

Denmark's preliminary written remarks to REV2 of the proposal for an ecodesign regulation

Date
03-03-2023

Denmark would like to thank the Swedish Presidency for an ambitious approach and dedicated work with REV2 of the proposal for ESPR. We are glad to see that some of our previous comments have been included in the latest revision of the proposal.

We are still analysing the revised proposal and has a parliamentary and general scrutiny reservation. We look forward to constructive negotiations. You will find our provisional remarks on the following pages.

We are at your disposal if the Presidency should have comments and/or questions.

Scope and Free Movement

The scope (Article 1)

- *Requirements to the effectiveness of software in itself?*

We find it important that the frame of the regulation is far-sighted and takes into account the technical development and the influence that digital content have on the efficiency and performance of products. Therefore, we welcome the adjustments in recital 11 in REV2 and presented by the Presidency at the Working Party on the 17th of February. In particular, we welcome that digital content such as software that is an integral part of physical products is also included in the scope. Further, we see a potential of looking at the effectiveness of software in itself, which would probably require that software is considered a physical product or something in between a physical product and a service.

- *ESPR and the construction product regulation (CPR)*

We support that ESPR “as a safety net” that can supplement product specific legislation with further requirements on environmental sustainability. In regards of construction products, we recognise the attempt to clarify the distinction between which products that can be expected to be regulated under ESPR and which products that can be expected to be regulated under CPR. However, we still find it unclear which regulation will regulate certain construction products such as cement and steel. This could be specified in recital 43.

Definitions

Definition of Substances of Concern (Article 2(28))

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We support the scope of article 2(28) defining Substances of Concern. At the same time, it is important to ensure that substances that contribute to a circular economy and are defined as Substances of Concern can be used by derogation. Enzymes classified as respiratory sensitizers do fall under the definition of Substances of Concern, while positively contributing to the green transition. The issue is recognised in the criteria for the EU-Ecolabel for detergents where enzymes are exempted from the ban on respiratory sensitizers in eco-labelled products.

The positive effects are also recognized in the JRC draft report on product priorities for the first working plan under the ESPR. It recognizes that replacing chemicals with enzymes can reduce water use by 25%^[1]. We would be happy to provide additional examples if needed. Consequently, we suggest introducing a minor change to article 2(28)(b) for respiratory sensitization:

- “respiratory sensitisation category 1 **exempt enzymes**.”

In our comments to article 5(9) you will find an amendment clarifying the definition of substances of concern in article 2(28)(c), and in our comments to article 9(1) we propose to add a new definition on ‘vender lock-in’.

Definition of online marketplace (Article 2(55))

We propose the Presidency to consider the definition of online marketplaces aligned with the definition from the General Product Safety Regulation. Thus, defining a provider of an online marketplace as: ‘provider of an online marketplace’ means a “*provider of an intermediary service using an online interface, which allows consumers to conclude distance contracts with traders for the sale of products*”. Additionally, we suggest defining an online interface as: “online interface” means any software, including a website, part of a website or an application, including mobile application”. We find it important to ensure as much consistency as possible in definitions across different EU-legislations.

Empowerments to the Commission regarding ecodesign requirements

Empowerments to the Commission (Article 4)

Our overall priority is to have an efficient legally sound framework, ensuring Member States influence and the necessary flexibility to account for the specific circumstances of the regulated products groups as well as future technological and scientific developments.

We doubt this would be possible if the framework of the Regulation is to be adjusted to be able to regulate complex objectives such as performance requirements and information requirements with implementing acts. It follows from

^[1] [Ecodesign for Sustainable Products Regulation - preliminary study on new product priorities](#) (draft), p.163



the Interinstitutional agreement on application of article 290 and 291 TFEU¹ that on setting additional rules implementing the basic act by specifying in further detail the content of that act without affecting the substance of the legislative framework that such rules should be laid down in implementing acts. Further, it follows from the agreement: *“This would be the case where a sufficiently precise legal framework has been laid down by the legislator, for example where the main conditions and criteria are laid down by the legislator.”*, cf. II criteria, point D.

Denmark will as soon as possible provide written remarks on which empowerments of the Commission we consider appropriate to regulate with delegated acts and which would be appropriate to regulate with implementing acts. We strive to ensure a nuanced approach to the discussion and to ensure a future proof framework for setting requirements for environmental sustainable that accounts for the specific circumstances of the regulated product and future technological and scientific developments as well as not causing unnecessary burdens on companies due to a rigid framework.

Ecodesign requirements (Article 5)

Article 5(3): As raised by several Member States, we would like to reintroduce “or both” in article 5(3) to make explicit that the European Commission should be able to set both information and performance requirements. Similarly, we still find it important that the Commission should justify if it decides not to set information or performance requirements. This could be in the explanatory memorandum accompanying the product specific regulation.

Article 5(3): We propose adding a sentence on the possibility for companies to voluntarily share information, including on performance for product parameters not covered by ecodesign requirements. Some companies might have developed a competitive advantage for non-covered product aspects, and should be allowed to voluntarily share such information.

Article 5(4)(b): We propose adding the wording on ‘model, batch or item level’ on digital product passports in accordance with recital 27 to this article. We would like to have specified in the legal text, what elements shall be considered when the Commission carries out the impact assessment.

Article 5(5): We see a risk that ecodesign regulation can compromise the operational effectiveness and military security of the armed forces, in particular in relation to mandatory criteria for green public procurement, use of chemicals in products and the introduction of a digital product passport. It follows from recital 16 that for military or sensitive equipment ecodesign requirements should take into

¹ [Non-Binding Criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union — 18 June 2019](#)



account the security needs and the characteristics of the defence market, as defined in Directive 2009/81/EC of the European Parliament and of the Council. A clarification in the legal text would further mitigate this risk, e.g. by adding to article 5(5) that ecodesign requirements also shall meet criteria of not having negative impact on security needs and activities of armed forces. Member States should still encourage competent authorities to comply with procurement requirements to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces.

Article 5(5)(c): We support the amendment to article 5(5)(c).

Article 5(9): The text in article 5(9) should be moved to article 2(28)(c) to ensure that the purpose of the new text solely clarify the meaning of point (c). This means to explain in greater detail the ways in which a substance can be considered a substance of concern by “negatively affecting the re-use and recycling of materials in the product in which it is present”.

Consequently, article 2(28)(C) would read as follows:

(c) negatively affects the re-use and recycling of materials in the product in which it is present **taking into account, whether:**

(a) based on the state-of-the-art technologies, the substances make the re-use, [remanufacturing, repairing] or recycling process substantially more complicated or energy-demanding.

(b) the substances impair the technical properties or functionalities, the usefulness or the value of the recycled material or products manufactured from this recycled material.

(c) the substances negatively impact cosmetic or aesthetic properties of the recycled material, e.g. through its colour and smell.

Smartness of products: Since products are to play an important role in the future fluctuating energy systems it is important that requirements in this regard are possible within the scope of the regulation. Smartness or smart-readiness could be interpreted as being included in Annex I (q) “functional performances”, but we find it unclear. We propose a clarification to this point.

Performance requirements (Article 6)

Article 6(3): We appreciate that the Presidency mentioned at the Working Party on the 17th February that the addition to article 6(3) did not intend to change the content with regard to the proposal from the Commission. We recognize that the scope for ecodesign requirements is environmental sustainability. However, the wording seriously restricts the possibilities of setting requirements for all chemicals falling under the definition in article 2(28). We are worried that it calls for *specific*



documentation of improvement of the environmental sustainability of the products, which would deviate from how ecodesign requirements has been set under the ecodesign directive that has shown to be effective and balanced. Our comment follows our previous written feedback to REV1.

Information requirements (Article 7)

Article 7(2) and 7(5): Several of the amendments seriously narrow the information flow regarding substances of concern in products. Pursuant to article 7(1), information requirements can only be set if they relate to the ecodesign requirements in article 5(1). This ensures that no unjustified or random information requirements are set. Furthermore, all product aspects mentioned in article 5(1) must a priori be considered as improving the environmental sustainability of products. Hence, the proposed extra requirement is potentially very burdensome as well as potentially restricting the information flow considerably. For article 7(2)(b)(i) the addition of “one or more” would result in passing on information for only one product aspect from in Annex 1 would be sufficient to fulfil the obligation. This would severely limit the information flow.

We do not support the changes in Article 7(5) because we find it useful that the substances of concern relevant to the specific product group in the product group covered by a product specific act are established in the act. Regarding article 7(5) second subparagraph point (c) we are not in favour of softening the requirements by adding “where relevant” and “in other duly justified cases”. Finally, a decision not to establish an information requirement on substances of concern should be justified and accounted for by the Commission.

Article (7(2)(b)(iii)): The deletion of allowing the Commission to set information requirements relevant to waste facilities, could in practice inhibit the transition to a circular economy. We find it highly problematic that the Presidency intends to delete the possibility to set information requirements relevant to waste treatment facilities in article 7(2)(b)(iii). Industries are calling for this type of information to increase the uptake of secondary raw materials. Failure to provide information would seriously inhibit the transition to a circular economy and work against the goal of improving EU’s strategic autonomy. Information about waste handling ensure that i.a. critical raw materials are to the extent possible recycled, providing independence from third countries.

