

**BG comments on the EP amendments on ESPR**  
**P9\_TA(2023)0272 before the 1<sup>st</sup> trilogue (and on the Presidency**  
**discussion paper for the WP on 14.07.23)**

**1. PROHIBITION OF PREMATURE OBSOLESCENCE**

**Amendment 91 Article 5 a (new) – premature obsolescence**

(Am.1 from discussion paper)

**We do not support** this amendment. It is extremely challenging to regulate the premature obsolescence of products. First of all, what would be the definition of it – for the different kinds of products there are different criteria to be taken into account. And even taking measures to influence consumer's behavior it is often difficult to control their decision (they may have many reasons to replace the product) when to stop using a product.

**2. PRIORITIZATION OF PRODUCTS**

**Amendment 131 Article 16 – para 2 – subpara 2 b (new)- prioritization of products**

(Amendment 2)

We **insist to keep the text as it is in the GA**. We find this amendment unnecessary as the procedure of prioritization of product groups is already clearly defined in art.16 para 1 and para 2. And this procedure shall be valid for the products listed in this amendment as well.

We do not support the inclusion in the framework regulation of a list of specific product groups to be prioritized without having made an appropriate analysis based on the criteria set out in art.16 para 1.

What if the analysis or the study finds other more relevant products that are not listed here as the ones with very high environmental impacts?

Finally having in mind that the ESPR will be applied for nearly all kind of products, we consider that 3 months are absolutely not sufficient to estimate and analyze between all different kind of products which to be prioritized.

We consider that the 12 months from the GA in art.16 para 2 shall be kept.

**Amendment 132 art.16 para 2 sub para 2c (new)**

(Amendment 3)

**We do not consider it appropriate to regulate cement in ESPR instead of in Construction products regulation/CPR.**

Who will assess that „.....adequate performance and information requirements on the environment and carbon footprint for cement....." are developed according to the new construction products regulation?

We insist to ensure coherence in the development of legislative proposals in order to avoid double regulation and the increase of the administrative burden for economic operators.

### 3. TREATMENT OF SECOND-HAND PRODUCTS

#### Amendment 70 art.4, para 1 – subpara 1a (new)

(Amendment 5)

art.4 para 1 subpara 1(a)(new): The procedure is not clear. For example, an economic operator imports a second-hand washing machine from China. He has to notify the Commission. It is not clear on what basis the Commission will define how long will be the „limited period of time“, and what happens if the Commission’s evaluation shows that the products do not fulfil the requirements in (a), (b) and (c)? Does the economic operator withdraw the products from the market or he destroys them????

**We do not support this amendment.** There is already recital 14 where it is clearly stated that *„In view that circular and sustainable business models, including those based on the sale of second-hand goods, need to be promoted, ecodesign requirements should not apply to products already placed on the market“*. Which means that in principle the second-hand products are not within the scope of the regulation, unless there is a substantial modification or remanufacturing that makes the product to be considered "new".

It is also not clear how will the resource savings be measured or calculated - letter (c) *“the resource savings due to the placing on the market of the imported second-hand product or product group outweigh the benefits of the ecodesign requirements for new products or product groups.”*

Would it be possible for third country manufacturer/importer to circumvent the rules and import these specific products as second hand in order not to be obliged to comply with the ED requirement? and what kind of product could that be? - it would be good to ask the EP during the technical meetings.

### 4. REVIEW CLAUSE INCLUDING DUE DILIGENCE ASPECTS

#### Amendment 222 art.69 para 1

(Amendment 7)

**We insist to keep the deadline as much closer as possible to this defined in the GA.**

Having in mind that, first of all, the Commission shall have to adopt an implementing act for the working plan where the prioritized products will be defined (12 months for the IA). Then the Commission will need time to adopt the delegated acts establishing the ED requirements, and finally that these del. acts will start applying in another 18 months, we are at the opinion that the period of 6 years seems too short and not long enough to assess the effects of the measures. **We consider that 6 years is a rather ambitious period.**

**We support** the regular evaluation in a reasonable period.

**We do not support** the evaluation for the imported second-hand products.

We have scrutiny reservation on the requirements for social sustainability and due diligence. It could lead to confusion, the term “social sustainability” seems really unclear yet.

## 5. SANCTIONS

### Amendment 218 art.68 para 1a new

(Amendment 8)

**We do not support.** The penalties are of the competences of MSs.

**We do not consider it appropriate to define criteria for the penalties which MSAs defines themselves.**

And along with the included objective criteria, there are also some that are too subjective - for example, what does it mean „the level of cooperation of the natural or legal person held responsible with the competent authority;“?

How this level will be defined, by whom?? This is a very subjective and one-sided approach.

### Amendment 219 Article 68 – paragraph 1 b (new)

(Amendment 9)

**We totally do not support.**

Probably in all MSs there are fines (a) – it's clear. **But imposing mandatory sanctions including "b) confiscation of revenues gained by the natural or legal person from a transaction related to the infringement; and (c) exclusion from public procurement procedures"- interferes very roughly with the national policies on this matter.**

### Amendment 223 Article 69 a (new)

(Amendment 10)

**We do not support at all.**

Directive 2019/771 and Directive 2005/29 refer to sales contracts between seller and consumer and to unfair commercial practices by traders to consumers (B2C), where "consumer" means only a "natural person"!

While the ecodesign regulation does not make distinguishment between natural and legal entities that acquire products from the scope of the regulation.

## 6. INSTRUCTIONS IN DIGITAL FORMAT

### Amendment 170 art.21 para 7

(Amendment 11)

We could accept it. We do not oppose on the digital format, but it limits the rights of consumers - they shall have the option of a paper format as well. An appropriate adaptation of the text could be acceptable - in digital format and/or paper format

Amendments 170 – 173 - **could be accepted.** (amendments 11,12,13,14)

## 7. NEW OBLIGATION FOR MANUFACTURERS

## 8. SELF-REGULATION MEASURES

### **Amendments 138, 142-145, 148 and 149 - art. 18**

(Amendment 16, 17, 18, 19, 20, 21 and 22)

We could accept those amendments **although we prefer the text from the General approach.**

The 3 months deadline for the update of self-regulatory measures in amendment 148 (am.21) is too ambitious.

## 9. REPARABILITY

### **Amendments 72 Article 4 – paragraph 3 – point h a (new)**

### **Amendments 98 Article 7 – paragraph 4 a (new)**

(Amendment 23 и 24)

**Scrutiny reservation but we are not positive for those amendments.**

The proposed new methodology for the reparability score seems useful at first, but it will create additional burden for economic operators. Amendment 98 also refers to the label from art.14, including art.14 para 3 for which we have concerns. In principle, our opinion for para 3 and the replacement of the energy label with a label according to the ESPR is that this will lead to a lot of difficulties for economic operators, market surveillance authorities and consumers (having in mind that they are very well acknowledged to the current energy labels).p In addition, we do not consider it necessary to put any icon for the reparability score of products on the label, since this information will be already available in the digital product passport. We also consider that an additional eco-design label is not necessary. In this connection we are rather reluctant to support this amendment.

## 10. OBLIGATIONS OF ONLINE MARKETPLACES

### **Amendment 186 art.29 para 1** (am.26)

We would like to keep the GA text - it is more precise.

### **Amendment 190 art. 29 para 3** (am.30)

The text of the GA seems more precise.

### **Amendment 192 Article 29 – paragraph 5 – subparagraph 1**

(Amendment 31)

We do not see many reasons for enabling consumers to discuss ecodesign requirements of products with the online market places, which only provide a platform for sale, but do not have the knowledge for the ED requirements.

The need to communicate with MSAs is due to the obligation of the platforms themselves according to this regulation.

## 11. PROHIBITION OF DESTRUCTION OF UNSOLD CONSUMER GOODS

### **Amendment 156**

### **Article 20 – paragraph 1 – subparagraph 1 – point a**

(Amendment 33)

**We could support (*percentage*)**

### **Amendment 168**

### **Article 20 a (new)**

(Amendment 34)

Our opinion on the prohibition of destruction of unsold consumer products is well known.

**We do not accept** any prohibition for destruction of unsold consumer goods in the framework regulation and any prohibition without appropriate assessment. **The broadening of the scope in the EP amendment is totally unacceptable for us.** We consider it important implementing acts to be used.

**We support the exclusion of SMEs.**

## SI COMMENTS ON AMENDMENTS TABLED BY THE EUROPEAN PARLIAMENT

### ***PROPOSAL FOR A REGULATION ESTABLISHING A FRAMEWORK FOR SETTING ECODESIGN REQUIREMENTS FOR SUSTAINABLE PRODUCTS AND REPEALING DIRECTIVE 2009/125/EC***

General comment: When reviewing the EP amendments we noticed that the amendments under consideration are substantially complement the proposal and the general approach. We estimate that when achieving a compromise with the EP, it will be necessary to pay attention to the feasibility of the proposed measures and consequences for the SME.

We would like to point out that we are not in favor of reopening the discussions where we have achieved the appropriate compromise solution in general approach.

Regarding the content that is regulated by sectoral legislation (empowering consumers for the green transition and CPR), we do not support of double arrangements, as it reduces legal clarity and reliability. We estimate that some recitals can be amended to reach the compromise. In the following table, we have tried to comment on EP text and note the level of flexibility regarding a particular point.

EP Amendment	SI position
Amendment 1 Article 5 a (new)	<b>we are flexible.</b> In principle we do not oppose to the idea, but we think that proposed amendment should be in line with the empowering consumers for the green transition legislation. The consequences for the economic operators are unknown as well as the implementation and the surveillance of this issue.
Amendment 2 Article 16 – paragraph 2 – subparagraph 2 b (new)	<b>we support the general approach.</b> We believe that the working plan should be based on analysis and prior assessment. We estimate that the period of 3 months period is too short.

