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**WK 15058/2022 INIT**

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**MEETING DOCUMENT**

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**From:** European Commission  
**To:** Delegations

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**Subject:** Presentation from the Commission: Proposal for the Ecodesign for Sustainable Products Regulation (ESPR)

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# Proposal for the Ecodesign for Sustainable Products Regulation (ESPR)

WP 7 November



# Final provisions (Ch XIV)

- Art. 68 on penalties to be imposed by MS for infringements of ESPR:
  - Same wording as current Art. 20 of Dir 2009/125 → effective, proportionate and dissuasive (standard text) + taking into account the extent of non-compliance and number non-complying products: important for single market and effective deterrent
  - MS report on nature and severity of penalties via ICSMS → Commission publishes biannual report (Art. 61)
- Art 69 on evaluation:
  - In light of aims stated in Art. 1(1)
  - 8 years after date of application → appropriate as ESPR is a framework legislation where the aggregated effect will become clear only once delegated act apply

# Final provisions (Ch XIV) – cont.

Art. 70: ED 2009/125 repealed; measures under ED 2009/125 remain.

Transition provisions ensure proper functioning of remaining ED measures until amended/ repealed by ESPR provisions

§3 provisions of ED 2009/125 which continue to have full effect in the context of applying existing Ed measures:

Art. 1 (3): products only for use in means of transport remain excluded (e.g: motors designed only for ships); Art. 2. definitions (e.g. “components” continue not to be considered ErPs); Arts. 3 (1) A (4) responsibilities of MS and importers; Art 5 CE marking; Art.8 continuation of conformity assessment procedures Art. 9 (3) presumption conformity with ED of products in so far these requirements have been met by ecolabel; Art.10 procedure when harmonized standards are not satisfactory) and related Annexes (IV, VI and VI).

§4 lists provisions of EPSR that apply to existing 2009/125 measures as from entry into force.

Art. 3: ensuring free movement; Art. 33: improved circumvention; Arts 59-65: Market surveillance and Safeguard provisions.

Art 71: sets entry into force 20 days after publication (standard default regime); kicks off some deadlines “ad hoc” transition periods to be foreseen under DAs where needed/

# Market surveillance (Ch XI)

## **Increased enforcement efforts needed to deliver expected results (see PO 7 of IA)**

- Proposal contains dedicated planning, coordination and support measures to boost ecodesign market surveillance and safeguard the ESPR's contributions to EU environmental, energy and climate objectives
- Under current framework, significant share of the expected energy savings are lost due to non-compliance
- Need to create stronger deterrent, especially in view of the increase in scope and ambition

## **Proposed approach: targeted enhancements compared to the Reg. 2019/1020**

- Provisions build on and are coherent with the new Market Surveillance Regulation (2019/1020) and
- Focus on improving **planning, coordination and support** to create transparency and accountability and to help Member States in increasing efforts
- **Increased enforcement ambition reflects ecodesign's central role in achieving EU energy, climate and environmental objectives**

# Art. 59: Action plans

- Proposes two yearly action plans which need to be based on objective criteria and commonly defined priorities:
  - timeline is aligned with that of the **overarching national market surveillance strategy** (Art. 13 MSR), so that every other time, the action plan can be integrated into it if preferred
  - increased frequency and more focused scope allows action plans to be more detailed on the planned actions, better ensuring sufficient action is taking and increasing accountability
  - more detailed plans provide a better basis for planning and coordination in the ADCO and allows Commission to better target support measures

# Art. 60: Minimum numbers of checks

- **Fall-back option:** to be used only in case levels of non-compliance remain too high despite the proposed planning, coordination and support measures
  - If used, the minima should be differentiated per Member State based e.g. based on the amount of products sold in a Member State per year or the amount of different economic operators selling products
  - In addition, where structurally no checks are performed an horizontally applicable minimum could be set for all Member States (cf. vehicles legislation)
- + right to recover costs for checking non-compliant products guaranteed (cf. Art. 15 MSR where this is a possibility)

# Art. 61: Reporting and benchmarking

- Two yearly report to take stock of levels of checks, non-compliance and implementation of action plans
- Based on information in ICSMS (para 1 provides obligation to upload info on nature and severity of penalties in ICSMS, art. 34(4) MSR does it for in-depth checks of compliance)
- Should include benchmarks on frequency of checks and severity of penalties imposed
- Should boost transparency and accountability, incentivise increased action.

