refers only to the procedure in which it did not comply with the provisions of the ESPR Regulation or to all public procurement procedures in a certain period.
 - If the exclusion were for a certain period, this would lead to the restriction of competition, since the economic operator could meet, after the exclusion decision, the ecological design requirements for other products that he could offer in another procedure of public procurement.
 - According to the provisions of the Directives on public procurement, an offer is considered admissible if it was submitted by a tenderer who was not excluded in accordance with Article 57 - "Reasons for exclusion", and who meets the selection criteria and whose offer is compliant with the technical specifications, without being non-compliant or unacceptable or inadequate. If a bidder fails to meet the eco-design requirements or does not have the product's digital passport, which may be requested through the procurement documentation, its bid will not be considered admissible and, consequently, it will not be awarded the purchase contract.
- Regarding **Article 58, paragraph 3, second sentence**, we believe that it should be amended and supplemented with situations where technical difficulties can be considered disproportionate. The text proposed is:
- "Contracting authorities and contracting entities may also, in duly justified cases, derogate from the mandatory requirements, when those would lead to disproportionate technical difficulties, **such as requirements of interchangeability with existing equipment, services or installations procured under the initial procurement.**"