<b>Amendment 3</b>  <b>Article 16 – paragraph 2 – subparagraph 2 c (new)</b>	<b>we support the general approach.</b> We believe that cement as a basic construction product should be regulated in the CPR. The term “adequate performance” is much too wide and requires professionally supported definitions and content, which in our opinion cannot be regulated in ESPR.
<b>Amendment 4</b>  <b>Recital 12 a (new)</b>	<b>we support the general approach.</b> We believe that exceptions for refurbished or repaired second hand products and different treatment of the products originating from the third countries is not acceptable could present the risk for the consumers and users.
<b>Amendment 5</b>  <b>Article 4 – paragraph 1 – subparagraph 1 a (new)</b>	<b>we support the general approach.</b> different treatment of the products originating from the third countries is not acceptable.
<b>Amendment 6</b>  <b>Article 5 – paragraph 5 – point c</b>	<b>we are flexible</b>
<b>Amendment 7</b>  <b>Article 69 – paragraph 1</b>	<b>we would like to keep the general approach.</b> We would like to keep the timeframe of 8 years, for us it is important to carry out the appropriate evaluation of this complex regulation
<b>Amendment 8</b>  <b>Article 68 – paragraph 1 a (new)</b>	<b>we support the general approach.</b> We see the problems, we need to take into account the Market surveillance Regulation 1020
<b>Amendment 9</b>  <b>Article 68 – paragraph 1 b (new)</b>	<b>we support the general approach.</b> We need to consider the Market surveillance Regulation 1020. We think that proposed text is too detailed.
<b>Amendment 10</b>  <b>Article 69 a (new)</b>	<b>we do not support the amendment.</b> We believe that proposal is questionable from a legal point of view
<b>Amendment 11</b> <b>Article 21 – paragraph 7</b>	<b>We are flexible, but</b> we think that this wording excludes the possibility of the product being accompanied by instructions

	in paper form. We believe that the legislation should allow the possibility for the product to be accompanied by documentation also in paper form.
<b>Amendment 12</b> <b>Article 21 – paragraph 7 a (new)</b>	<b>We support</b> the amendment.
<b>Amendment 13</b> <b>Proposal for a regulation</b> <b>Article 21 – paragraph 7 b (new)</b>	<b>We are flexible.</b>
<b>Amendment 14</b> <b>Proposal for a regulation</b> <b>Article 21 – paragraph 7 c (new)</b>	<b>We are flexible.</b>
<b>Amendment 15</b> <b>Proposal for a regulation</b> <b>Article 21 – paragraph 8 a (new)</b>	<b>We support</b> the amendment especially the emphasis on accessibility for people with disabilities, but we are concerned about the administrative burden especially for SMEs



<b>Amendment 16</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 1</b>	<b>We support</b> the amendment
<b>Amendment 17</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 2 – subparagraph 1 – point d a (new)</b>	<b>we would like to keep the general approach.</b> we are concerned about the administrative burden especially for SMEs
<b>Amendment 18</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 2 – subparagraph 1 – point d b (new)</b>	<b>we would like to keep the general approach.</b> we are concerned about the administrative burden especially for SMEs
<b>Amendment 19</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 2 – subparagraph 2</b>	<b>we would like to keep the general approach.</b> we are concerned about the administrative burden especially for SMEs
<b>Amendment 20</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 3 – subparagraph 1 – introductory part</b>	<b>We are flexible.</b>
<b>Amendment 21</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 4</b>	<b>We are flexible</b>
<b>Amendment 22</b> <b>Proposal for a regulation</b> <b>Article 18 – paragraph 5</b>	<b>we would like to keep the general approach.</b> The inclusion of the independent inspector, who shall notify the Commission of the lack of compliance of a signatory, to our opinion is not acceptable.
<b>Amendment 23</b> <b>Proposal for a regulation</b>  <b>Article 4 – paragraph 3 – point h a (new)</b>	<b>We are flexible,</b> but we are concerned about the administrative burden especially for SMEs
<b>Amendment 24</b> <b>Proposal for a regulation</b>  <b>Article 7 – paragraph 4 a (new)</b>	<b>We are flexible,</b> but we are concerned about the administrative burden especially for SMEs
<b>Amendment 25</b> <b>Proposal for a regulation</b> <b>Article 29 – title</b>	<b>we would like to keep the general approach.</b>

<b>Amendment 26</b> <b>Proposal for a regulation</b>  <b>Article 29 – paragraph 1 – introductory part</b>	<b>we would like to keep the general approach.</b>
<b>Amendment 27</b> <b>Proposal for a regulation</b> <b>Article 29 – paragraph 2 – subparagraph 1 (deleted)</b>	<b>we would like to keep the general approach.</b>
<b>Amendment 28</b> <b>Proposal for a regulation</b> <b>Article 29 – paragraph 2 – subparagraph 2</b>	<b>we would like to keep the general approach.</b>
<b>Amendment 29</b> <b>Proposal for a regulation</b>  <b>Article 29 – paragraph 2 – subparagraph 3</b>	<b>we would like to keep the general approach.</b>
<b>Amendment 30</b> <b>Proposal for a regulation</b>  <b>Article 29 – paragraph 3</b>	<b>we would like to keep the general approach.</b>
<b>Amendment 31</b> <b>Proposal for a regulation</b> <b>Article 29 – paragraph 5 – subparagraph 1</b>	<b>we would like to keep the general approach.</b>
<b>Amendment 32</b> <b>Proposal for a regulation</b>  <b>Article 29 – paragraph 5 – subparagraph 2</b>	Technical amendment. Should be checked with legal service.
<b>Amendment 33</b> <b>Proposal for a regulation</b> <b>Article 20 – paragraph 1 – subparagraph 1 – point a</b>	<b>We can support.</b>

<b>Amendment 34</b> <b>Proposal for a regulation</b>  Article 20 a (new)	<b>we would like to keep the general approach.</b>



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
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**Brussels, 21 August 2023**

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**NOTE**

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From:	AT, BG, DE, DK, FI, LU, LV, PL, SI Delegation
To:	Working Party on Competitiveness and Growth (Internal Market – Ecodesign)
Subject:	ESPR: AT, BG, DE, DK, FI, LU, LV, PL, SI comments on EP amendments

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**Letter**

17.8.2023

EU/977/2022  
EU/977/2022-TEM-50

The Spanish Presidency  
Internal Market Secretariat

# Ecodesign - Comments to the Spanish Presidency by Finland

We would like to thank the Spanish presidency for the possibility to provide comments on the European Parliaments position. Please find our comments below.

## 1. Transfer of powers

We would like to reiterate our support to the general approach reached by the Competitiveness Council in May, and therefore also to the solution concerning the transfer of powers presented therein. This includes first, the adoption of eco-design requirements by the Commission by means of delegated acts, second, the adoption of the Commission working plan by means of an implementing act, and third, the introduction of the eco-design expert group. It is necessary to keep all these elements to ensure sufficient say by the Member State, and thus a balanced end result.

## 2. Prohibitions to destroy unsold consumer products

We support the line taken in the Council general approach concerning the prohibition to destroy unsold consumer products. We find, however, that prohibitions set at the level of the framework regulation must in general be viewed critically, and that we do not agree with prohibitions at this level that are additional to what has been put forward in the general approach. We find that prohibitions of this kind should be given in separate legal acts after sufficient impact assessments and public consultations have been carried out and taken into account. It should be required for the assessments and consultations to be sufficient that e.g. the costs incurred by companies are estimated and addressed in detail, preferably in euros and for companies of different sizes.

## 3. Inclusion of social sustainability and due diligence requirements

We find that the law should be consistent, clear and understandable. Therefore, we do not support the inclusion of other requirements than those concerning environmental aspects. These issues, albeit important, should be dealt with in other applicable instruments.

## 4. Other/Detailed comments

The European Parliament has proposed that tyres be one of the prioritised product groups (Article 16, new subpara 2 b). However, as motor vehicles, including their components, have been excluded from the scope of the Regulation in the Council general approach, the prioritization of tyres may be

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seen to be in conflict with the general approach. Furthermore, should tyres be included, it should be ensured that overlappings with other EU legislation are eliminated.

We support the proposals made by the Parliament in Recitals 5 and 5a.

Clarifications are needed in many parts of the Parliaments proposal:

- On the overall, we would like to see better consistency in the use of the words 'data' and 'information'.
- Article 7 para 5, Article 10 para ba., Rec. 26 and 27, Annex II para 1 – it is unclear what is sought for. Also terminological problems have been detected.
- Recitals 26 and 27, Article 7 para 5: We wonder whether the term 'confidential business information' refers to trade secrets, or to the wider category of confidential commercial information. This would need to be clarified.
- Recital 12 a: We are not aware of a general definition for 'second-hand sector'. We wonder if it is possible to draw limits to the concept here.
- Recital 23, Article 7 para 6 subpara 3, Article 8 para 2: In the sentence 'Essential information relating to the health, safety and rights of end-users should always be provided to consumers by physical means and be accessible through a data carrier included on the product' we propose to replace 'by physical means' by 'by physical or digital means' or 'in physical or digital format'.
- Recital 28 and Article 9 para 1 subpara 1 point d: It is not certain that the network referred to exists, or is being set up, yet. We would like to propose as alternative terms 'data exchange channel' or 'data space'.
- Article 7 para 5: What does the 'threshold-based approach' include in this context?
- Article 10 (ba): We find the term user-friendly vague and therefore subject to different interpretations. The wording 'clear and easily understandable' used in e.g. Article 14 para 2 would be clearer. In any case a clarification would be recommendable.
- Article 25: What does the term 'mixture' refer to?
- Articles 23 and 24: The use of the term 'mutatis mutandis' is not advisable. The application of the Articles referred to should be specified.
- Annex II para 1: 'If the signatory has not undertaken sufficient corrective action within three months, it must be dismissed from the self-regulation measure.' This type of provision should be in the operative Articles, not in an Annex.
- Article 68: The provision concerning sanctions should respect the legal conditions that exist for such provisions.



## LU comments

In addition to the comments made in the WP of 14 July, please find hereafter one short LU comments on the amendments discussed, using the final numbering as adopted in Doc.

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- **Amendment 91, Article 5a (new):**

- We agree with the general idea of introducing a prohibition of premature obsolescence.
- However, it should be further clarified how and when “practices that result in shortening a product’s lifespan” will be identified by the COM and whether it will be on a case by case analysis, according to an impact assessment in the context of the adoption of product specific ecodesign requirements (under the delegated act adopted pursuant Article 4).
- For legal certainty, if premature obsolescence is prohibited, it will be necessary to define cases of “regular” obsolescence.
- For coherence, it will be necessary to articulate the prohibition of premature obsolescence in the ESPR with similar provisions provided for in other EU legislation related to consumer protection.



**Poland's written comments on the amendments adopted by the European Parliament to the draft regulation on the ecodesign of products (the so-called "ESPR")**

**I. Poland supports** the following amendments of the European Parliament No.: **9, 17, 25, 26, 63, 68, 70, 86, 91, 94, 95, 106, 119, 120, 125, 156, 170, 171, 172, 175, 178, 181, 183, 192, 221 and 223.**

**II. Poland does not support** the following amendments of the European Parliament No.: **33, 138, 158, 160, 165, 168, 186-189, 223.**

- **Amendments No. 33 and 158 Reporting on destructed products (Recital 47 and Article 20.1.2)**

Poland postulated (during the meetings in WP COMPET) that the reporting should be done to the European Commission only, as any public reporting would lead to stigmatization of the companies. Unfortunately, both institutions did not agree with reporting to the European Commission only, and proposed public reporting. The European Parliament proposes public reporting on the European Commission's public website, whereas the Council proposed reporting on the own company website.

The reporting on the own company website would be less stigmatizing and less burdensome. Moreover, the company would maintain the control on the data on the products this company places on the market. If all the information would be gathered on the European Commission's website in one place – this would be easily accessible tool for "black PR" and stigmatization of the companies.