# Art. 62: Coordination and support

- Coordination:
  - increased role and support for the ADCO
  - Commission to organize common trainings and elaborate guidelines to ensure harmonized implementation
- Support:
  - Commission to organize and support for joint projects and investments
  - Support planned based on priorities identified in the ADCO
  - Financial support based on existing budget lines

# Market surveillance procedures (Ch XII)

- Specifies a sequence of procedures aimed at ensuring that appropriate and proportionate surveillance and enforcement action is undertaken across the EU
- To be read in conjunction with Articles **16, 18, 19 and 20** of Regulation (EU) 2019/1020 which provide more detail, for all sectors, on:
  - circumstances where corrective action is to be taken by MSAs (art. 16)
  - procedural rights of economic operators (art. 18)
  - what to do in case of products presenting a serious risk (art. 19+20)

# Art 63: Procedure for non-compliant products

- Proposed procedures follows reference provision of the NLF:
  - sufficient reason to believe that a product **presents a risk** (see next slide)? → evaluation
  - finds non-compliance during evaluation? → require the relevant economic operator to take appropriate and proportionate corrective action (to be taken throughout EU)
  - (non-compliance not restricted to national territory? → inform COM and other MSs)
  - no corrective action or the non-compliance persists? → prohibit or restrict the making available, withdraw or to recall product (+ inform COM and other MSs)
  - no objection within three months? → other MS to also take restrictive measures

# Art 63: Procedure for non-compliant products – cont.

- Art 2(58) and (59) provide definitions essential to the procedure:
  - *‘product presenting a risk’ means a product that, by not complying with a requirement set out in or pursuant to this Regulation other than those listed in Article 65(1) [i.e. formal non-compliances], may adversely affect the environment or other public interests protected by that requirement;*
- Different from definition in Regulation 2019/1020 (art. 2(19)) to take account of the specific nature of ecodesign requirements:
  - to ensure that all non-compliances with ecodesign requirements, except for formal requirements, lead to a product being considered to ‘present a risk’ and trigger MSA evaluation;
  - there should not be the need for a non-compliance to have ‘the potential to affect adversely [the environment] to a degree which goes beyond that considered reasonable and acceptable’;
  - ecodesign as such sets the degree of adverse effect considered acceptable

# Art 63: Procedure for non-compliant products – cont.

- Art 2(58) and (59) provide definitions essential to the procedure:
  - *‘product presenting a **serious risk**’ means a product presenting a risk for which, based on an assessment, **the degree of the relevant non-compliance or the associated harm** is considered to require rapid intervention by the market surveillance authorities, including cases where the effects of the non-compliance are not immediate*
- Different from definition in Regulation 2019/1020 (art. 2(20)) to take account of the specific nature of ecodesign requirements:
  - standard definition also takes account of ‘the probability of occurrence of a hazard causing harm’
  - not relevant to ecodesign requirement, which do not address product related hazards but try to improve generally their environmental performance

## Art 64 (+ art. 63(5) to (8)): Safeguard procedure

- Ensures necessary restrictions are extended to all Member States, to ensure an equivalent level of protection throughout the EU:
  - where MSAs take restrictive action based on art. 63(4), they need to inform COM and other MSs of that action and its grounds
  - no objection within three months? → other MS to also take restrictive measures
- Allows other MSs and COM to take a position on national measures restricting free movement:
  - objections raised within three months? → COM consults with Member States and economic operators concerned → COM decides by means of an implementing act whether the national measure is justified
- 13 • national measure is justified? → other MS to also take restrictive measures

## Art 65: Procedure for formal non-compliances

- Sets out a list of non-compliance that should be considered 'formal' by MSAs
- Aligned with NLF, with addition of other specific formal non-compliances
- In dealing with such non-compliance, a simplified procedure compared to Art 63 and 64 should be used
- Reflects principle of proportionality

## Chapter XI – Market Surveillance (ESPR) in line with provisions of Regulation (EU) 2019/1020

Proposal for the Ecodesign for Sustainable Products Regulation (ESPR)	Regulation (EU) 2019/1020	Enhancements compared to reference provisions set out in Regulation (EU) 2019/1020
<b>Art. 59:</b> Market surveillance action plans	<b>Art. 13:</b> National market surveillance strategies	Two yearly action plan build on and is consistent with the overarching national market surveillance strategy (deadline aligned every other time)
<b>Art. 60:</b> Minimum number of checks	<b>Art 11:</b> Activities of MSAs <b>Art 15:</b> Recovery of costs by market surveillance authorities	Art. 60(1): Goes beyond Article 11(4) of the 2019/1020, which is about ' <u>criteria for determination</u> of the frequency of checks' Art. 60(2): Goes beyond Art. 15 of 2019/1020, where the right of MSA to recover costs is only an option
<b>Art. 61:</b> Reporting and benchmarking	<b>Art 34:</b> Information and communication system (ICSMS)	Creates obligation to upload information about the severity of penalties imposed, in addition to info required in Art. 34 2019/1020
<b>Art. 62:</b> Market surveillance coordination and support	<b>Art. 30:</b> Composition and functioning of the network (UPCN) <b>Art. 32:</b> Role and tasks of administrative cooperation groups	Specific tasks for the ADCO to help implement measures in ESPR, which are consistent with the role of the ADCO described in 2019/1020