Recital 25: We are positive towards taking into account the proportionality of the requirements regarding administrative burdens for businesses in recital 25. Exemptions should be possible on the basis of the feasibility of tracking and confidentiality issues, but not in other unspecified cases. However, the last sentence in recital 25 starting with “*Where a substances have already been established...*” should be deleted. We are not convinced that the establishment of



substances of concern with relevance for circularity for one product group have derivative effects for other product groups.

Article 7(6): We strongly support the changes made to this article, as this will ensure that the digital product passport will be the starting point for sharing product related information aligned with the 'once-only' principle. The Digital Product Passport should be the starting point for sharing product related information. The changes made to article 7(6) should not replace physical labels that promotes easy comparability between products for consumers.

Content of the implementing act [Former Annex VI with adjustments] (Article 7)

Article 7a(f and g): We consider it important that there is not an imposed transition period in the article because this will vary depending on the product group and set with the ecodesign requirements for the specific product groups.

Incentives and Green Public Procurement

Member States incentives (Article 57)

Article 57(1): We welcome the addition inserted in the article adding “*EU ecolabels including products fulfilling equivalent requirements*”. We would like to make sure that this includes regional and national officially recognized EN ISO 14024 type I environmental labels.

Green public procurement (Article 58)

Article 58(1): Following the opinion from the Council Legal Service, we consider it important that article 58 about Green Public Procurement clearly states that it is minimum requirements. Frontrunner Member States should be allowed to set and maintain requirements that are more ambitious and reap the environmental and economic benefits from this. The reference could be added to the first sentence of article 58:

“The Commission shall in the implementing act pursuant to Article 4 specify minimum mandatory requirements for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, in order to incentivise the demand for environmentally sustainable products falling in the scope of that implemented act.”

We welcome the Presidency's effort to make the article more readable. We consider the article could be further clarified by clearly stating that Member States can add technical specifications for product aspects not covered by the act. This can be achieved by adding at the end of article 58(1):



"When an implementing act includes requirements referred to in point (i) of this paragraph, Member States will still be able to set technical specifications not covered by that act"

Article 58(1a)(b): Requirements set after this paragraph should strive to include product aspects decided when setting ecodesign requirements for the specific product groups. It is important that green public procurement criteria are clear and manageable for the public authorities and businesses.

Article 58(1a)(b)(iv): We encourage the Commission to specify what kind of 'targets' for green public procurement the Commission intends to impose on Member States.

Further, we would like to include a provision in the article that ensures that the Commission will include the market sufficiently in the process of developing specific requirements for green public procurement because even small price adjustments can have a significant impact on public expenditures.

Destruction of unsold consumer goods and policy of management of unsold consumer goods

Policy of management of unsold consumer goods (Article 20a)

We understand the good intention to ensure there is a policy amongst companies to minimise waste generation of unsold consumer products while promoting sustainable production and consumption models. However, as companies are being asked to disclose an increasing amount of sustainability information according to the Corporate Sustainability Reporting Directive, it is important to ensure that the proposed policy should be disclosed within the framework of the annual reporting.

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Destruction of unsold consumer goods (Article 20)

Over all we find that the article must be specified in order to ensure effective enforcement of the provisions.

Article 20(1): We appreciate the work to clarify the article in terms of where to provide relevant information and that it has to be disclosed annually. Ideally, we still prefer this to be part of the Corporate Sustainability Reporting Directive to simplify for companies. We would like to know why the Presidency decided not to take this proposal on board.

Article 20(1a): We do not find that the Commission should be empowered to specify that specific SMEs should comply with reporting requirements and would prefer a broader scope. It could allow the Commission to establish general criteria for when SMEs should be obliged to report on the destruction of unsold consumer goods.



We find that the added requirement would be very difficult to administer in practise, if not impossible.

Article 20(2): Streamlining with the CSRD will be preferable. Alternatively, we prefer that it is laid down that information shall be provided in machine-readable and structured format.

Article 20(3c): We are still concerned about the broad possibility to make exemptions related to refusal for donation, preparing for reuse and remanufacturing.

There should be an effort threshold describing to which extent the company should be willing to pay for the cost of transportation of the donated products and how costly remanufacturing and preparing for reuse should be before a company can “refuse” this operation.

Article 20(6): We propose to remove the 30-day timeframe, as we believe that such decisions should be made at the discretion of individual member states.

Labels (Article 14)

Article 14(3): As mentioned at the Working Party on the 28th February, we are concerned that the well-known energy label for energy-related products could be replaced by a label that is less known by the consumers. At the meeting the Commission confirmed that there could be information on a relevant product parameter that could not be incorporated in the energy label. Based on this, we would like to raise a concern that the scope of the well-known energy label could be limited by labels under ESPR. This we find worrying and to avoid inappropriate consequences, we propose to add to the text that a detailed analyses of trade-offs has to be included in the impact assessment of the proposed regulation, especially with focus on consumers expected shopping behaviour.

Article 14(5): We welcome that the Commission will be required to adopt an implementing act in article 14(5). Ideally, there should be added a deadline for the adoption of the implementing act in article 14(5) to ensure that there will be a common layout for the labelling as early as possible.

We will provide further written remarks to the article shortly after the working party on the 28th February, with the intention to provide constructive feedback.

Self-regulatory measures (Article 18)

The experience under the existing Ecodesign Directive shows a lack of added value for self-regulating measures. They often describe the market for the product group in question rather than pushing for innovation. We welcome the adjustments



in REV2, but still find it appropriate to limit the use of self-regulating measures and that the criteria for these measures should be significantly stricter. We foresee that self-regulating measures will hinder setting ecodesign requirements for products falling under the scope of such a measure.

Digital product passport and the Registry

Product passport (Article 8)

Article 8(2)(e): After introducing article 12a, the coherence between the decision on ways to make product passports accessible to costumers prior to being bound by a contract should be clarified. Article 12a on creating a webportal should at least be referred to in article 8(2)(e), as a potential to fulfil this criteria.

General requirements for the product passport (Article 9)

Article 9(1)(d): Coherence with the legal text agreed in the Battery Regulation must be ensured to ensure interoperability of data and systems across product groups. In order to achieve this, we propose aligning the formulation of this article by adding: *“shall be transferable through an open interoperable data exchange network without vender lock-in”*

Further, we propose adding a new definition to article 2 defining ‘vender lock-in’. We also recommend adding a new recital requiring the Commission to analyse and consider the technical feasibility of applying the eDelivery building block for the IT-infrastructure for the Digital Product Passports. A similar recital is included in the agreed text on the Battery Regulation (recital 94a). Ensuring coherence with the Battery Regulation will support the interoperability.

The Registry (Article 12a)

While we understand the efforts from the Presidency to include a web portal to search for information, we find the article unclear and lacking key elements.

We are not convinced that the Commission would be the right actor to develop, implement and maintain a web-platform targeted at consumers as proposed. Instead, we propose to empower the Commission to explore and to propose how to best facilitate access to information through innovative market-driven digital solutions.

In article 12a the reference for ‘stakeholders’ to be able to search for information in line with their respective access rights is unclear, when article 8(2)(f) that defines the setting of access rights, refers to ‘actors.’ Similarly, article 8(2)(e) describes the manner in which the digital product passport must be made accessible prior to being bound by a contract. Hence, this criteria is decided upon in the product specific acts, which is beneficial due to the many different purchasing practices from different actors, depending on the product group at stage. Thus, the wording of article 12a opens up for misinterpretation by referring to stakeholders. Also, the



introduction of the need to always being able to search for information regarding products is questionable in terms of value creation. Further, sustainability data is increasingly seen as a market in itself by private actors and entrepreneurs. The Commission should not be tasked with the responsibility for this, undercutting this emerging market for data.

Market surveillance and conformity assessment

Minimum number of checks (Article 60)

Article 60(2): The MSA's rights to recover the costs of document inspection and physical product testing in case of non-compliance has not been added again after the deletion in REV1 of the proposal. It is common in other product regulations to let responsible economic operators pay for the costs of document inspection and physical testing in case of non-compliance, which seems like a fair practice. Alternatively, market surveillance authorities will experience growing costs when compliance in general is low, which will risk resulting in less resources for market surveillance and enforcement.

Requirements on economic operators

Obligations of online marketplaces and online search engines (Article 29)

We find that providers of online marketplaces should be subject to a more proactive (and not only reactive) responsibility and have responsibilities that match their key role in the distribution of products into the Union market. Denmark would like to impose obligations on providers of online marketplaces to ensure that the ecodesign requirements are fulfilled for the products whose sale they facilitate. In general, Denmark supports the inclusion of online marketplaces in the proposal. Since online marketplaces occupies a rapidly growing role in placing products on the European market, Denmark finds it paramount to introduce new obligations that prevents non-compliant products to be made available on the Union market.

Prioritisation of products and the Ecodesign Forum and Member States

Expert Group

Prioritisation of products (Article 16)

Denmark welcomes the expansion of the scope of the ecodesign regulation and see great potential in the widening of product groups and the inclusion of more product aspects related to circularity. However, to ensure that the regulation sufficiently delivers to the "*Union climate, environmental and energy efficiency priorities*" (see article 5(4), (a), (i), we find that the wording in recital 42 regarding an adequate share of energy related products should be strengthened. This in order to emphasise the level of ambition and importance these product groups continue to have in reaching these.