- **Amendment No. 138 Self-regulation measures (Article 18.1)**

Poland believes that self-regulation measures are extremely important for lots of sectors. However, new amendment from the Parliament in this paragraph (Amendment 138) would make it impossible for products included in the working plan to have self-regulation. Self-regulation measures are an important element that enables the development of innovation and competitiveness of companies, to take steps towards more sustainable products and to meet ESPR policy objective more quickly and effective than legislation. Therefore it should be possible also for products included in the working plan to have self-regulation.

- **Amendment No. 160 non-negligible environmental impact (Article 20.3.1)**

Each sector might be considered as having non-negligible impact on the environment. Therefore, negligible and non-negligible are very vague terms and might be subject to legal uncertainty and misinterpretation. In order to prioritize, the European Commission should choose the sectors which have significant impact on the environment.

- **Amendment No. 165 counterfeit products (Article 20.3.2da (new))**

Counterfeit products are illegal products and were developed as a result of the criminal activity. They should not be made available on the market. The only way to deal with counterfeit products is to destroy them. As such – counterfeit products should be excluded from the ban of unsold goods destruction/discard.

- **Amendment No. 168 Ban on some product categories (Article 20 a (new))**

Poland would rather not be in favor of such an arbitrary introduction of the ban, especially e.g., on destroying unsold electronics (AM 168, art. 20a), despite the legitimate exceptions. We would like to point out that this will provide companies (including smaller ones) with a large amount of reporting, already a year after the adoption of the regulation (i.e. de facto the collection and analysis of data will be necessary immediately after the entry into force of the regulation, and in practice it will force the need to prepare additional statements before the application of the act).

- ***Amendments No. 186-189 Responsibilities of digital platforms (Articles 29, 29.1, ~~29.2.1~~, ~~29.2.2~~, ~~29.2.3~~, 29.3, 29.5.1, 29.5.2)***

Poland points out that amendments No. 186-189 raise serious doubts and reservations. The European Parliament does not explain why these obligations for platforms are delating from the draft. We must remember that the final recipient is also the consumer and it is necessary to ensure such regulations so that he receives full, clear information. Clearly defined obligations of the various actors in the chain (platforms, producers, agents, importers, sellers) will enable more effective enforcement of the rules. Such a solution will enable, for example, producers to fulfill their legal obligations resulting from EU regulations. Therefore, Poland is against deleting the obligations of platforms from the draft, in particular Article 29 - paragraph 2 - subparagraph 1 (European Parliament deletes this provision by ammendment 187). These obligations should be explicitly regulated in the Directive.

- ***Amendment No. 223 Remedies for lack of compliance (Article 69a)***

In our view, different enforcement authorities would be involved in enforcement of these rules. Besides, it is rather too far-fetched an interpretation to immediately claim that in the case of a non-compliant product or offer (or simply lack or incomplete required information) it should be considered an unfair commercial practice. Ultimately, it can be recognised as non-conformity of the goods with the contract, but not as an unfair practice – we should not immediately accuse the seller or manufacturer of bad faith.

**III. Poland has some remarks** regarding the following European Parliament's amendments No.: **6, 14, 57, 108-113, 131-132, 201, 209.**

In general they can be seen as a decent direction, however, we see a few points worth highlighting.

- ***Amendment No. 6 Prohibition on shortening the product life (Article 5a)***

While we understand why this concept was introduced, we would like to point out that regulating premature aging of products remains extremely difficult. In our view, it is not possible to control the reasons or the point at which consumers independently decide to stop using the products. This is a social/cultural issue.

- ***Amendments No. 14, 201 and 219 public procurement (Recital 19 and Article 68.1b (new))***

In the case of amendments No. 14 and No. 219 the word "public" should be deleted as the provisions of the ESPR Regulation also apply to contracting entities under the Directive 2014/25/EU. The term "procurement" is sufficient and covers contracts awarded under the provisions of the Directive 2014/24/EU as well as under the Directive 2014/25/EU. The amendment No. 201, should also refer to "contracting entities", as they fall within the scope of the ESPR Regulation.

- ***Amendment No. 57 environmental footprint (Article 2.1.23)***

Poland generally supports broadening the definition of "environmental footprint" in Article 2 – paragraph 1 – point 23 to include other scientific methods to assess the environmental footprint of product in addition to PEF methodology. However, it is important to ensure comparability across product groups.

- ***Amendments No. 72 and 98 Repairability (Articles 4.3.ca, 7.4a)***

Poland, in principle, sees the desirability of the European Parliament's amendments to the regarding reparability. The durability of a product is directly related to its repairability. Nevertheless, the scope of regulation should be limited to the need to establishment of an appropriate methodology, and then it should be established for each product based on an appropriate impact assessment. Poland advocates the adoption of specific methodology for estimating the reparability potential of a given group of products in a delegated act dedicated to it.

- ***Amendment No. 108-113 Access to Digital Product Passports (Article 8)***

Access to information under DPPs has been extended to also include professional repairers, independent operators, refurbishers, civil society organisations, researchers, trade unions. This could present a potential risk for business operators if their confidential information is shared with civil society organisations, researchers, or trade unions.

- ***Amendments No. 131-132 Prioritization (Articles 16.2.2b, 16.2.2c)***

Poland is concerned about the European Commission's obligation to adopt the first working plan within 3 months of the entry into force of the regulation, and the specification in Article 16.2.2b of the specific product groups that should be covered by the first working plan. We believe that setting work priorities is not appropriate at this stage of the negotiations, and the draft regulation itself should be as general as possible.

Poland favours the compromise adopted in the general approach, where the working plan was to be adopted no later than 12 months in the form of an implementing act (Article 16.2, GA). We believe that working plan in the form of an implementing act is a part of maintaining an appropriate balance between the scope and quantity of delegated acts and the influence of the member states on the creation of ecodesign requirements.

According to Poland, the list of priorities should be based on data collected and analyses conducted by the Joint Research Center (JRC) - should not be taken into account as part of the work on the draft regulation on ecodesign for sustainable products (ESPR). We believe that the JRC can identify other, more relevant products that are not listed in this draft as having a very high environmental impact.

In this context, clarification is needed on what is meant by "chemical substances." This would be necessary to ensure a uniform legal interpretation. Poland considers that it applies to chemical substances and mixtures, but not finished consumer products, such as medical devices or cosmetic products.

Similarly, we see no need for Article 16.2.2c. The text of the regulation of ESPR should be as concise and general as possible. In Poland's view, the proposal of the European Parliament on this point should, however, be noted as a valuable remark to be considered by experts at the stage of preparing the first working plan of the European Commission concerning the determination of priorities of product groups to be covered by ESPR.

## **AT COMMENTS: Ecodesign for sustainable products regulation (2022/0095 (COD); Amendments of the European EP**

AT welcomes the possibility to comment on the Amendments proposed by the European EP. The following comments are based on the adopted text (A-9-2023-0272) and the Amendments mentioned therein.

### **1. General remarks**

- AT advocates for maintaining all implementing acts as agreed in the Councils general approach. Any change of the existing implementing acts (in Council position) to a delegated act is a red line for AT.
- In general, we have a quite positive view on many amendments proposed by the European EP and we do see some common ground to find a quick and good compromise during trilogues.
- We especially welcome, the proposed amendments regarding “*durability*” and “*reparability*”. Furthermore, we support the clearer wording for “*independent operators*” and “*refurbishers*” in the EP text, as well as the provision that access to repair information and spare parts is not limited to authorised repairers.
- However, the text of the EP uses both the term „*reparability*“ and the term „*repairability*“. This should be aligned in the final text.

### **2. Comments on the Amendments in more detail:**

#### **AM 3 - Critical Raw Materials [Recital 3 a (new)]**

AT supports amendment 3, because it is important to lay down comprehensive information requirements about materials, especially critical raw materials, on products placed on the Union market in order to reduce the import dependency and secure the availability of critical raw materials.

#### **AM 5 – Recital 5**

AT supports the overall aim of creating a regulation that supports sustainable production and consumption patterns that are aligned with the Union’s overall sustainability and Green Deal targets, in order to bring them within planetary boundaries as soon as possible.

#### **AM 6 - Premature obsolescence [Recital 5 a (new)]**

*(5a) Practices making products prematurely obsolete or non-functional are negatively affecting consumers, and have a negative impact on the environment due to the increased material use in our economy. To ensure that products have a long lifespan for consumers, to reduce the generation of waste and to contribute to sustainable consumption, this Regulation should address such practices, in particular when they are the result of design choices by manufacturers, when software updates or accessories are not provided within an appropriate period of time, or when the functionality of a product is limited when consumers use consumables, spare parts or accessories not provided by the original manufacturer. As reparability is a cornerstone of a long lifespan for products, the Regulation should also ensure that disassembly of key components is not impeded, and access to repair information and spare parts is not limited to authorised repairers.*

AT is in favour of amendment 6. We believe that this recital provides an important additional explanation for the interpretation of amendment 91 (Art. 5a (new)). The use of standardised tools could be mentioned here as well as prerequisite for reparability.

### AM 10 - Recital 13

As mentioned above, all implementing acts as laid down in the Councils general approach have to be maintained. The following new addition in this recital by the EP is supported by AT: *“It is important that horizontal requirements be developed in particular on durability and repairability. Sufficient time should be provided to economic operators to adjust to new ecodesign requirements. Those horizontal requirements should take into account potential environmental benefits stemming from the use of one common charger for several products. Therefore, product groups with technical similarities should be required to be equipped with common chargers”*.

### AM 11 - Recital 14

AT welcomes the addition to recital 14 stating that the Commission should take into account the Union's objectives in the fields of climate, environment and biodiversity, energy efficiency and resource security when setting ecodesign requirements. And that these requirements should contribute to the overall aim of decreasing the Union's environmental, material and consumption footprints to bring them within planetary boundaries as soon as possible.

### AM 13 – Recital 17

We support the uptake of **“packaging” legislation** in this recital to improve the consistency between the ESPR and other Union legislation. However, we do not support the deletion of the phrase **“To avoid duplication of efforts and regulatory burden,”** in the EP amendments.

### AM 15 + AM 234 Nanoplastics

*“This Regulation should also consider the use of sustainably-sourced renewable materials in products and address the release of nano- and micro-plastics.”*

According to the common definition (Annex XVII, REACH Regulation), microplastics include synthetic polymeric microparticles in the size range of 0-5 mm. This definition would also include nanoplastics. A separate mentioning of nanoplastics would therefore be redundant and confusing.

### AM 16 – Recital 22

AT does not support the addition of the phrase *“unless there is an unacceptable risk to human health or the environment, arising from the use of a substance present in the product or product component when it is placed on the market or during the subsequent stages of its lifecycle.”* If there are unacceptable risks to human health or the environment, substances can already be restricted in the framework of the chemical legislation mentioned in the recital.