## Chapter XII – Safeguard Procedures (ESPR) in line with provisions of Decision 768/2008 (NLF)

Proposal for the Ecodesign for Sustainable Products Regulation (ESPR)	Decision 768/2008 (NLF)	Enhancements compared to reference provisions set out in Decision 768/2008 (NLF)
<p><b>Art. 63:</b> Procedure for dealing with products presenting a risk at national level</p>	<p><b>Art. R31:</b> Procedure for dealing with products presenting a risk at national level</p>	<ul style="list-style-type: none"> <li>▪ <b>Art 63 (7) - 2<sup>nd</sup> sentence</b> → “Measures may specify a period longer or shorter than three months in order to take account of the specificities of the products or requirements concerned.”</li> </ul>

### Art 2(58) and (59) of the ESPR provide definitions essential to the procedure:

*‘product presenting a risk’ means a product that, **by not complying with a requirement set out in or pursuant to this Regulation other than those listed in Article 65(1)** [i.e. formal non-compliances], may adversely affect the environment or other public interests protected by that requirement.*

*‘product presenting a **serious risk**’ means a product presenting a risk for which, based on an assessment, **the degree of the relevant non-compliance or the associated harm** is considered to require rapid intervention by the market surveillance authorities, including cases where the effects of the non-compliance are not immediate.*

The definitions are different from the definitions in Regulation 2019/1020 (art. 2(20)) to take account of the specific nature of ecodesign requirements

## Chapter XII – Safeguard Procedures (ESPR) in line with provisions of Decision 768/2008 (NLF)

Proposal for the Ecodesign for Sustainable Products Regulation (ESPR)	Decision 768/2008 (NLF)	Enhancements compared to reference provisions set out in Decision 768/2008 (NLF)
<p><b>Art. 64:</b> Union safeguard procedure</p>	<p><b>Art. R32:</b> Community safeguard procedure</p>	<ul style="list-style-type: none"> <li>▪ <b>Art 64 (1)</b> – “That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3).”</li> <li>▪ <b>Inclusion of 64 (4)</b></li> </ul>
<p><b>Art. 65:</b> Formal non-compliance</p>	<p><b>Art. R34:</b> Formal non-compliance</p>	<p><b><u>Inclusion of:</u></b></p> <ul style="list-style-type: none"> <li>• <b>Art. 65 (c)</b> → the identification number of the notified body has been affixed in violation of Article 39 or has not been affixed where required</li> <li>• <b>Art. 65 (g)</b> → the information referred to in Article 21(6) or Article 23(3) is absent, false or incomplete;</li> <li>• <b>Art. 65 (h)</b> → any other administrative requirement provided for in Article 21 or Article 23 or in the applicable delegated act adopted pursuant to Article 4, is not fulfilled.</li> </ul>

## Chapter XIV – Final Provisions

Proposal for the Ecodesign for Sustainable Products Regulation (ESPR)	Directive 2009/125
<b>Art. 68: Penalties</b>	<ul style="list-style-type: none"> <li>• Same wording as current Art. 20 of Dir 2009/125</li> </ul>
<b>Art. 69: Evaluation</b>	<ul style="list-style-type: none"> <li>• In light of aims stated in Art. 1(1)</li> <li>• 8 years after date of application → appropriate as ESPR is a framework legislation where the aggregated effect will become clear only once delegated act apply</li> </ul>
<b>Art. 70: Repeal and transitional provisions</b>	<ul style="list-style-type: none"> <li>• ED 2009/125 repealed; measures under ED 2009/125 remain.</li> <li>• Transition provisions ensure proper functioning of remaining ED measures until amended/ repealed by ESPR provisions</li> <li>• §3 provisions of ED 2009/125 which continue to have full effect in the context of applying existing Ed measures:               <ul style="list-style-type: none"> <li>• Art. 1 (3): products only for use in means of transport remain excluded (e.g: motors designed only for ships);</li> <li>• Art. 2. definitions (e.g. “components” continue not to considered ErPs);</li> <li>• Arts. 3 (1) A (4) responsibilities of MS and importers;</li> <li>• Art 5 CE marking;</li> <li>• Art.8 continuation of conformity assessment procedures;</li> <li>• Art. 9 (3) presumption conformity with ED of products in so far these requirements have been met by ecolabel;</li> <li>• Art.10 procedure when harmonized standards are not satisfactory) and related Annexes (IV, VI and VI).</li> </ul> </li> <li>• §4 lists provisions of EPSR that apply to existing 2009/125 measures as from entry into force.</li> <li>• Art. 3: ensuring free movement; Art. 33: improved circumvention; Arts 59-65: Market surveillance and Safeguard provisions.</li> </ul>
<b>Art. 71: Entry into force</b>	<p>Sets entry into force 20 days after publication (standard default regime); kicks off some deadlines “ad hoc” transition periods to be foreseen under DAs where needed.</p>

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