We suggest to clarify this aspect in the development of the working plans and possibly split the recital 42 into two or more recital allowing the importance of this to stand out to a greater extent:



“(42) To deliver in the most efficient way on the European Green Deal’s objectives and to address the most impactful products first, the Commission should carry out a prioritisation of products to be regulated under this Regulation and requirements that will apply to them. Based on the process followed for prioritisation under Directive 2009/125/EC, the Commission should adopt a working plan, covering at least 3 years, laying down a list of product groups for which it plans to adopt **implementing** acts as well as the product aspects for which it intends to adopt **implementing** acts of horizontal application. The Commission should base its prioritisation on a set of criteria pertaining in particular to the **implementing** acts’ potential contribution to the Union climate, environmental and energy objectives and their potential for improving the product aspects selected without disproportionate costs to the public and economic operators **contributing to Union economic resilience and competitiveness. The Commission should also assess whether there is a risk of unfair competition between final products manufactured in the Union and those manufactured outside the Union before proposing requirements for intermediate products.**

(42a) Considering their importance for meeting the Union’s energy objectives, where high level of ambition requires a stronger promotion of cost-effective energy efficiency measures in all areas of the energy system, the working plans should always include an adequate share of actions related to energy-related products, ensuring that the Union overall is on track with its [binding] energy efficiency targets and Union commitments made in the framework of the Energy Union and global climate agenda established by the 2015 Paris Agreement. Experts designated by the Member States should also be consulted through the Ecodesign Expert Group, as well as through the Ecodesign Forum, ~~which also gather and stakeholders, including actors from the circular business models.~~ Due to the complementarities between this Regulation and Regulation (EU) 2017/1369 for energy-related products, the timelines for the working plan under this Regulation and the one provided for under Article 15 of Regulation (EU) 2017/1369 should be aligned.

(42b) When prioritising products to be regulated under this regulation experts designated by the Member States should also be consulted through the Ecodesign Expert Group, as well as through the Ecodesign Forum, which also gather stakeholders, including actors from the circular business models. Product groups which under Union law are already subject to specific environmental requirements, such as for example motor vehicles, should not be prioritised the first for the establishment of ecodesign requirements, such as for example motor vehicles.”



In order to ensure involvement of Member States, we would also like to add some procedure provisions regarding Member States involvement. Related to this, we would also like to ask the Council Legal Service's opinion about the legal possibilities of letting the adoption of the working plan depend on a vote among the Member States experts.

Ecodesign Expert Group (Article 17 a)

Denmark look forward to provide constructive input on the role of the expert group to ensure that Member States are sufficiently involved in the development of delegated acts to be adopted by the Commission. We foresee an expert group building the productive experiences from the energy labelling regulation coexisting with the procedures under the ecodesign directive. To ensure Member State influence we propose to clarify the procedures of Member State involvement in the development of delegated acts in the legal text. This could be by formalising the periods of which Member States experts should have the first draft of the proposal, the impact assessment, the proposal for regulation etc. before they are expected to deliver comments, ensuring Members States sufficient time to develop their comments.

Other remarks

Entry into force and application (Article 71)

It is our assessment that a timeframe of 6 months may be insufficient for implementing the measure related to article 20(1) and Article 20a, including supplementary national law regarding penalties. Given the scope of the implementation process, it is our recommendation that a timeframe of 12 months should be considered as the minimum for implementation. This would provide sufficient time for all relevant stakeholders to become familiar with the new requirements and ensure that all legal instruments are updated and in compliance.



Council of the European Union
General Secretariat

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

Brussels, 14 March 2023

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NOTE

From:	BE, DK, FR, IT Delegation
To:	Working Party on Competitiveness and Growth (Internal Market – Ecodesign)
Subject:	ESPR: BE, DK, FR, IT comments

Paris, le 9 mars 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires des autorités françaises concernant le règlement relatif à l'écoconception des produits durables (« ESPR ») suite au groupe de travail du 28 février 2023

I- Contexte

Le 10 février, la Présidence suédoise a fait part d'une nouvelle proposition de compromis modifiant notamment les dispositions relatives aux produits invendus, aux labels (étiquettes) et à l'autoréglementation. Suite à la réunion du groupe de travail du Conseil du 28 février, la Présidence a invité les Etats-membres à lui communiquer leurs commentaires écrits d'ici le 3 mars, notamment pour ce qui concerne les dispositions relatives à l'interdiction de destruction des invendus.

II- Commentaires

Les propositions d'amendements sont encadrées

A/ Destruction des invendus (Considérants 46, 47, 48, 48a ; Articles 2(35), 2(37), 20 et 20a)

Les autorités françaises tiennent à remercier la Présidence suédoise pour ses efforts pour trouver un compromis sur le sujet emblématique de la destruction des produits invendus.

Les autorités françaises appellent de nouveau l'attention sur l'importance d'adopter une mesure d'interdiction générale de destruction des invendus dans le contexte actuel des tensions d'approvisionnement en diverses matières et la volonté de renforcer la souveraineté des industries européennes. Il est en effet essentiel de réaliser que l'économie circulaire peut devenir la principale force de l'Union. Cela serait par ailleurs cohérent avec le traitement du projet de règlement sur l'écoconception des produits au sein du groupe Compétitivité, qui permet de ne pas opposer la compétitivité et l'économie circulaire.

Si les Etats membres sollicitent leurs citoyens sur l'acceptabilité de la pratique de destruction de produits invendus, ils constateront que leur réponse est généralement une interrogation : pourquoi n'est-ce pas déjà interdit ?

Aussi, comme les autorités allemandes, autrichiennes, néerlandaises, danoises, luxembourgeoises et belges, les autorités françaises demeurent favorables à un principe général d'interdiction de la destruction des produits invendus. C'est pour ces raisons que les autorités françaises ont communiqué à la Présidence, à la Commission et au Conseil une proposition de nouvelle rédaction de l'article 20 durant le mois de février 2023. Cette proposition est jointe à la présente note.

Les autorités françaises ne sont donc pas favorables au texte de compromis de la Présidence suédoise, en ce qu'il est sensiblement moins disant que les dispositions actuellement en vigueur en France. Ainsi, si le règlement venait à être adopté en l'état, sa mise en œuvre en France conduirait à une importante régression du droit de l'environnement en matière

de gestion des invendus, ce qui n'est pas envisageable pour les autorités françaises. **Le règlement ne doit donc pas conduire à des régressions du droit des Etats membres qui ont déjà adopté des dispositions plus ambitieuses que la proposition de règlement.**

Par ailleurs, les autorités françaises sont favorables à la proposition des autorités allemandes visant à renforcer le lien entre l'interdiction de destruction des produits invendus avec les dispositions de la directive n° 2008/98/CE modifiée relative aux déchets notamment la hiérarchie des déchets définie à son article 4 mais également la notion de déchet qui repose elle aussi sur l'utilisation du verbe « *discard* » (*se défaire* en français). Elles sont également ouvertes à la proposition des autorités allemandes de créer un registre européen visant à assurer l'obligation de transparence/rapportage des pratiques de gestion des invendus.

Les autorités françaises tiennent à rappeler qu'elles ne sont pas favorables à ce que les PME puissent bénéficier de dérogations aux dispositions relatives aux invendus dans la mesure où les petites et moyennes entreprises (PME) représentent 99 % de toutes les entreprises de l'UE (https://single-market-economy.ec.europa.eu/smes/sme-definition_en). De telles dérogations limiteraient drastiquement la portée de ces dispositions relatives aux invendus, ce qui n'est pas souhaitable. Comme l'ont indiqué les autorités luxembourgeoises lors de la réunion du 28 février dernier, il semble préférable d'accompagner les PME dans la mise en œuvre de ces dispositions plutôt que de les exclure de celles-ci.

B/ Labels / étiquettes (Articles 14, 15, 25 et 26 et considérants 39 à 41 et 55-56)

De manière générale, les autorités françaises **soutiennent la possibilité de pouvoir continuer à développer des labels et des étiquettes**. En effet, si elles soutiennent également le passeport de produit, les autorités françaises estiment que les solutions numériques ne sont pas adaptées à tous les cas de figure. Dans certains cas, la communication au plus près du produit par le biais d'informations clefs synthétisées et assorties de visuels est beaucoup plus efficace, notamment dans le secteur des produits de consommation. Dans le domaine de la consommation durable, les enjeux d'information sont tellement essentiels qu'une **palette d'outils complémentaires** constitue, en effet, la meilleure approche.

Article 14 et considérant 40

Au point 1(b) relatif à la présentation de l'étiquette, les autorités françaises proposent **d'ajouter l'aspect de la compréhension par le consommateur**. En effet, il s'agit d'un des principaux paramètres d'efficacité des labels.