### AM 19 – Recital 26

AT supports the amendment proposed by the EP, that **“professional repairers, independent operators, refurbishers** or recyclers” get access to relevant information in the DPP. In addition, coherence with similar definitions in the ‘Right to Repair’ Directive should be ensured.

### AM 20 - Recital 27

AT supports the addition in recital 27 *“The product passport should remain available for at least the expected lifetime of a specific product, but with an adequate margin to ensure the product passport is available in cases in which the product lasts for longer than expected.”*

#### AM 25 - Recital 39

AT supports the uptake of the phrase “**clear and easily understandable**” information on labels.

Due to the very wide range of products potentially covered by the new legislation, some of the new labels will differ in terms of the parameters displayed. This is already the case with current energy labels. Nevertheless, **all new ESPR labels should share a common general design for all products to facilitate consumer recognition**. Parameters that may be used horizontally in different regulations should be represented with the same design/layout (e.g., different energy and material efficiency parameters such as energy efficiency, durability, reparability, etc.) Easy-to-understand labels include word/image combinations similar to energy efficiency labels.

#### AM 26 - Recital 41

*(41) Consumers should be protected from misleading information that could hamper their choices for more sustainable products. For this reasons it should be prohibited to place on the market products bearing a label **with misleading or contradictory information or mimicking the labels provided for in this Regulation. However, it should be possible to continue to display an EU Ecolabel or other existing type I ecolabels as set out in Regulation (EC) No 66/2010.***

AT welcomes that the EP amendment foresees that EU Ecolabels and other existing type I ecolabels can be further displayed on products. **However, AT supports the wording in the Council general approach.**

#### AM 28 - Possible inclusion of cement for next working plan [Recital 42 a (new)]

The following phrase should be deleted: *“~~To avoid a lack of product requirements urgently needed to reach our climate and environment objectives, any absence of adequate performance and information requirements for these products under [the forthcoming Regulation laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 (2022/0094 COD)] should trigger their inclusion in the next working plan of this Regulation.~~”*

While AT recognizes that the environmental impact of the cement industry should be reduced, the incentive to include a provision that states that an absence of adequate performance and information requirements for construction products should automatically trigger their inclusion in the next working plan of the ESPR is in our opinion not appropriate. It contradicts the intended process of the Commission determining which product categories are to be considered under the Regulation.

#### AM 31 - Support for SMEs

SMEs should not be overburdened by the new ecodesign requirements. Therefore, we see any support for SMEs to meet the ecodesign requirements as positive. In this context, we want to specifically support the following EP amendment in Recital 45:

Those *measures* should **at least include specific mechanisms to facilitate compliance with the requirements set out in the product passport and with conducting life-cycle assessments.**

#### AM 46 - Article 1 – paragraph 1 – subparagraph 1 – introductory part

***“This Regulation establishes a framework to improve the environmental sustainability of products in order to make sustainable products the norm and to reduce their overall environmental footprint over their lifecycle,”***

This Amendment adds clarity and focus. AT supports the intention to highlight that sustainable products should be the overall standard within the EU and reduce their overall environmental footprint.

#### **AM 49 - Definition “end-of-life”**

The term “*waste product*” does not exist in waste legislation; on the contrary, a distinction is always made between product and waste. The term “*waste material*” does exist. Therefore, we support the amended version proposed by the EP.

#### **AM 50 – Definition “class of performance”**

AT very much welcomes the addition “*based on a common methodology for the product or product group*” in the definition of “*class of performance*”. Without clear rules per product category/group there can be no differentiation into classes of performance.

#### **AM 54 - Definition “premature obsolescence” [Article 2 – paragraph 1 – point 20 a (new)]**

***(20a) ‘premature obsolescence’ means making available on the market a product with a feature which limits its foreseeable lifetime;***

This definition for premature obsolescence is insufficient and formulated too vague. AT would suggest that the latest wording on “*early*” obsolescence from the Empowering Consumer Directive (Dok-N.2022/0092, rec. 14) should be taken up in the ESPR (see below). However, we recommend to stick to the wording of “*premature*” obsolescence.

*Text from the Empowering the Consumers Directive:*

*“Premature (or early) obsolescence’ means a commercial policy involving deliberately planning or designing a product with a limited useful life so that it prematurely becomes obsolete or non-functional after a certain period of time or after a predetermined intensity of use (see therefore document nr. 2022/0092).”*

#### **AM 57 – Definition “environmental footprint” [Article 2 – paragraph 1 – point 23]**

***(23) ‘environmental footprint’ means a quantification of product **life cycle**’s environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product Environmental Footprint method or other scientific methods developed by international organisations and widely tested in collaboration with different industry sectors and recognised by the Commission;***

AT does not agree to add the new part proposed by the EP. It opens the door for the use of various methods, which could lead to diverging product information across various product groups. AT continues to advocate for a harmonized approach which ensures harmonised and aggregable data also across product groups.

If environmental footprint information is based on different methods for intermediate products compared to environmental footprint information of end-products containing those intermediates, the consequence of being “*open and inclusive*” to various methods, would create many data mismatches.

We understood the hard work and the effort from all involved partners and stakeholders (including EC) into the development of the Product Environmental Footprint methods (PEF) as a commitment to harmonised methods and as a statement that are heavily needed. The PEF currently reflects the max. consensus possible related to life cycle analysis-based methods. We

do not see other methods leading to equivalent results in a quantitative manner. Therefore, other internationally established methods for environmental sustainability assessment must be rejected, as that would totally counter harmonization.

It is completely unclear which assessment methods of environmental sustainability fall under the definition "*or other scientific methods developed by international organizations and widely tested in collaboration with different industry sectors and recognised by the Commission*". If, for example, assessment methods that are not based on the LCA-methodology are included, it would be very difficult to make comparable statements on the environmental effectiveness/environmental quality of two products. This would also be extremely burdensome for enforcement, as it would then be up to enforcement to prove the equivalence of the statements. Despite all the shortcomings of the PEF method (which therefore still needs to be improved, especially simplified), it offers the advantage that it provides methodological harmonization in the ESPR, with which the environmental effectiveness of all regulated products would be assessed - and thus avoids incomparability and greenwashing, which is promoted precisely by the existence of different methods (also different system boundaries).

If alternative assessment methods were allowed here at all, they would have to be explicitly mentioned and the Commission (see above) would have to be asked to explicitly confirm that these methods lead to equivalent results.

#### **AM 58 Definition material footprint** [Article 2 – paragraph 1 – point 25 a (new)]

*'material footprint' means the quantification of the materials needed for a product system as the sum of biomass, fossil fuels, metal ores and non-metallic minerals consumed;*

AT does not support the proposed addition of mentioning "*material footprint*" separated from the environmental footprint. Resource use (biotic and abiotic) is part of the Life Cycle Impact Assessment under the PEF-methodology and it is very important to address scarcity effects combined with the actual resource use in the respective product system under study. Only "*stacking up*" mass information on various resources/inputs, as it is usually done in "*material footprinting*" does not give enough information. Resource efficiency cannot be interpreted similarly compared to energy efficiency – as the actual impact varies a lot for several resources.

#### **AM 59 - Definition SoC**

We do not support the deletion of reference to Art 59.1 REACH in the definition of SoCs due to regulatory clarity - under REACH, a substance only becomes SVHC when it has been identified as such according to Art. 59(1).

#### **AM 60 - Definition SoC with inclusion of PoP-Regulation**

The fact that all substances regulated under the POP Regulation should now also fall under the SoC definition is fine. Most (if not all) substances regulated under the POP Regulation fall under lit. b) of the SoC definition of articles anyway, due to their persistent properties, as they are also classified harmonized according to CLP.

By including POPs in the definition of SoC, the precautionary principle is probably been taken into account (i.e. that for a substance that is not harmonized under CLP in Europe - possibly because it is no longer used in Europe, but is regulated under the POP Regulation - the information requirements under ESPR should still apply).

The same change is proposed by the EP in the CSRD in the article with the definition of SoCs. In



any case, there should be coherence in the SoC definition within the two dossiers and therefore, from our point of view, the EP amendment can be accepted.

#### **AM 62 – Definition destruction** [Article 2 – paragraph 1 – point 35]

*‘destruction’ means the intentional damaging or discarding of a product as waste with the exception of discarding for the only purpose of delivering a product for preparing for re-use, **refurbishing** or remanufacturing operations;*

AT supports the EP amendment to include “refurbishing” as exception that doesn’t count as destruction.

#### **AM 63 – Definition unsold consumer product** [Article 2 – paragraph 1 – point 37]

*‘unsold consumer product’ means any consumer product **fit for consumption or sale** that has not been sold **including surplus, excessive inventory, overstock and deadstock, including products** returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU;*

AT supports EP’s definition of “unsold consumer product” as we believe it better covers the possible reasons for unsold products and leaves less room for interpretation. For reasons of legal certainty, we recommend to support this EP amendment.

#### **AM 64 – Definition independent operator** [Article 2 – paragraph 1 – point 46 a (new)]

*(46a) ‘independent operator’ means a natural or legal person who is independent from the manufacturer and is directly or indirectly involved in the refurbishment, repair, maintenance or repurposing of the product, and includes waste management operators, refurbishers, repairers, manufacturers or distributors of repair equipment, tools or spare parts, as well as publishers of technical information, operators offering inspection and testing services and operators offering training for installers, manufacturers and repairers of equipment;*

The inclusion of the definition of “independent operator” in the ESPR proposal is welcomed from AT’s perspective, as it makes access to information or the DPP more mandatory for independent operators. It also better covers the role of independent operators for the circular economy and to reach the goals of the ESPR. Attention should be paid to consistency with “Right to Repair” Directive.

#### **AM 65 – Definition professional repairer** [Article 2 – paragraph 1 – point 46 b (new)]

*(46b) ‘professional repairer’ means a natural or legal person who provides repair or maintenance services for a product, irrespective of whether that person acts within the manufacturer’s distribution system or independently;*

AT supports the introduction of the definition for “professional repairer” and that “independently” is also mentioned. However, as mentioned above attention should be paid to consistency with “Right to Repair” Directive.

**AM 70 + AM 9 - Treatment of second-hand products [Recital 12a (new); Art. 4 para 1 subpara 1a (new) and Article 4 – paragraph 1 – subparagraph 1 a (new)]**

AT agrees that the second-hand sector plays an important role in promoting sustainable consumption. However, it does not seem to be compatible with the EU internal market legislation to define exceptions for second hand products. First and foremost, this would significantly complicate the tasks of market surveillance. Exemptions could serve as loopholes for new products by declaring these products as second-hand goods. In addition, further efforts should be made to ensure that the demand for second-hand products can be met with used products within the Union. It seems more reasonable to us to define incentives so that EU citizens increasingly return unused electrical appliances instead of importing 2nd hand products from third countries.