Art. 14 – 1

(b) the layout of the label taking account visibility, **and** legibility, **and** consumer understanding;

Au point 14 (3) sur les produits liés à l'énergie, les autorités françaises demandent la suppression des passages suivants : « *and where this information is considered to be more relevant than the information covered by the energy label* » et, à la fin du paragraphe, « *instead of the energy label* ». De la même manière, elles demandent la suppression de « *instead of the energy label* » au considérant 40. **En effet, le besoin de mettre en place une nouvelle étiquette, en plus de l'étiquette énergie, n'est pas lié à une hiérarchie de l'information (dans tous les cas, l'information liée à l'efficacité énergétique du produit reste très importante, et a été établie réglementairement), mais plutôt à une contrainte sur l'étiquette liée à un manque d'espace ou à un risque de confusion pour le consommateur. Par ailleurs, cette nouvelle étiquette est supplémentaire à l'étiquette énergie mais ne saurait en aucun cas la substituer.**

Les autorités françaises proposent de préciser, au point 3 et de manière plus détaillée au considérant 40, le type de raisons qui peuvent empêcher l'ajout d'autres sortes d'informations sur l'étiquette énergie (manque d'espace, risque de confusion pour le consommateur, etc.).

3. For energy-related products that are subject to energy labels established pursuant to Regulation (EU) 2017/1369, ~~only~~ where information on a relevant product parameter, including on classes of performance referred to in Article 7(4), cannot, **for different reasons**, be incorporated in the energy label established pursuant to Regulation (EU) 2017/1369 ~~and where this information is considered to be more relevant than the information covered by the energy label~~, the Commission, after assessing the risk of confusion for customers, the administrative burden for economic operators and the best way to communicate about this that particular information, may, if appropriate, require the establishment of a label in accordance with this Regulation, **instead of the energy label**.

(40) Regulation (EU) 2017/1369 setting a framework on energy labelling applies, in parallel to this Regulation, to energy-related products. This means that energy labels are the primary instrument providing the appropriate information to consumers for energy-related products and that classes of performance determined under this Regulation should, where appropriate, be incorporated in the label as supplementary information as provided for in Article 16 of Regulation (EU) 2017/1369. In cases where relevant information on a product's performance in relation to a product parameter cannot, **for different reasons (such as lack of space or risk of confusion for consumers)**, be included as supplementary information in the energy label established for the energy-related product pursuant to Regulation (EU) 2017/1369, the Commission should, if appropriate, be able to require the establishment of a label in accordance with this Regulation **instead of the energy label** where the relevant information on the energy label may be so incorporated. ~~should assess whether a label in accordance with this Regulation is to be established, taking into account the need for consumers to be informed on the most relevant parameters for the product and the disadvantages in terms of risks of confusion for the public and of excessive administrative burden for economic operators.~~

Au point 14 (5), les autorités françaises soutiennent le remplacement du mode « may » par le mode « shall ».

Par ailleurs, concernant les aspects liés à la comitologie, les autorités françaises se posent la question de la cohérence avec le règlement 2017/1369 (UE) relatif à l'étiquetage énergétique, dont les mesures sectorielles sont adoptées par la voie d'actes délégués. Il conviendrait probablement, lors de sa prochaine révision, d'aligner le règlement 2017/1369 (UE) en prévoyant que ses mesures de mise en œuvre soient adoptées par le biais d'actes d'exécution.

Article 15 - Étiquettes trompeuses

Les autorités françaises **soutiennent les modifications proposées par la Présidence**, qui permettent de compléter les cas de figure où les produits non concernés par des exigences d'étiquettes n'ont pas le droit de porter des étiquettes trompeuses copiant les labels réglementaires issus de la mise en œuvre de l'article 14.

Article 25 - Obligations des revendeurs

Les autorités françaises souhaitent que le point 3 soit complété pour expliciter clairement que **les informations obligatoires sur le produit doivent être accessibles facilement avant l'achat**, notamment sur le point de vente ou le site en ligne (et accessibles gratuitement).

Art. 25 (1). Dealers shall ensure that their customers have **free** access to any relevant information required by the delegated acts adopted pursuant to Article 4, including **before the time of purchase, at the point of sales and** in case of distance selling.

Article 26 - Obligations liées aux étiquettes

Au 26 (1-a), les autorités françaises **s'opposent à l'introduction d'une possibilité pour les labels ciblés à cet article d'être fournis aux consommateurs sur un support numérique**. Elles

rappellent que l'objectif des articles 14 et 26 est précisément de permettre la mise en place de labels directement sur les produits (étiquettes), ou au plus près des produits, dans certains cas où le support physique est plus pertinent et plus efficace que le support numérique. Si une étiquette est fournie par le biais d'un support numérique, cela doit être uniquement en supplément du support physique, et non pas en substitution de ce dernier. Le support physique doit rester obligatoire dans tous les cas.

Art. 26. 1) a) ensure that products are accompanied, for each individual unit and free of charge, by printed labels ~~or digital copies of the label~~ in accordance with that delegated act;

En outre, les autorités françaises souhaitent que **les opérateurs de vente à distance soient inclus dans le champ de ces obligations**, en ajoutant la mention « **y compris les opérateurs économiques de vente à distance** » aux points 1 et 2. Pour les opérateurs de vente en ligne, places de marché et moteurs de recherche, en plus de permettre l'affichage des étiquettes/label, ils devraient aussi permettre aux consommateurs de réaliser plus facilement des recherches, via un moteur de recherche adapté en fonction des étiquettes et labels existants pour le produit.

Art. 26. 1) Where a delegated implementing act adopted pursuant to Article 4 requires products to have a label as referred to in Article 14, the economic operator placing the product on the market or putting it into service shall, ***including in the case of online distance selling***:

De même, il est important que les revendeurs soient en mesure de fournir des **informations ou des documents explicatifs sur les labels et étiquettes**, le cas échéant pour la bonne compréhension du consommateur.

Les autorités françaises estiment également qu'il devrait être possible d'inclure davantage d'informations sur les produits, notamment des modes d'emploi pour un **usage plus respectueux de l'environnement**, et des messages pédagogiques (par exemple, les éco-gestes).

Art. 26 (new) Economic operators shall make available explanatory information about the labels mentioned in paragraph 1 for the good understanding of the consumer. This can be fulfilled by making available documents or online link to contents published by the Commission, Member States or any other competent authority. Economic operators shall promote messages of sobriety and green gestures associated to the products. Where relevant, economic operators can be requested to accompany their products and their promotional material with additional general information about products, notably related to its use.

De plus, les autorités françaises soulignent le besoin d'assurer une **cohérence avec le règlement 2017/1369 relatif à l'étiquetage énergétique** pour que les mêmes règles s'appliquent et assurer une bonne articulation entre les deux textes qui vont devoir se coordonner sur les labels/étiquettes.

Considérant 56 (affichage des étiquettes)

Les autorités françaises souhaitent que les mentions « **y compris en cas de vente à distance, y compris en ligne** » soient également introduites dans les deux premières phrases du considérant 56 car la vente en ligne s'applique à tous les cas de figure (*NB : le cas de la vente en ligne n'est précisé que dans le cas où le revendeur fait de la publicité pour le produit*).

(56) To facilitate the choice of more sustainable products, labels, where required, should be displayed in a clearly visible and identifiable way, ***also in cases of distance selling, including online***. They should be identifiable as the label belonging to the product in question, without the customer having to read the brand name and model number on the label, ***also in cases of distance selling, including online***. Labels should attract the attention of the customer browsing through the products displayed. To ensure that the label is accessible to customers when considering a purchase, both the dealer and the responsible economic operator should display the label whenever advertising the product, also in cases of distance selling, including online. They

should take special care to avoid confusing or misleading customers by displaying, on a product required to have a label pursuant to this Regulation, other labels referring to the same information. Other labels would not be considered to be confusing or misleading when they are required under other legislation and could continue to be displayed as required by that legislation. Neither the EU Ecolabel nor any other nationally or regionally officially recognised EN ISO 14024 type I environmental labels should be considered as misleading.

C / Mesures d'autoréglementation (article 18, article 2 (38), considérant 44, annexe

VII)

Les autorités françaises, tout en prenant bonne note des propositions d'amélioration des Présidences tchèque et suédoise, **réitèrent leur opposition au maintien de possibilités d'autoréglementation dans le règlement ESPR**. En effet, les accords volontaires encadrés dans le contexte de la directive écoconception actuelle sont peu probants. Ils mobilisent des ressources des pouvoirs publics pour peu de résultats. **Les autorités françaises estiment que le nouveau règlement représente une opportunité de retirer cette disposition**. Rien n'empêchera les industriels qui le souhaitent de mettre en place des accords volontaires en dehors du cadre officiel de l'écoconception, sans pour autant que ces accords aient de portée normative. En tout état de cause, les résultats de tels accords volontaires pourront toujours être pris en compte par la Commission au préalable, lors des consultations pour définir le programme de travail ou pour l'étude préparatoire en amont d'une mesure sectorielle d'application ESPR.

Par conséquent, les autorités françaises souhaitent la **suppression de l'article 18 et des dispositions afférentes**.

Courtesy translation

Comments from the French authorities concerning the regulation on the ecodesign of sustainable products ("ESPR") following the working group of 28 February 2023

Amendment proposals are framed

A/ Destruction of unsold products (recitals 46, 47, 48, 48a ; articles 2(35), 2(37), 20 et 20a)

French authorities would like to thank the Swedish Presidency for its efforts to find a compromise on the emblematic issue of the destruction of unsold products.