Therefore, we think the Council's position has to be maintained in that manner. In any way, this aspect must be analysed with great caution.

**AM 71 - Sufficient time to adjust for SMEs**

AT supports amendment 71.

**AM 72 – methodology for reparability [Article 4 – paragraph 3 – point c a (new)]**

*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;*

AT supports this EP amendment.

**AM 73 + 16**

AT supports the focus on substances that are present in products only. Substances that are used during the manufacturing process but are not detectable in the product, should not be targeted. ecodesign requirements shall only be established for SoC that are present in the product.

**AM 77 – avoid conflicting ecodesign requirements with other Union legislation [Article 5 – paragraph 4]**

AT supports this amendment.

**AM 78 – “non-toxicity”**

AT doesn't support the inclusion of non-toxicity at this point. It has to be clear that there will still be use cases for substances with varying degrees of toxicity in a sustainable economy (e.g., for appliances in critical technologies where there are no substitutes yet) for some time. An approach focusing exclusively on hazard and not considering risk management measures is seen very critical.

**AM 81 – prioritisation of measures in accordance with the waste hierarchy**

AT supports this amendment.

#### **AM 82 – Impact Assessment [Article 5 – paragraph 4 – point b]**

Regarding point (i) AT is not of the opinion that “*all the product aspects listed in paragraph 1 are analysed*” because not all product aspects are of relevance for every product group.

(ii) the analysis of “*trade-offs between the different product aspects listed in paragraph 1*” is welcomed by AT.

#### **AM 84**

It is explicitly supported by AT that feedback of public consultation has to be considered when the EC is preparing ecodesign requirements.

#### **AM 85 + 226 – Criteria of ecodesign requirements**

The adding of the safety aspect is welcomed, as well as, sufficient time frames for adaptation and implementation.

#### **AM 89 – Sufficient time frames for adaption and implementation**

Sufficient time frames are an essential prerequisite for a functioning implementation of the requirements of the regulation without the risk of economic damage, especially for SMEs.

#### **AM 91 - Article 5a (new) Durability and reparability of products**

We welcome the proposal of the EP to strengthen the product aspects of durability and reparability in the text. With this newly introduced article the two aspects get higher importance within the ESPR, which was always supported by AT. Amendment 91 in combination with the newly introduced recital 5a (AM 6) covers also the aspect of premature obsolescence, which is supported by AT. In paragraph (2) it would be important to mention the use of standardised tools as a prerequisite for reparability.

The consequential challenge:

The service life (RSL – reference service lifetime) of products must be clearly defined in the delegated act, as it varies depending on the product group and intended use of the products.

The framework regulation should at least ensure that an agreement is reached on the minimum service life per product type in the respective product-specific delegated act. This is needed for a clear definition of “appropriate period of time” mentioned in the new proposed text by the EP.

In addition, a voluntary manufacturer's guarantee can be used as a measure to reduce the risk of planned obsolescence, so that consumers can also be assured that the product will fulfill a specific function beyond a minimum service life.

Measures can also be taken via repair guarantees. For example, if manufacturers guarantee such a product (free of charge) for up to 10 years after purchase, this is an important indicator of “extension of service life” or prohibition of early obsolescence.

#### **AM 93 – Performance requirements**

If there are unacceptable risks to human health or the environment, substances can already be restricted by chemicals and product specific legislations e.g., REACH, CLP, cosmetics regulation, regulations for food contact materials etc. Amendment 93 is not supported by AT.

### **AM 94 + 95 - Clear and easily understandable information**

AT supports the Amendments 94 and 95, that **clear and easily understandable** information for consumers and other end-users should be provided.

### **AM 96 - Information requirements accompanying products**

<i>(iib) relevant information for providers of repair and refurbishment services and operators involved in preparing for reuse, reuse, repair and disassembly;</i>
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AT supports the newly introduced paragraph to, if appropriate, require products to be accompanied by relevant information for providers of relevant practices for the circular economy.

### **AM 98 – Reparability Score**

AT supports the introduction of a new paragraph regarding the reparability score. In the EC proposal the reparability scoring was only mentioned in Recital 19 and we think that AM 98 is a positive proposal in order to better display circularity aspects and provide guidance for consumers. It is also supported that *“clear and easy-to-understand language and pictograms, to avoid overload of information for consumers”* should be used.

### **AM 99 – Information requirements for tracking of SoC**

The addition, in the EP amendment **“with a threshold-based approach”** does not seem necessary to AT.

### **AM 105 – Information requirement regarding health, safety, and rights of end-users**

Information requirements for health and safety aspects are not within the scope of the ESPR and should not be, as there are already other regulatory measures in place e.g. CLP, cosmetics regulation etc. This amendment might lead to double regulation and legal uncertainty for labelling requirements. However, we do support that information shall be provided “with” instead of “on” the product.

### **AM 110 – DPP**

AT supports Amendment 110, especially that **“professional repairers, independent operators, refurbishers, and civil society organisations, researchers, trade unions”** are mentioned in this paragraph and shall have access to information in the product passport.

### **AM 111 – DPP**

AT supports amendment 111, because in order to collect and store all relevant data of products along the life cycle it is necessary that also actors like independent operators and refurbisher can introduce or update information in the product passport.

### **AM 119 – DPP**

AT welcomes the more detailed listing of relevant stakeholders in amendment 119.

### **AM 131 – Prioritising of product groups [Article 16 – paragraph 2 – subparagraph 2 b (new)]**

We are rather sceptical of including a list of product groups in the framework regulation for the first working plan. However, the product groups proposed by the EP are largely in line with the EU Commission's possibly prioritized product groups for the first working plan. Moreover, it is foreseen that the EU Commission could nevertheless exclude named product groups from the working plan: *"If any of the following product groups is not included in the working plan, the Commission shall provide a justification for its decision in the working plan."* We don't support the inclusion of this list of product groups in the framework regulation, however, we don't see this Amendment as a red line.

In any way, if products will be listed in the framework regulation, chemicals have to be included as a priority product group for the first working plan because these form the foundation of all material products. Information requirements on chemicals (especially PEF-information) are necessary to pass on the data along the value chain that is necessary for further ecodesign requirements for different product groups.

### **AM 132 - Cement**

As already mentioned under our comments for AM 28, AT does not support the inclusion of cement in the framework regulation.

### **Self-regulation measures**

#### **AM 138 (+ AM 30)**

AT was generally very sceptical of the possibility of self-regulation measures, because experience under the Ecodesign Directive has shown little effectiveness for various reasons. However, we can be more flexible if the possibility for self-regulation measures is better narrowed down. Therefore, we welcome the EP amendment foreseeing that **self-regulation measurements can be only set if the product group is not listed in the working plan.**

#### **AM 148 Three to six months revision time for new version of self-regulation measure**

Three months is most probably too short to revise and completely overhaul such a measure. It would be more useful, to extend the period for submitting a revised and updated version of the self-regulation measure within three to six months.

#### **AM 149 – Independent Inspector**

It is unclear what the *"independent inspector"* will be. The role is not clear as there is no reference to any definition. If "inspector" refers to an administrative body, "independent" should be deleted

### **Destruction of unsold consumer goods:**

The enormous waste of resources caused by the destruction of unsold consumer products is not compatible with the goals of the circular economy. Emissions and negative impacts on the environment occur along the entire production chain of products. The destruction of unsold but new and intact products jeopardizes EU climate and environmental targets and must therefore be prevented. For this reason, we support the broader scope and the shorter implementation period of the destruction ban in the EP amendments. However, in some other aspects we prefer to maintain the Councils general approach. Please see the following comments on the AT position on these EP amendments in more detail:

#### **AM 156 + 166**

A percentage (%) is always a relative indication. In this context, number and weight are much clearer parameters. Clarity on the variables of the percentage rate should be added. Percentage in relation to the produced volume/ traded volume. We would prefer to maintain the Councils General Approach.

#### **AM 157 + 159 + 161 + 32**

AT supports these amendments

#### **AM 162**

The inclusion of the aspect "hygiene" further restricts the requirements, but can be accepted by AT.

#### **AM 164 – fitness of the product**

This deletion of this paragraph is incomprehensible from our point of view.

#### **AM 167**

Sufficient time frames are an essential prerequisite for a functioning implementation of the requirements of the regulation without the risk of economic damage, especially for SMEs.

#### **AM 168 + AM 34**

This amendment is supported by AT, except paragraph 4. We do not agree that SMEs are generally exempted. We recommend to maintain the wording in the General Approach "[... shall not apply to SMEs. However, it shall apply to medium-sized enterprises from [OJ note: 4 years after entry into force of this Regulation]]".

However, we support the EP suggestions for stronger enforcement options for the EC with regards to the disclosure obligations, also for SMEs. It remains however unclear how "*sufficient evidence that they account for a substantial proportion of unsold consumer products*" (SME) or "*sufficient evidence that they may be used to circumvent the prohibition on the ...*" will be evaluated.

#### **AM 170 – Timeframe for keeping instructions available**

This amendment does not take into account that the minimum requirement will apply to very different product groups. These also have very different lifetimes. For some product groups it might not be necessary to keep "*instructions for... dispose*" available for at least 10 years. However, we think leaving instructions available for longer periods might also not be such a bureaucratic effort, since they were already uploaded.

#### **AM 171 – Format of instructions that make it possible to download them**

AT supports this amendment.

## **AM 172 – Instructions in paper format**

If the instructions in paper format are provided at the time of the purchase, we think it is sufficient. Online access to this information is still available in case the instructions get lost or are not available anymore.

## **AM 175 - Establishment of communication channels to submit complaints or concerns [Art. 21 para 8a]**

The proposal by the EP (*"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"*) raises questions:

The added value of these communication channels is not apparent, as websites must have an imprint anyway according to the E-Commerce Directive 2000/31/EC. This is further supported by Article 11 Digital Services Act, according to which providers of intermediary services shall designate a single point of contact to enable them to communicate directly, by electronic means. Duplicate regulations should be avoided in any case. In regards to online marketplace we therefore support the idea, that an existing point of contact (which is obligatory according to the DSA) can also be designated in Art. 29 (**AM 192**).

With regard to the complaint submissions for consumers at manufacturers, we see the problem that as a rule there is no contractual relationship between manufacturer and consumer, and therefore no obligations should be imposed or implied in this context.

## **AM 183 - Obligation of suppliers [Art. 25a (new)]:**

AT opposes the inclusion of such an article because the term "supplier" and therefore the addressee of this obligation is too broad and vague, since according to Regulation (EC) No 1907/2006 supplier means any producer or importer of an article, distributor or other actor in the supply chain placing an article on the market.

## **AM 185-189 - Obligation of online marketplaces and online search engines**

AT supports a fair enforcement of the Ecodesign rules also on online marketplaces. However, AM 185 -189 do not show any improvement in this respect and are therefore not supported.