French authorities once again draw attention to the importance of adopting a general ban on the destruction of unsold goods in the current context of supply tensions for various materials and the need to strengthen the sovereignty of European industries. It is indeed essential to realise that the circular economy can become the main strength of the Union. This would also be consistent with the reading of the draft regulation on eco-design of products in the Competitiveness Group, which allows competitiveness and the circular economy not to be opposed.

If Member States ask their citizens about the acceptability of the practice of destroying unsold products, they will find that their answer is usually a question: why isn't it already banned?

Like the German, Austrian, Dutch, Danish, Luxembourg and Belgian authorities, French authorities remain in favour of a general principle of prohibiting the destruction of unsold products. For these reasons, French authorities sent the Presidency, the Commission and the Council a proposal for a new wording of Article 20 in February 2023. This proposal is attached to this note.

French authorities are therefore not in favour of the Swedish Presidency's compromise text, in that it is significantly less favourable than the provisions currently in force in France. Thus, if the regulation were to be adopted as it stands, its implementation in France would lead to a major regression in environmental law in the area of unsold goods management, which is not an option for the French authorities. **The regulation must not therefore lead to regressions in the law of Member States that have already adopted more ambitious provisions than the proposed regulation.**

Furthermore, French authorities are in favour of the German authorities' proposal to strengthen the link between the ban on destroying unsold products and the provisions of Directive 2008/98/EC as amended on waste, in particular the waste hierarchy defined in Article 4, but also the concept of waste, which is also based on the use of the verb "discard". They are also open to the German authorities' proposal to create a European register to ensure the transparency/reporting obligation of unsold goods management practices.

French authorities would like to reiterate that they are not in favour of allowing SMEs to benefit from derogations from the provisions on unsold goods, as small and medium-sized enterprises (SMEs) represent 99% of all enterprises in the EU (https://single-market-economy.ec.europa.eu/smes/sme-definition_en). Such derogations would drastically limit the scope of these unsold goods provisions, which is not desirable. As the Luxembourg authorities indicated at the meeting on 28 February, it seems preferable to support SMEs in implementing these provisions rather than to exclude them from them.

B/ Labels (articles 14, 15, 25 et 26 and recitals 39 à 41 and 55-56)

In general, French authorities support the possibility of **continuing to develop labels and tags**. Although they also support the product passport, French authorities believe that digital solutions are not suitable for all cases. In some cases, communication as close as possible to the product by means of summarised key information accompanied by visuals is much more effective, particularly in the consumer products sector. In the field of sustainable consumption, the information challenges are so crucial that a range of **complementary tools** is indeed the best approach.

Article 14 and recital 40 - labels

In point 1(b) on the presentation of the label, French authorities propose **adding the aspect of consumer understanding**. Indeed, this is one of the main parameters for the effectiveness of labels.

Art. 14 – 1

(b) the layout of the label taking account visibility, **and** legibility, **and consumer understanding**;

In point 14 (3) on energy-related products, French authorities request the deletion of the following passages: « *and where this information is considered to be more relevant than the information covered by the energy label* » and, at the end of the paragraph, « *instead of the energy label* ». Similarly, they request the deletion of "instead of the energy label" in recital 40. **Indeed, the need to introduce a new label, in addition to the energy label, is not related to a hierarchy of information (in any case, the information related to the energy efficiency of the product remains very important, and has been established by regulation), but rather to a constraint on the label related to a lack of space or a risk of confusion for the consumer**. Furthermore, this new label is additional to the energy label but in no way replaces it.

French authorities propose to specify, in point 3 and in more detail in recital 40, the type of reasons that may prevent the addition of other kinds of information on the energy label (lack of space, risk of confusion for the consumer, etc).

3. For energy-related products that are subject to energy labels established pursuant to Regulation (EU) 2017/1369, ~~only where information on a relevant product parameter, including on classes of performance referred to in Article 7(4), cannot,~~ **for different reasons**, be incorporated in the energy label ~~established pursuant to Regulation (EU) 2017/1369~~ **and where this information is considered to be more relevant than the information covered by the energy label**, the Commission, after assessing the risk of confusion for customers, the administrative burden for economic operators and the best way to communicate about this that particular information, may, if appropriate, require the establishment of a label in accordance with this Regulation: **instead of the energy label**.

(40) Regulation (EU) 2017/1369 setting a framework on energy labelling applies, in parallel to this Regulation, to energy-related products. This means that energy labels are the primary instrument providing the appropriate information to consumers for energy-related products and that classes of performance determined under this Regulation should, where appropriate, be incorporated in the label as supplementary information as provided for in Article 16 of Regulation (EU) 2017/1369. In cases where relevant information on a product's performance in relation to a product parameter cannot, **for different reasons (such as lack of space or risk of confusion for consumers)**, be included as supplementary information in the energy label established for the energy-related product pursuant to Regulation (EU) 2017/1369, the Commission should, if appropriate, be able to require the establishment of a label in accordance with this Regulation **instead of the energy label** where the relevant information on the energy label may be so incorporated. ~~should assess whether a label in accordance with this Regulation is to be established, taking into account the need for consumers to be informed on the most relevant parameters for the product and the disadvantages in terms of risks of confusion for the public and of excessive administrative burden for economic operators.~~

In point 14 (5), the French authorities support the replacement of the "may" mode by the "shall" mode.

Furthermore, concerning the aspects related to comitology, French authorities wonder about the consistency with regulation 2017/1369 (EU) on energy labelling, whose sectoral measures are adopted by means of delegated acts. It would probably be appropriate, in its next revision, to align regulation 2017/1369 (EU) by providing for its implementing measures to be adopted by means of implementing acts.

Article 15 - Mimicking labels

French authorities **support the amendments proposed by the Presidency**, which make it possible to complete the cases in which products not covered by labelling requirements are not allowed to bear misleading labels copying the regulatory labels resulting from the implementation of Article 14.

Article 25 - Obligations of dealers

French authorities would like point 3 to be completed to make it clear that **the compulsory product information must be easily accessible before purchase**, particularly at the point of sale or on the online site (and accessible free of charge).

Art. 25 (1). Dealers shall ensure that their customers have **free** access to any relevant information required by the delegated acts adopted pursuant to Article 4, including **before the time of purchase, at the point of sales and** in case of distance selling.

Article 26 - Obligations related to labels

In Article 26 (1-a), French authorities are **opposed to the introduction of a possibility for the labels targeted in this article to be provided to consumers on a digital medium**. They point out that the aim of Articles 14 and 26 is precisely to allow labels to be placed directly on products (labels, tags), or as close as possible to products, in certain cases where the physical medium is more relevant and effective than the digital medium. If a label is provided through a digital medium, this should only be in addition to the physical medium, and not as a substitute for it. The physical medium should remain mandatory in all cases.

Art. 26. 1) a) ensure that products are accompanied, for each individual unit and free of charge, by printed labels **or digital copies of the label** in accordance with that delegated act;

In addition, French authorities wish to **include distance selling operators in the scope of these obligations**, by adding the words **"including economic distance selling operators"** to points 1 and 2. For online sales operators, marketplaces and search engines, in addition to allowing the display of labels, they should also allow consumers to search more easily, via a search engine adapted to the existing labels for the product.

Art. 26. 1) Where a delegated implementing act adopted pursuant to Article 4 requires products to have a label as referred to in Article 14, the economic operator placing the product on the market or putting it into service shall, **including in the case of online distance selling:**

Similarly, it is important that retailers are able to provide **information or explanatory material on labels and tags**, where appropriate, for consumer understanding.

French authorities also believe that it should be possible to include more information on products, including instructions for more **environmentally friendly use**, and educational messages (e.g. eco-gestures).

Art. 26 (new) Economic operators shall make available explanatory information about the labels mentioned in paragraph 1 for the good understanding of the consumer. This can be fulfilled by making available documents or online link to contents published by the Commission, Member States or any other competent authority. Economic operators shall promote messages of sobriety and green gestures associated to the products. Where relevant, economic operators can be requested to accompany their products and their promotional material with additional general information about products, notably related to its use.

In addition, French authorities stress the need to ensure **consistency with regulation 2017/1369 on energy labelling** so that the same rules apply and to ensure proper coordination between the two texts, which will have to coordinate on labels.

Recital 56 (label display)

French authorities would like the words "**including in the case of distance selling, including online**" to be included in the first two sentences of recital 56, as online selling applies in all cases (NB: online selling is only specified in the case where the reseller advertises the product).

(56) To facilitate the choice of more sustainable products, labels, where required, should be displayed in a clearly visible and identifiable way, **also in cases of distance selling, including online**. They should be identifiable as the label belonging to the product in question, without the customer having to read the brand name and model number on the label, **also in cases of distance selling, including online**. Labels should attract the attention of the customer browsing through the products displayed. To ensure that the label is accessible to customers when considering a purchase, both the dealer and the responsible economic operator should display the label whenever advertising the product, also in cases of distance selling, including online. They should take special care to avoid confusing or misleading customers by displaying, on a product required to have a label pursuant to this Regulation, other labels referring to the same information. Other labels would not be considered to be confusing or misleading when they are required under other legislation and could continue to be displayed as required by that legislation. Neither the EU Ecolabel nor any other nationally or regionally officially recognised EN ISO 14024 type I environmental labels should be considered as misleading.

C / Self-regulation measures (article 18, article 2 (38), recital 44, annex VII)

French authorities, while taking good note of the proposals for improvement made by the Czech and Swedish Presidencies, **reiterate their opposition to maintaining the possibility of self-regulation in the ESPR**. Indeed, the voluntary agreements framed in the context of the current Ecodesign Directive are not very effective. They mobilise public authority resources for little result. **French authorities believe that the new regulation represents an opportunity to withdraw this provision**. Nothing will prevent manufacturers who wish to do so from setting up voluntary agreements outside the official eco-design framework, without these agreements having any normative scope. In any case, the results of such voluntary agreements could always be taken into account by the Commission in advance, during consultations to define the work programme or for the preparatory study upstream of a sectoral ESPR measure.

Therefore, **French authorities** wish to delete Article 18 and the related provisions.

Paris, le 8 mars 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires des autorités françaises concernant le règlement relatif à l'écoconception des produits durables (« ESPR ») suite au groupe de travail du 17 février 2023

La Présidence suédoise a présenté une nouvelle proposition de compromis au groupe du 17 février, qui a notamment abordé de nouveau le sujet de la comitologie. Suite à ces échanges, les autorités françaises souhaitent faire part des propositions écrites ci-dessous.

Les propositions d'amendements sont encadrées

1. Commentaire général

Les autorités françaises remercient la Présidence suédoise pour le texte de compromis qu'elle a présenté au groupe du Conseil du 17 février. Elles estiment que ce texte (ST 6199/23) permet un nombre d'améliorations sur certains points (notamment les marchés publics écologiques). Néanmoins, en matière de comitologie, elles s'interrogent sur l'approche consistant à remplacer, à travers tout le texte, les actes délégués par des actes d'exécution sans une analyse préalable relative à la pertinence de chaque type d'acte par rapport aux différentes dispositions, notamment eu égard à la robustesse du texte, y compris juridique, en vue de sa future mise en œuvre. Les autorités françaises feront part de commentaires plus spécifiques sur ce point. En attendant, elles souhaitent communiquer à la Présidence leurs commentaires sur les autres sujets abordés lors du groupe du Conseil du 17 février.

2. Commentaires sur les considérants

Considérant 11

Les autorités françaises remercient la Présidence pour cet ajout qui vient clarifier que les **éléments numériques d'un produit** sont bien inclus dans le champ du règlement. Toutefois, elles s'interrogent quant à la formulation choisie : en effet, il aurait été préférable de viser de manière explicite les « **biens comportant des éléments numériques** », les « **contenus numériques** » et les « **services numériques** », conformément aux directives 2019/770 et 2019/771.

La partie modifiée du considérant pourrait être ainsi reformulée :

(11) (...) ~~Digital content that is an integral part of a physical goods is also included in the scope.~~ **The scope of this regulation also includes goods with digital elements, digital content and digital services.**

Considérant 15
(voir commentaires à l'article 3)

~~Member States should not impose national requirements relating to product parameters referred to in Annex I, for products which an implementing act adopted pursuant to this Regulation provides that no performance, no information or neither performance nor information requirements are necessary for that parameter.~~

Considérant 23

Les autorités françaises remercient la Présidence pour l'ajout relatif à la prise en compte de la réparabilité et de l'empreinte carbone pour de possibles mesures horizontales. Toutefois, elles souhaiteraient que cette disposition, pour avoir plus d'impacts, soit transférée dans le corps du texte, à l'article 5 relatif aux exigences en matière d'écoconception (paragraphe 2) :

Art 5. 2. Ecodesign requirements shall be established for a specific product group. However, where two or more product groups display similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common requirement, ecodesign requirements may be established horizontally for those product groups. **For relevant products groups, horizontal requirements on important aspects such as reparability and product carbon footprint should systematically be considered in order to speed up the transition to a circular economy.**

Considérant 25

Le paragraphe ajouté à la fin de ce considérant est en lien avec les dispositions du point c du 2^{ème} alinéa du paragraphe 5 de l'article 7 qui prévoit des possibilités d'exemptions des obligations d'information sur les substances préoccupantes. **Comme déjà indiqué par les autorités françaises, sur le fond, elles s'inquiètent du fait que ces exemptions soient peu cadrées. Il conviendrait, dans le texte, de mieux préciser sur quelles bases les exemptions devraient être définies et de prévoir systématiquement que le metteur sur le marché justifie sa demande.**

Disproportionate administrative burden for businesses should however be avoided. Exemptions from this obligation requirement related to the tracking and communication of sustainability information should be defined based on technical feasibility of tracking, the need to protect trade secrets subject to justification and in other duly justified cases. This regulation also enables the Commission to set requirements which prevents chemicals that hinder circularity from being included in the product. Where a substance has already been established as being a substance of concern that hinder circularity for another product group this can give indication that the chemical hinder circularity also for other product groups.

Considérant 27a

Les autorités françaises soutiennent l'ajout de ce nouveau considérant qui encourage la Commission à s'appuyer sur les dispositifs existants de communication d'informations sur les substances et les mélanges au sein de la chaîne d'approvisionnement (fiche de données de sécurité, base de données SCIP). Cela permet en effet d'éviter la surcharge administrative pour les industriels et de faciliter l'appropriation de ces informations par les consommateurs.

3. Commentaires sur les articles

Article 2 – définitions

Définition 1- Produit

Les autorités françaises souhaitent que les produits numériques, fonctionnant sur un support physique mais dont la nature n'est pas physique, soient inclus dans le champ du règlement. Elles proposent ainsi l'amendement suivant :

(1)	'product' means any <u>item physical good</u> that is placed on the market or put into service;
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Définition 6 - écoconception

Les autorités françaises souhaitent demander une **clarification quant à la notion de « durabilité environnementale »** (*environmental sustainability*). Au vu de l'utilisation fréquente de cette notion à travers le texte, il serait probablement opportun d'introduire une **définition spécifique** de cette notion. De plus, dans la version française, le terme « durabilité » peut entraîner une confusion avec la notion de durée de vie.

Afin de pallier à ce manque de clarté, les autorités françaises proposent également de **reprendre dans le règlement ESPR la définition incluse dans la directive actuelle** relative à l'écoconception des produits liés à l'énergie (2009/125/UE), qui nous semble plus satisfaisante :

23) «écoconception», l'intégration des caractéristiques environnementales dans la conception du produit en vue d'améliorer la performance environnementale du produit tout au long de son cycle de vie;

Cela permettra aussi d'assurer plus de continuité entre les deux textes.

Définition 7 - Exigence en matière d'écoconception

En ce qui concerne la définition 7, les autorités françaises souhaitent rappeler que la **performance de fonctionnalité** du produit ne doit pas être oubliée. L'objectif de performance environnementale doit se faire dans le maintien des fonctionnalités du produit. Dans ce contexte, elles proposent l'amendement suivant :

(7) 'ecodesign requirement' means a performance requirement or an information requirement aimed at making a product more environmentally sustainable <u>whilst maintaining its functional performance</u> ;
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Définition 12 - Cycle de vie

S'agissant de la définition 12 relative au cycle de vie, les autorités françaises sont de l'avis qu'il **conviendrait plutôt de reprendre la définition incluse dans les normes ISO 14 040 relatives à l'analyse cycle de vie**. Cette définition a l'avantage d'être très utilisée et d'être reconnue internationalement.

Définition 16 - Remanufacturing

Les autorités françaises proposent l'amendement suivant, visant notamment à introduire, dans la définition de remanufacturing, la notion de « modification substantielle » ainsi que l'exigence de conformité à la réglementation.

(16) 'remanufacturing' means an industrial process operation in which leading to a new product manufactured from a product having undergone a substantial modification or from is produced ~~manufactured from objects that are~~ waste, products used components or used products, and to which relevant regulatory requirements related to new products apply. and ~~in which at least one change is made to the product that affects the its safety, performance,~~ purpose or type of the product typically placed on the market with a commercial guarantee;

Définition 18 – Reconditionnement

Les autorités françaises proposent l'amendement suivant, dans la définition de reconditionnement, visant notamment à introduire l'étape de vérification des fonctionnalités du produit. S'agissant de la performance du produit reconditionné, elles estiment que les termes « range of performance » suffisent. En effet, le reconditionnement ne permet pas toujours de rétablir le même niveau de performance que celui du produit neuf.

(18) 'refurbishment' means preparing, cleaning, testing and ~~preparing or modifying~~ and, where necessary, repairing an object that is waste or a product to check and restore its performance or functionality within the intended use, and range of performance and maintenance originally conceived at the design stage, applicable at the time of its placing on the market. ~~or to meet applicable technical standards or regulatory requirements with the result of making a fully functional product;~~

Définition 24 - Méthode de l'empreinte environnementale de produit

Les autorités françaises soulignent le soutien de la France à l'utilisation des méthodes PEF (*product environmental footprint*). Cependant, elles estiment que les méthodes déjà utilisées dans certains secteurs devraient encore être autorisées. De plus, des compléments méthodologiques devraient être autorisés pour les aspects non couverts par les méthodes PEF. En effet, ces dernières ne prennent pas en compte, ou insuffisamment, certains aspects environnementaux très importants tels que la biodiversité ou la pollution par les pesticides.