## **AM 199 – Common Specifications**

For the sake of legal and planning security *"In the elaboration of delegated acts the activities of the European standardisation organisations shall be taken into account"* needs to be added.

## **AM 201 - Art. 58 – GPP**

Generally speaking, the EP's changes are limited with respect to procurement law.

The (newly proposed) Art. 58 (1a) – Amendment 201 is considered to be not critical, but should be moved to the recitals because of the lack of normative content.

However, much more important is what the EP has not changed. It is therefore crucial that the Council's revisions to Art. 58 are maintained. We refer to our various previous notes in which we also prioritized our concerns regarding the initial proposal by the Commission, most importantly:

- ensuring implementing acts instead of delegated acts

- ensuring that no award criteria can be enacted
- ensuring limitations on contracts within the scope of the public procurement directives
- ensuring derogation clauses in duly justified cases

#### **AM 200 + 202**

From this follows, that amendments 200 and 202 are rejected.

#### **AM 217 Sanctions [Article 68 – paragraph 1]**

AT can support the aim to facilitate a more consistent application of penalties among the EU Member States.

However, AT recommends retaining the wording from the EC proposal, as we consider the wording “*give regard to → number of units of non-complying products*” to be sensible.

#### **AM 218 – Sanctions**

Amendment 218 [introduction of a new Art. 68 (1a)] is considered to be problematic due to its complexity. MS and their competent authorities are already now considering various criteria when determining the type and level of penalty in a specific case. The EP proposals in Article 68 do interfere with national competences regarding sanctions. Therefore, amendment 218 cannot be supported.

#### **AM 219 - Sanctions**

Amendment 219 is also seen critically, especially para 1b in its current form does not ensure a sufficient level of flexibility for MS and can therefore not be supported.

The (newly proposed) Art. 68 Abs. 1b lit. c – Amendment 219 - is rejected. While such a proposal can also be found in other legislative proposals, we see such sanctions critical. As we have repeatedly pointed out, procurement procedures are not an end in itself. By means of procurement procedures, the state procures only those works, goods and services that it does not “produce” itself or “provide” through its own means and therefore buys on the market. These procurements serve the fulfilment of public tasks – first and foremost the provision of services of general interest. While such an exclusion may seem effective from an environmental enforcement point of view, this need not be the case in general.

In this context, it should also be taken into account that exclusions – already at present – are possible, if there are violations of regulations in connection with the supplies/services specifically requested in a procurement procedure. This means, for example, if services are offered contrary to the ESPR or if inferior services have been provided in the past, the bid must not be considered by the contracting authority anyway.

Finally, exclusion must always be proportionate. If the provision cannot be dropped, a maximum period for the exclusion must be set [see for example Art. 25(2)(d) of Regulation (EU) 2023/1115, which provides for a maximum period for exclusion]. Otherwise, the question would arise as to whether an exclusion applies forever. In any case, this would be completely disproportionate and incompatible with primary law insofar as fundamental rights are concerned.

#### **AM 222 – Art. 69 - Evaluation**

The inclusion of social aspects in the course of a revision makes sense in the long term, **if the appropriate methods for monitoring are available.**



The Sustainable Due Diligence Directive (CSDDD) refers to internationally recognized human rights conventions, and includes topics such as:

- Prohibition of child labor,
- slavery and forced labor,
- disregard for occupational health and safety,
- the withholding of a decent wage,
- disregard for the right to form trade unions or employee representatives,
- denial of access to food and water; and
- the unlawful deprivation of land and livelihoods.

These are issues that could certainly be included in the DPP **as information requirements**. However, only as information, a classification/benchmarking within specific sectors on product level is not recommended. In any case, the requirements would have to be consistent with the requirements in the CSDDD.

We would furthermore suggest a **review period of 6 years** for social aspects after application. The proposed 4 years seem to be too short with regard to the implementation time of the CSDDD.

## AM 223 - Remedies

### *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.*

**Para 1:** In our view, the proposed reference to the Sales of Goods Directive and the resulting right to redress - irrespective of the expiry of the time limits set out in Article 10 - is to be viewed positively.

However, the article could - as a compromise - be provided with a time limit, e.g. as follows:

*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. **Art 10 of the Directive (EU) 2019/771 shall apply accordingly; the time limits shall be extended to ten years.***

**Para 2 is not acceptable:** The UCPD 2005/29/EC only concerns B2C unfair commercial practices and does not regulate the offering for sale of products - it is therefore not appropriate to qualify sales as an unfair commercial practice. Ecodesign requirements are obligations for manufacturers - however, the manufacturer does not usually engage in commercial practices according to Art. 2 lit. d UCPD - the regulation is therefore not adequate and should not be discussed in the ESPR. The term "marketing" in the context of the UCPD also raises many questions as the discussion in the WP CONSOM on the Empowering Consumer Proposal have shown, as there is no uniform understanding of it. **Therefore, this 2nd paragraph should be deleted.**

### **AM 226 - Ease of repair**

**AT supports this amendment, especially the newly introduced part “compatibility with commonly available tools and spare parts”**

### **AM 242 – sufficient time frames for adaptation and implementation**

Sufficient time frames are an essential prerequisite for a functioning implementation of the requirements of the regulation without the risk of economic damage, especially for SMEs.



August 2023

# German comments on the ESPR amendments adopted by the European Parliament

## General remarks

Through the ESPR, the EU can become a pioneer in setting rules for sustainable products and a functioning circular economy. We can thus make a significant contribution both to achieving the goals of the Green Deal and to improving security of supply. We must continue to work vigorously to increase energy and material efficiency and reduce carbon and environmental footprints. Our products must be as durable, material-saving, less carbon intensive, repairable, reusable and recyclable as possible. Germany has therefore worked hard to introduce a ban on the destruction of unsold goods directly in the ESPR. The compromise reached in the council on this will curb resource destruction while addressing the needs of affected businesses.

By additionally including recycling, remanufacturing and material recovery as independent product aspects in each case, the circular economy concept has been strengthened in the ESPR. The introduction of a product parameter for lightweight construction, supplemented by the aspects of recycling and circular economy, will in future create a meaningful system according to which ecodesign requirements can contribute to improving material efficiency or reducing material consumption. Further, requiring and disclosing information on the carbon intensity of products will support additionally the transformation of production processes in the EU.

We therefore advocate to hold high the compromises reached in the Council. This applies especially to the foreseen changes in **Article 20 and 20a** of the EP Proposal. We support to stay with the reached compromise of the Council regarding **Article 20aa to 20d** ESPR.

Germany has always favored ambitious targets and a speedy conclusion of the negotiations. Nevertheless, we see further need for improvement in the context of the upcoming negotiations with the European Parliament and the Commission:

- Germany sees ambitious and effective green public procurement targets as an important lever towards climate neutrality and resource efficiency. That is why DEU expects ambitious and sustainable procurement legislation in the ESPR that sets mandatory requirements for climate protection, sustainability, and the circular economy.
- The question of raw materials and recycling will play an important role in the coming years. If the ESPR wants to truly foster circular economy business models in the common market, simply

concentrating on energy efficiency and repairability of products will not be enough. Therefore, we believe that product design must allow for the non-destructive replacement of product components, resource efficiency as well as the recycling of products and the recovery of the raw materials they contain at the end of the product life cycle. Only that will ensure to make circular products the norm in Europe as envisaged by the ESPR and will be important for implementing a European lead market in circular economy. We therefore strongly support the compromises reached in the Council on **Article 5 para 1 (i), (ia) and (ka)**.

- Orientation towards internationally established standards and definitions for environmentally friendly products.
- Germany considers it necessary to exclude motor vehicles from the scope of the ESPR, as they are already sufficiently regulated elsewhere.
- Due to the broad scope of the ESPR, a significant additional workload for customs authorities and corresponding additional personnel expenses are predicted. In the technical design, therefore, care will have to be taken to ensure a low-effort procedure for the customs administration, within the framework of which it can properly perform its original tasks.
- In the implementation of the previous ecodesign product requirements, the full savings potential was not exploited for many product groups. We therefore expects that the Trilogue parties will also examine the implementation of modern concepts such as that of a frontrunner approach as part of the evaluation of the ESPR.
- Germany considers it important to ensure that the consequences of the ESPR Trilogue negotiations regarding the definition of the term “*substances of concern*” on parallel legislative processes are reflected and taken into account in the discussion. The term “*substances of concern*” as defined under the ESPR is referenced in the Commission proposals for the **Packaging and Packaging Waste Regulation (COM(2022) 677 final)**, for the **Toy Safety Regulation (COM(2023) 462 final)** and for the **Regulation on circularity requirements for vehicle design and the management of end-of-life vehicles (COM(2023) 451)**. The term “*substances of concern*” is also defined by the Commission in the Delegated Act supplementing the **Corporate Social Responsibility Directive** as regards sustainability reporting standards (**C(2023) 5303 final**). Also, in position regarding the Commission proposal for the Construction Products Regulation, the Parliament proposes to add requirements for substances of concern without defining the term (P9\_TA(2023)0253).

## Remarks on the EP proposal

We would like to thank the ESP Presidency for the opportunity to comment on the proposed amendments to the ESPR by the European Parliament and comment as follows:

In our view, the European Parliament's draft contains aspects that are worthy of support as well as proposals that we see critically. In principle, we welcome the clarifications with regard to important aspects of resource protection, among others product recycling. Furthermore, we support the addressing of second-hand products, as they will play a crucial role on the path to a true circular economy.

## Amendment 9

We generally support legal certainty regarding second-hand products. However, the proposal will not be enforceable for market surveillance and also will lead to confusion for consumers and end-users as it will allow two different grades of second-hand products (compliant third country products and possibly non-compliant EU-products).

## Amendment 13

We support this amendment which adds **“packaging”** to the types of Union legislation that the ESPR should be consistent with.

## Amendment 20

Since the DPP shall also be available for refurbishers and recyclers, its availability needs to be ensured beyond the expected lifetime of a specific product so the information it contains can be of use for those economic operators.

## Amendment 17

We welcome the additions in **Recital 23**: *“Essential information relating to the health, safety and rights of end-users should always be provided to consumers by physical means and be accessible through a data carrier included on the product”*. These requirements are being called for in different product safety legislations.

## Amendment 32

We welcome extending the wording of **Recital 46** to *„electrical and electronic equipment and devices“*.

## Amendment 46

We support the addition in principle *“in order to make sustainable products the norm and to reduce their overall environmental footprint over their lifecycle”*. Since reducing both the carbon and environmental footprint play a crucial role in achieving the EU climate goals, we would replace the term *“footprint”* with *“impact”*.

## Amendment 48

We support this addition in principle, as it is in line with the general approach to **Article 4**.