Ainsi, les autorités françaises font part de la proposition d'amendement suivante :

(24) 'Product Environmental Footprint method' means the life cycle assessment method to quantify the environmental impacts of products established by Recommendation (EU) 2021/2279; subject to, where appropriate, methodological supplements for aspects not covered by the PEF methods, and without prejudice to methods used in some sector policies such as construction products or energy-related products;

Définition 27 - Substance

Les autorités françaises **soutiennent l'ajout de cette définition qui est celle du règlement REACH.**

Article 3 – libre circulation, et considérant 15

Les autorités françaises remercient la Présidence pour la suppression à l'article 3 du point 4 interdisant aux Etats membres de prendre des dispositions nationales relatives à des aspects de performance ou d'information non régulés par des mesures d'application du règlement ESPR. Elles notent, toutefois, que ce texte a été transféré dans les considérants (au considérant 15). Les autorités françaises se déclarent **opposées au maintien de ce point, même au sein des considérants.** En effet, les autorités françaises sont d'avis que **les États membres doivent être autorisés à adopter ou conserver** des mesures dans les domaines ou pour des critères qui ne sont pas couverts par les mesures ESPR.

Dans ce contexte et pour la même raison, les autorités françaises souhaitent également la **suppression, à l'article 5-3, du texte suivant, qui risque d'être trop restrictif pour les marges**

de manœuvre des Etats membres, y compris s'agissant des catégories de produits qui ne seraient pas visées par la réglementation ESPR :

~~“When the setting of performance requirements or information requirements would not contribute to the objectives of this Regulation, ecodesign requirements may provide that no information requirements or no performance requirements or neither are necessary for specific product aspects.”~~

Les actes d'application sectorielle du règlement ESPR ne doivent pas préciser des aspects de produit pour lesquels aucun autre type de mesure ne pourrait être pris.

Article 5 - Exigences en matière d'écoconception
Voir aussi le commentaire au considérant 23

Les autorités françaises souhaitent souligner le **manque de lien entre l'article 5 et l'annexe I** relative aux paramètres environnementaux des produits. Ces derniers sont liés aux exigences d'écoconception listées à l'article 5. Dans ce contexte, un lien avec l'annexe I devrait être inclus :

Art. 5 (1). The Commission shall, taking into consideration all the following product aspects, **as well as the product parameters as set out in annex I**, and with due consideration for all stages of their life cycle, establish ecodesign requirements to improve the product aspects relevant to the product group concerned:

Au point 3, les autorités françaises sont de l'avis qu'il devrait être possible d'établir, pour une même catégorie de produits, les deux types d'exigences d'écoconception, à savoir des exigences de performance et des exigences d'information. Elles proposent donc l'amendement suivant :

Art 5 (3). Ecodesign requirements shall, as appropriate to improve the specific product aspects, include:
(a) performance requirements as set out in Article 6 **and** /or;
(b) information requirements as set out in Article 7, **or both**.

Les autorités françaises réitèrent leur souhait que les **impacts compétitifs relatifs aux exigences d'écoconception pouvant s'appliquer aux produits intermédiaires** soient pris en compte dans la préparation des mesures sectorielles. En effet, les produits finaux seraient fabriqués au sein de l'Union européenne avec des produits intermédiaires conformes aux exigences d'écoconception alors qu'ils pourraient être fabriqués en dehors de l'Union européenne avec des produits intermédiaires non soumis à ces exigences. Les autorités françaises proposent l'amendement suivant, à l'article 16 relatif à la définition des priorités et planification :

1. When prioritising products to be covered by ecodesign requirements, the Commission shall analyse the potential contribution of those products to achieving Union climate, environmental and energy efficiency objectives, and to fostering the Union economic resilience and competitiveness, taking into account at least the following criteria:
(a) [...] (b) [...] (c) [...] (d) [...] (e) **(new) for intermediate products, their potential impact on the Union competitiveness for the products in which the intermediate products are incorporated.**

En outre, les autorités françaises **regrettent que la possibilité d'établir des critères d'écoconception avancés volontaires et incitatifs, en plus des exigences réglementaires «de base », n'ait pas été prise en compte** (approche dite « top-runner »). En effet, les autorités françaises souhaiteraient que le système dynamique inclus dans la directive existante soit conservé dans le nouveau règlement, selon lequel les critères d'écoconception sont élaborés à deux niveaux : les exigences réglementaires minimales et les critères de référence plus avancés

pour une utilisation volontaire. Un troisième niveau d'exigences peut également être envisagé, lié aux objectifs à plus long terme de l'UE en matière de neutralité carbone et d'efficacité énergétique, en tenant compte des meilleures technologies disponibles, des potentiels d'amélioration et des scénarii, qui peuvent donner une orientation aux entreprises et à la recherche/innovation. A cet effet, les autorités françaises proposent l'amendement suivant :

Art 5 3. bis (new) Ecodesign requirements shall be supplemented with more advanced benchmarks based on the best available technologies that can be used by manufacturers on a voluntary basis.
They shall also be supplemented with longer term requirements associated with the energy efficiency and carbon neutral objectives of the Community.

S'agissant du nouveau paragraphe 5 (9), les autorités françaises comprennent que ce nouveau point vient préciser la définition au point c du paragraphe 28 de l'article 2 (définition de substance préoccupante) et remplacer le point a du 2ème alinéa du paragraphe 5 de l'article 7. **Les autorités françaises accueillent favorablement cet ajout. Toutefois, elles estiment que ce paragraphe aurait davantage sa place au point c du paragraphe 28 de l'article 2.** En l'état actuel de la proposition, ce nouveau paragraphe crée de la confusion quant à ce qui est à considérer comme substances préoccupantes dans les groupes de produits car il semble restreindre les substances à considérer à celles du point c du paragraphe 28 de l'article 2.

Par ailleurs, les autorités françaises souhaitent réitérer un commentaire déjà exprimé sur la procédure de restriction. **En effet, elles s'interrogent sur le dispositif prévu pour permettre de restreindre, pour des raisons autres que la sécurité chimique ou alimentaire, les substances présentes dans les produits ou utilisées dans leurs procédés de fabrication qui ont une incidence sur la durabilité des produits.** Elles soulignent le fait que le processus d'élaboration de la procédure de restriction est complètement différent du processus tel qu'il est connu dans le règlement REACH, ce dernier mettant en jeu des consultations publiques et une expertise par des comités d'experts scientifiques (comités d'évaluation des risques (RAC) et d'analyse socio-économique (SEAC) de l'Agence européenne des produits chimiques (ECHA)). Elles s'interrogent dans quelle mesure la procédure qui sera mise en œuvre par le règlement écoconception permettra une robustesse équivalente.

Article 6 - Exigences en matière de performance

Les autorités françaises regrettent que le **lien avec l'annexe I**, supprimé par la Présidence tchèque, n'ait pas été réintroduit. En effet, les exigences en matière de performance sont liées aux paramètres environnementaux des produits listés à l'annexe I. Dans ce contexte, un lien avec l'annexe I devrait être inclus.

Art. 6 (2). Performance requirements referred to in paragraph 1 shall be based on the product parameters referred to in Annex I and shall as appropriate, include:

Au point 3, la proposition d'ajout vient renforcer la clarification de l'interface entre la réglementation produits chimiques et le projet de règlement éco-conception. Les autorités françaises soutiennent cet ajout.

Article 7 - Exigences en matière d'information

Les autorités françaises signalent un problème rédactionnel au début de la première phrase, avec une redondance de sens « Information requirements shall require ».

S'agissant du point 2-b-ii, les autorités françaises **soutiennent l'introduction de l'information relative à la réparabilité.** Cependant, dans un esprit d'amélioration de l'ordre logique (il vaut mieux pouvoir bénéficier d'informations sur la réparabilité du produit avant celles relatives à la réparation), elles proposent de **remonter l'information sur la réparabilité.**

(ii) information for customers and other actors consumers and other end-users on **the reparability of products and** how to install, use, maintain and repair the product, **including its reparability**, in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or dispose of the product at end-of-life handle the product at the end of its life, as relevant;

Les autorités françaises **soutiennent le point 2-b-v relatif à la possibilité d'exiger des informations sur l'empreinte carbone des produits.**

Au point b du 1^{er} alinéa du paragraphe 5, les autorités françaises sont en **désaccord avec l'ajout de « where relevant »** qui amoindrit la portée de la disposition.

Art. 7 (5-b) (b) **where relevant**, the location of the substances of concern within the product;

Au point e du 1^{er} alinéa du paragraphe 5, les autorités françaises **soutiennent l'ajout de «recycling and end-of-life management »** qui répond à un commentaire qu'elles avaient déjà exprimé.