#### Amendment 53

We welcome the adaptation of the definition, as it makes the definition clearer and differentiates it better from **definition (16) 'remanufacturing'**. It seems to resemble the feedback from the European Refurbishment Association.

#### Amendment 57

We welcome the addition in the definition.

#### Amendment 58

Since quantification as well as environmental impact of relevant materials and substances are being covered by the environmental footprint, an additional requirement for a "*material footprint*" would not have the same informative value and would burden additionally the reporting efforts of enterprises.

#### Amendment 59

We reject the proposed deletion "*and is identified in accordance with Article 59(1)*". The wording of the Commission proposal and the Council's general approach should be maintained.

#### Amendment 60

We support the proposal to add substances regulated under the **POP Regulation** to the scope of substances of concern. The addition could be relevant in the future, e.g. for persistent substances that are no longer used in the EU and will therefore not have a harmonised classification under **CLP**, but will be included in **Annex I of the POP Regulation**. However, Germany suggests to have a separate point for those substances to allow specific references.

#### Amendment 61

This amendment remains partially unclear. Germany asks for further clarification which substances currently regulated in **Annex XVII of Regulation 1907/2006** should be included or excluded by the term "*specific restricted substances*"? Who determines which substances should be included or excluded and on which basis?

#### Amendment 62

We support the inclusion of „*refurbishing*“ in the enumeration of **Article 2 para1 point 35**.

## Amendment 70

We welcome the clarification that second-hand products could be exempt from regulations in certain cases to support the second-hand market. However, the proposal will not be enforceable for market surveillance and also will lead to confusion for consumers and end-users as it will allow two different grades of second-hand products (compliant third country products and possibly non-compliant EU-products) on the market at the same time. Moreover, the property of a 'new product' requiring a conformity assessment is determined by the manufacturer. The 'used' condition would sometimes be very difficult to check by market surveillance. With the proposed exemption of second-hand products, it would be for manufacturers to declare them as such for economic reasons and to circumvent ecodesign regulations, even though the products are new.

## Amendment 76

We consider the clarification to be necessary, since horizontal regulations cannot cover all aspects of a product.

## Amendment 78

In general, we welcome the addition, in order to reduce the reporting burden and increase information transparency for end consumers, we propose to keep only environmental and carbon footprints instead of "*environmental, material and consumption footprints*".

## Amendment 82

In our view, the additions are useful to ensure that all relevant aspects are considered in the impact assessment.

## Amendment 91

We welcome the specific emphasis on the durability and reparability of products. The durability and reparability requirements introduced with a new **Article 5a** are, in our view, important aspects that future regulations should include. With respect to the scope of the ESPR, limitations due to safety aspects might be justified.

## Amendment 93

We reject the proposal to allow the restriction of substances of concern in products under the ESPR in case of an unacceptable risk to the human health and the environment. For restrictions relating primarily to chemical safety, it is appropriate to use the restriction procedure under the **REACH Regulation**. Germany suggests to stick to the text in the Council mandate.

## Amendments 95 and 96

We support the EP proposal.

## Amendment 98

The additions regarding a reparability score are very welcome, as we would like to see the rapid introduction of reparability scores on as many products as possible.

## Amendment 99

Germany prefers to stick to the text in the Council mandate that enables the Commission to set thresholds for the application of the information requirement as appropriate. The term “*threshold-based approach*” proposed by the EP remains unclear.

## Amendment 105

We support the proposal to prescribe that certain information needs to be provided to consumers in physical form. However, regarding information relating primarily to the hazards of substances to health or the environment, we consider **Article 6 (3)** sufficient to clarify that labelling requirements under the **CLP Regulation** remain in place irrespective of the information requirements under the ESPR.

## Amendment 106

We particularly welcome the addition „*Information relevant for an informed purchasing decision shall be provided to consumers prior to the purchase of a product.*”, as information provision prior to purchase is in-line with our demands in frame of the revision of the **Cosmetic Products Regulation**.

## Amendment 118

We support the proposal to require that product passports shall be interoperable with existing product databases such as the SCIP database to avoid unnecessary burdens on the economic operators and to use existing information.

## Amendment 128

We support that the working plan shall be updated on a regular basis.



#### Amendment 137

We support that the initiative to develop specific product regulations can come from within the Ecodesign Forum.

#### Amendment 156

In our view the introduction of „percentage“ in addition to the naming of the number of products that have been destroyed or being disposed of otherwise does not seem to be helpful. The obligation to inform on the percentage may allow deeper insights into trade secrets as well as disadvantage small and medium sized enterprises in relation to bigger enterprises because of the seemingly very small ‘share’ of destroyed products of the big players. In addition, it is hardly possible to make sure that the notified percentage can be relied on.

#### Amendment 157

We support the additional entry of „donations“ in the suggested manner. We would like to flag that the problem of turnover tax very often may constitute a barrier to donations. The mentioning of „donations“ should be named separately at the end of the paragraph as donation is not part of the cited wording of **Article 4 of the Waste Framework Directive**.

#### Amendment 161

We support the obligation in introduce a report about destruction of goods by the COM.

#### Amendment 162

In our opinion it is unclear, why „hygiene“ is not covered by safety or health and needs to be introduced as a separate matter. Is there a definition of „hygiene“ in existing EU law that may be referred to?

#### Amendment 163

We welcome the amendment.

#### Amendment 164

We do not support the amendment as in our understanding a purpose for a product may be a reason for its removal.

#### Amendment 166

We do not support this amendment. Reason: see above (Amendment 156)

#### Amendment 168

Except for the widening of prohibition of destruction to electric and electronic goods and some minor aspects, we have the opinion that the EP Proposal has a less ambitious level compared to the reached compromise of the Council. We support to stay with the Council proposal.

#### Amendment 175 and 219

These proposals need proper evaluation since they might interfere with the **Market Surveillance Regulation**.

#### Amendment 183

We support the proposal to add an obligation of suppliers of substances, mixtures and articles to provide relevant information to the economic operator free of charge. The information requirements under **REACH** are not complete: **Article 33 (1) REACH** only applies to substances on the REACH candidate list, i.e. substances that meet the criteria laid down in **Article 57** and have been identified in accordance with **Article 59 (1) REACH**. **Article 31 (1) REACH** only applies to substances and mixtures. However, we ask for clarification of the term „*relevant information*“ as regards, inter alia, the handling of confidential business information.

#### Amendment 186 to 189

We oppose the EP's deletions because we believe the examples and regulations enumerated in **Article 29** are very reasonable.

#### Amendment 198

We reject the EP amendment because it is unclear what "*significantly*" should mean. In our view, no update should lead to any deterioration of product performance with respect to the requirements in **Article 4**.

#### Amendment 199

We propose instead "*repeal the implementing acts*" to "*adjust the implementing acts accordingly*": "*When the reference of a harmonized standard is published in the Official Journal of the European Union, the Commission shall repeal the implementing acts or parts thereof containing the same ecodesign requirements*".

## Amendment 219

We support the additions to **Article 68** as they lead to more legal certainty.

## Amendment 223

### Article 69a para 1

In our view, if the specific design of certain goods does not comply with ecodesign requirements those goods should be considered to be in nonconformity with the sales contract, with the result that buyers are entitled to legal warranty claims against sellers. We ask the legal service of the Council, if in this regard there are any legal uncertainties for customers to enforce their rights. At the same time, we would like to ask for coherence between the ESPR and the **Right to Repair Directive**.

### Article 69a para 2

We do not agree with **Amendment 223** concerning the proposed **Article 69a (2)**. A trader, who is not the producer, does not have the capacity to check any product with regard to its compliance with Union product legislation. For example, the **Ecodesign Regulation** provides for a clear set of responsibilities with regards to manufacturers (**Article 21**), importers (**Article 23**), distributors (**Article 24**) and dealers (**Article 25**). This finely balanced regime must not be circumvented.

## Amendments 226 and 228

We welcome the amendment *"while taking into consideration product safety"*.

## Amendment 227

We support the *"design for recycling"* amendment.

## Amendment 231 to 238

We support the EP proposals

## **LV written comments on the ESPR amendments adopted by the European Parliament**

### **Amendment 131 Proposal for a regulation Article 16 – paragraph 2 – subparagraph 2 b (new)**

Latvia doubts the necessity to define specific products in the Regulation to be included in the Commission's next working plan, considering the horizontal nature of the Ecodesign Regulation. Additionally, according to Article 16, paragraph 2, the Regulation already determines that the priority products will be defined not only in the working plan, but also in the implementing act that will establish the working plan. Therefore, specifying priority products in the Regulation might be redundant.

### **Amendment 132 Proposal for a regulation Article 16 – paragraph 2 – subparagraph 2 c (new)**

Similarly, as with Article 16, paragraph 2, subparagraph 2 b, also regarding Amendment 132, Latvia points out that creation of a separate subparagraph dedicated to a specific product within a horizontal regulation is unnecessary. We especially draw attention to the fact that cement is a construction product, and it should be appropriately regulated within the framework of the Construction Products Regulation.

### **Amendment 168 Proposal for a regulation Article 20 a (new)**

Latvia expresses its concerns about Article 20 a, paragraph 1, of the proposal of the European Parliament and believes that it may have a negative impact on the further adoption of the Ecodesign Regulation, considering that Chapter VI has been a tough compromise within the Council's position. We believe that, within the framework of Chapter VI, it is necessary to adhere to the wording of the compromise approved by the Council. We are particularly concerned about the provision in Article 20 a of the European Parliament that the ban on the destruction of unsold goods would be applied not only to textiles, but also to footwear and electrical and electronic equipment. While we are aware of the negative environmental impact of these product categories, their addition would require more extensive justification and discussion.

We also express our concern and cannot agree with the European Parliament's Article 20 a, paragraph 1, that the non-destruction obligation is introduced one year after the regulation has entered into force. This constitutes a significant reduction of the timeframe compared to the Council's proposal of three years. Such a drastic reduction curtails the transition period available for entrepreneurs to adapt accordingly.

### **Amendment 219 Proposal for a regulation Article 68 – paragraph 1 b (new)**

In case of violations of the Regulation, confiscation is mentioned as one of the recommended penalty mechanisms that Member States must be able to apply (Article 68, paragraph 1 b, subparagraph b of the European Parliament's proposal). Latvia expresses its concerns about the compatibility of such a penalty mechanism with Latvia's legislation and legal system. In Latvia, confiscation is applicable only in accordance with the Criminal Law – specifically in cases involving criminal violations, and confiscation can only be a result of court proceedings. It will not apply to violations of the Ecodesign Regulation.

Article 68, paragraph 1b, subparagraph c of the proposal of the European Parliament stipulates that Member States must be able to exclude natural or legal persons from public procurement procedures. In this context, Latvia expresses reservation concerning the practical application of such a requirement, considering that the EU companies can also participate in procurement

procedures in other Member States. Practically it means that information regarding violations should be available to all Member States. Therefore, the introduction of such a penalty mechanism could require the establishment of a single registry or other equivalent instrument for the purpose of sharing information related to companies that contravene the requirements of the Ecodesign Regulation. In Latvia's opinion, it will not be possible to apply this particular penalty mechanism in Member States without such an exchange of information on identified violations.

Additionally, a more detailed explanation is needed regarding Article 68, paragraph 1 b, subparagraph c of the European Parliament's proposal in the context of the EU public procurement regulation. The EU public procurement directives exhaustively distinct grounds for the exclusion of candidates and bidders, while also governing other aspects related to their application (such as restoration of credibility, among others). Consequently, if this requirement is to be introduced, its implementation should be clarified in the context of the existing EU public procurement directives, paying attention to the necessity for its integration into national legislation, the practical and legal aspects underpinning the rationale for such exclusion, the duration of the exclusion period in question, and potential applicability of credibility restoration measures, among other pertinent considerations.

## DK's comments on the European Parliament's proposed amendments to ESPR

Date  
18-08-2023

### General remarks

We wish Spain a successful Presidency and look forward to work further on this important file. We are still analysing some of the European Parliament's (EP's) proposed amendments. Below, you will find our provisional remarks.

### Amendments discussed at the WP of 14 July

#### ***Empowerments to adopt delegated acts***

Amendment 9 to recital 12a and amendment 70 to Article 4(1)(1a): We are *not* in favor of the proposed amendments, as we are worried about the consequences of giving the Commission the possibility to exempt imported second hand products from ecodesign requirements. In particular, we see a significant risk for creating a loophole and that the Regulation will depart from the EU's approach to the internal market.

- Amendment 72 to Article 4(3)(ca): We are in general flexible in terms of strengthening the wording on repair and reparability. It is our understanding that the EP's proposed amendment is covered by product aspects in article 5(1), e.g. point (e) "reparability" and might supplement amendments proposed by the Council. To ensure consistency, we suggest that additional wording on the methodology to assess the reparability of a product, define the classes of performance and product categories to which the reparability score shall apply is added in Article 5 (for example in relation to the Council's proposed amendments in paragraph 1a) or in Annex I or Annex II.

#### ***Ecodesign requirements***

- Amendment 86 to Article 5(5)(c): As mentioned above, we find that the EP's proposed amendments 9 and 70 regarding the empowerment of the Commission to exempt imported second hand products problematic due to the risk of creating loopholes and the changed approach to the internal market.

#### ***Durability and reparability of products***

- Amendment 91 to Article 5a: We find it promising that the EP appears to share similar concerns to those in the Council's general approach, including strengthening requirements regarding reparability and premature obsolescence. We are flexible in terms of strengthening the wording on these

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subjects. It is our understanding that the amendments are covered by the product aspects in Article 5(1) such as point a) “durability” and point e) “reparability” and might supplement amendments proposed by the Council. We would suggest that any additional wording would be added in Article 5 (for example in relation to the Councils proposed amendments in paragraph 1a) or in Annex I or Annex II.

### **Information requirements**

- Amendment 98 to Article 7(4a): As mentioned above, we find it promising that the EP appears to share several concerns with the general approach, including strengthening requirements regarding reparability. We are flexible in terms of strengthening the wording on this subject. It is our understanding that the amendments are covered by the product aspects in Article 5(1). To ensure consistency in the regulation, additional wording regarding the reparability score should be well coordinated with related text in the regulation, e.g. Article 5, 7, 14 and Annex I and II.

### **Prioritisation and planning**

- In general, we strongly prefer the Council's general approach, which strengthens the Member States' influence by proposing that the working plan should be adopted by an implementing act and setting requirements for reporting on the implementation of the working plans.
- Amendment 28 to recital 42a and amendment 132 to Article 16(2)(2c): We find the amendments regarding cement problematic, as the work to draw up new standards for cement under the Construction Products Regulation (CPR), including on environmental properties has started. Initiating regulation on cement under the ESPR while it is under development or completed under CPR would lead to unnecessary duplication of work. Further, if the assessment methods established for declaring environmental properties under the ESPR and CPR differ there is a risk that data cannot be used complementarily or aggregated for the declaration of environmental characteristics of construction products partly based on cement.

### **Self-regulation measures**

- Amendment 138 to Article 18(1), amendment 142-145 to Article 18(2)(1)(da), Article 18(2)(1)(db), Article 18(2)(2) and Article 18(3)(1)( introductory part), amendment 148 to Article 18(4), and amendment 149 to Article 18(5): We continue to be critical towards the efficiency of self-regulation measures and are in principle positive towards adjustments that would contribute to strengthening the article and supplement the general approach . In a process of rephrasing, we further propose to clarify that self-regulating measures should include requirements to establish digital product passports.

### **Destruction of unsold consumer products**



- Amendment 156 to Article 20(1)(1)(a): We prefer the Council general approach adding weight instead of percentage. Economic operators will typically already have the weight as part of discarding the product, which is not the case of percentage.
- Amendment 168 to Article 20a: Our priority is to ensure an ambitious approach. This includes the prevention of circumvention of the disclosure requirement and the prohibition on destruction of unsold consumer products. This could be done by maintaining the Council's General Approach to article 20(1) and obligating economic operators to have internal processes in place that show their compliance with the requirement.
  - Regarding the disclosure requirement we would also prefer the clarifications from the Council's general approach adding the possibility to fulfill the requirement by the annual sustainability reporting obligation in the Directive 2013/34/EU amended by Directive 2022/2464.
  - Further, recognising that the economic operators should have sufficient time to adjust to new requirements, we prefer the amendments from the Council. We would also like to highlight that we support exempting SMEs from the provisions of transparency and prohibition against destruction unless used for circumventing the rules.

#### ***Obligations of online marketplaces and online search engines***

- We are still of the opinion that online marketplaces should be subject to a more proactive responsibility, but recognise that neither the Councils nor the EPs amendments addresses the issue.
- Regarding EPs proposed amendments 185-189 to Article 29(title)-29(2), we prefer the amendments from the Council, because they generally specify the relevant Articles in The Digital Services Act (DSA) and therefor more directly addresses how to comply with the Regulation.
- Amendment 190 to Article 29(3): We prefer the Council's amendments, because it will consolidate the possibility for the Market Surveillance Authorities to intervene, when non-compliant products are marketed to consumers via an online marketplace. It sets out a clear frame that the non-compliant product is considered illegal content and therefore should be removed without any investigation or assessments done by the online marketplace (and hence the use of Article 9 of the DSA rather than the confinement of Article 8). The limits of Article 8 of the DSA will of course apply to the cases anyway. In general, we would prefer that these provisions covers as broadly as possible.
- With regard to the EP's amendment 192 to Article 29(5)(1) we are in favour, because it addresses the importance of a direct and rapid communication option from consumers.

#### ***Penalties***

- Amendment 218 to Article 68(1a) and Amendment 219 to Article 68(1b): We are positive towards laying down criteria for determining penalties as proposed





by the EP. However, we do not find that the financial strength of the natural or legal person held responsible are relevant from a market surveillance perspective, cf. Article 68(1a)(c).

### **Evaluation**

- Amendment 222 to Article 69(1): We are not in favour of reducing the evaluation period from 8 to 6 years, as it would limit the possibility to assess the efficiency of the regulation. We believe that 8 years would be appropriate allowing the regulation to have effect before assessing it.
- Further, we have a negative scrutiny reservation on the inclusion of social sustainability and due diligence in the evaluation criteria. We understood from previous discussions with the Commission that including social sustainability and due diligence requirements within the scope of the ESPR would require rethinking the current set-up. In addition, the effect of the Corporate Sustainability Due Diligence Directive should first be thoroughly assessed.

### **Other comments**

#### ***Subject matter and scope, Article 1***

In general, we support that the EP has kept a wider scope of the regulation, which we find more appropriate and ensures that the framework will be future proof. This includes amongst others that the EP has not exempted vehicles in Article 1(2)(h).

At the same time, we strongly prefer the Council's clear distinction between the ESPR and the chemical regulation and product safety regulation, and are not supportive of the EPs proposal to introduce risk assessments of chemicals under the ESPR.

#### ***Ecodesign requirements and exemptions for products used for defence or national security, Article 5***

The EPs proposal does not include exemptions regarding products used for defence or national security. On this point we strongly prefer the amendments in the Council's general approach.

#### ***Information requirements, Article 7***

We strongly prefer the Council's approach for article 7(6)(introductory part), making clear that the required information following an information requirement shall be provided in the product passport when available.

#### ***Customs control relating to the product passport, Article 13***

We would prefer that Member States are given full flexibility with regard to placing the responsibility for performing the control of the product passport. We propose that the wording is rephrased replacing "customs authorities" with "competent authorities". We can as a minimum support the Council's proposed amendments to Article 13, i.e. adjustments limiting the Commission's possibilities to establish



requirements for customs control, rather than the Commission's proposal and the EP's version. However, we still find the wording problematic.

**Green public procurement, Article 58**

We strongly prefer the Council's general approach. Our main priorities are:

- to ensure that the requirements will be minimum requirements allowing the Member States to maintain or set more ambitious procurement requirements nationally
- that award criteria is deleted from the text and
- to ensure sufficient Member State involvement in the development of the requirements

However, we welcome the focus on green competencies expressed in the EPs amendment 201 to Article 58(1a) stating that that "*Member States, together with the Commission, shall provide assistance to national contracting authorities to upskill and reskill staff in charge of green public procurement.*" Although, we find it unclear how these supporting activities will work in practice.

**Market surveillance, Article 59-62**

We find it essential to ensure effective enforcement of this regulation across Member States in order both to sustain a level playing field for businesses as well as to fulfil the intended political effect of the ESPR. On that ground, we support EPs amendment 207 to Article 59(3a), which stresses the importance of allocating sufficient amounts of resources to market surveillance across the Union.

We are in general flexible in terms of strengthening the wording regarding market surveillance in article 59-62. However, with regard to the EPs amendment 203 to Article 59(1)(1) we prefer the amendments from the Council as the alignment with the national market surveillance strategy seems preferable.

Amendment 42: We consider it highly important that the Commission has the right to intervene in order to ensure adequate market surveillance in Member States. However, we also consider it important that the opportunity to conduct an ambitious, flexible and risk-based market surveillance is maintained at the same time. We are flexible in terms of strengthening the wording on this subject.

**Methods for setting ecodesign requirements, Recital 19**

We are flexible with regard to the amendment to Recital 19 that is proposed by the Council. This concerns in particular the text about modelling the energy mix used in the manufacturing processes, where guarantees of origin should be taken into account. We are concerned that guarantees of origin could be a challenge in relation to principles of comparability and aggregatability of data and use of data in the supply chain, as well as in relation to ESPR's aim of reducing the negative environmental impact of products throughout their life cycle and improving the internal market. .