Au point c du 2^{ème} alinéa du paragraphe 5, les autorités françaises **s'inquiètent, comme pour l'ajout au considérant 25, à propos des possibilités de déroger à l'obligation d'information qui semblent assez peu cadrées**, ce qui pourrait mettre à mal la traçabilité de l'information sur les substances préoccupantes. Elles estiment qu'il conviendrait de revoir la rédaction pour préciser les modalités d'octroi de dérogation et *a minima* pour indiquer que le metteur sur le marché devrait dûment justifier sa demande de dérogation.

(c) where relevant, provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph based on **the technical feasibility or relevance of tracking substances of concern**, the need to protect confidential business information **subject to justification or in other duly justified cases**. Substances of concern falling under Article 2(28), within the meaning of point (a), paragraph 2 of Article 28, shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.

Les autorités françaises soutiennent l'ajout du point d au 2^{ème} alinéa, qui fait écho au nouveau considérant 27a.

Au point 6, les autorités françaises soutiennent la mise à disposition systématique des informations réglementaires dans le passeport de produit numérique.

Nouvel article 7a relatif au contenu des actes d'exécution

Les autorités françaises **soutiennent la nouvelle rédaction sur les délais de mise en œuvre** des actes de législation secondaire.

S'agissant du passeport de produit numérique, les autorités françaises posent la question de savoir s'il ne devrait pas être mentionné dans le contenu des actes de législation secondaire.

Au point f, les autorités françaises soulignent un problème rédactionnel (redondance à « adequate appropriate »).

Article 58 – marchés publics écologiques, et considérant 87

Les autorités françaises **remercient la Présidence pour sa proposition qui va globalement dans le bon sens**. La nouvelle rédaction permet une lecture plus lisible et plus opérationnelle de

l'article. De plus, la nouvelle première phrase du point 1a, ainsi que l'ajout à la première phrase du paragraphe suivant, soulignent avec clarté l'approche sectorielle des mesures et la nécessité de cibler les mesures sur les secteurs pertinents par groupes de produits concernés.

Les autorités françaises rejoignent la Présidence sur la nécessité que les mesures relatives aux marchés publics écologiques ne soient pas adoptées au moyen d'actes délégués. Dans cette perspective, elles sont **favorables aux actes d'exécution lorsqu'ils sont adoptés selon la procédure d'examen de manière ciblée et nécessaire** afin d'assurer une implication plus étroite des Etats membres et des experts dans leur élaboration.

De manière plus détaillée, les autorités françaises font part des commentaires suivants :

- Sur l'ensemble de l'article, les autorités françaises interrogent les modalités d'identification des groupes de produits « concernés » dans le cadre des marchés publics : selon quel niveau de granularité ces groupes seront-ils définis par le règlement? A titre d'illustration, le point (v) précise « *the class of products, which is the subject of the considered public contract* ».
- 1a (a) : les autorités françaises **soutiennent le critère visant à exiger la conformité des produits utilisés à l'une des deux classes de performance les plus élevées** dans les cas où des classes de performance sont établies pour une catégorie de produits.
- 1a (b) : les autorités françaises **soutiennent la prise en compte plus particulière des paramètres** relatifs à l'allongement de la durée de vie, à la consommation énergétique, à la gestion de la fin de vie, et aux possibilités de reconditionnement et de remanufacturation dans les possibilités de critères obligatoires.
- En ce qui concerne les exigences susceptibles d'être imposées aux acheteurs, elles doivent porter sur les clauses techniques et les objectifs : les autorités françaises **demandent donc la suppression des critères de sélection (point ii) et des conditions d'exécution du contrat (point iii)** qui doivent rester à la discrétion des acheteurs publics. **Les obligations ne doivent pouvoir porter que sur les clauses techniques et les objectifs.**
- les autorités françaises **s'opposent également au nouveau critère de conformité anticipée aux exigences d'écoconception** (point v).

The requirements shall, as appropriate to the product group concerned, take the form of, ~~mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate:~~

(i) technical specifications within the meaning of paragraph 1 of Annex VII of Directive 2014/24/EU and of Article 60 of Directive 2014/25/EU,

~~(ii) selection criteria within the meaning of Article 58 of Directive 2014/24/EU and of Article 80 of Directive 2014/25/EU,~~

~~(iii) contract performance clauses within the meaning of Article 70 of Directive 2014/24/EU and of Article 87 of Directive 2014/25/EU,~~

(iv) targets,

~~(v) [Where applicable,] compliance by the class of products, which is the subject of the considered public contract, with the ecodesign requirement, whole or parts thereof, at an earlier stage than the application dates foreseen in the implementing act referred to in Article 4 establishing those specific ecodesign requirements.~~

- Au point 2-d, les autorités françaises souhaitent demander une clarification à la Présidence sur ce qu'elle entend, dans ce contexte, par « pression compétitive » (*competitive pressure*). A ce sujet, les autorités françaises soulignent qu'il est effectivement important que la Commission prenne en compte lors de l'adoption des actes d'exécution qui fixeront les exigences applicables aux acheteurs publics, **les impacts de telles exigences sur la concurrence. Ces exigences ne doivent pas conduire à restreindre de manière disproportionnée la concurrence entre les opérateurs.**

- Enfin, les autorités françaises estiment que **des dérogations** à l'application de ces exigences devraient pouvoir être, dans un cadre précisément défini, **admises notamment en cas de contrainte opérationnelle liée à la défense nationale ou de contrainte technique significative pour l'exécution des prestations**.

Au considérant 87, les autorités françaises souhaitent demander des clarifications à la Présidence sur la signification de l'ajout suivant : « *Green public procurement requirements should not be developed if they are likely to disproportionately impact other public policy objectives of the Member States* ».

Annexe I

Les autorités françaises font part de leurs **réserves quant à l'ajout d'un paramètre relatif à la conception légère des produits** (nouveau point r : « lightweight design »). En effet, cette approche peut s'avérer contradictoire, dans certains cas, avec les objectifs d'allongement de la durée de vie des produits ou la réduction d'utilisation de matériaux plastiques. Ce commentaire vaut également pour le considérant 5.

Par ailleurs, dans cette annexe I : les « substances » sont mentionnées au point d) et au point f). Dans ces deux points, il n'est pas fait mention de « substances préoccupantes » mais de « substances dangereuses » ou de « substances ». Les autorités françaises s'interrogent sur le fait qu'il ne soit pas question dans les deux cas de « substances préoccupantes ». Il conviendrait probablement d'harmoniser.

Courtesy translation

Subject: Comments from the French authorities concerning the draft regulation on the ecodesign of sustainable products ("ESPR") following the working party of 17 February 2023

The Swedish Presidency presented a new compromise proposal to the WP on 17 February. Following these exchanges, the Presidency did not formally request written comments from delegations, but indicated that it would take note of comments sent by delegations on their own initiative. France would indeed like to make the following written proposals.

The proposals for amendments are framed

4. General comment

French authorities thank the Swedish Presidency for the compromise text it presented to the Council working party on 17 February. They believe that this text (ST 6199/23) allows for a number of improvements on certain points (in particular green public procurement). However, in terms of comitology, they question the approach of replacing delegated acts by implementing acts throughout the text without a prior analysis of the relevance of each type of act in relation to the various provisions, particularly with regard to the robustness of the text, including legal robustness, in view of its future implementation. French authorities will provide more specific comments on this point. In the meantime, they would like to send the Presidency their comments on the other subjects discussed at the Council working party on 17 February.

5. Comments on the recitals

Recital 11

French authorities thank the Presidency for this addition, which clarifies that the digital elements of a product are indeed included in the scope of the Regulation. However, they question the wording chosen: it might have been preferable to **refer explicitly to "goods with digital components", "digital content" and "digital services", in accordance with Directives 2019/770 and 2019/771.**

The amended part of the recital could be reworded as follows:

(11) (...) Digital content that is an integral part of a physical goods is also included in the scope. The scope of this regulation also includes goods with digital elements, digital content and digital services.
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Recital 15

(see comments on article 3)

Member States should not impose national requirements relating to product parameters referred to in Annex I, for products which an implementing act adopted pursuant to this Regulation provides that no performance, no information or neither performance nor information requirements are necessary for that parameter.
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Recital 23

French authorities thank the Presidency for the addition concerning the consideration of reparability and carbon footprint for possible horizontal measures. However, they would like this provision to be **transferred to the main body of the text**, to Article 5 on ecodesign requirements (paragraph 2), in order to have more impact:

Art 5. 2. Ecodesign requirements shall be established for a specific product group. However, where two or more product groups display similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common requirement, ecodesign requirements may be established horizontally for those product groups. **For relevant products groups horizontal requirements on important aspects such as reparability and product carbon footprint should be systematically considered in order to speed up the transition to a circular economy.**

Recital 25

The paragraph added at the end of this recital is linked to the provisions of point c of the second subparagraph of Article 7(5), which provides for the possibility of exemptions from the obligations to provide information on substances of concern. **As already indicated, French authorities are concerned that these exemptions are not well defined. The text should specify more precisely the basis on which exemptions should be defined and systematically provide for the marketer to justify his request.**

Disproportionate administrative burden for businesses should however be avoided. Exemptions from this ~~obligation~~ requirement related to the tracking and communication of sustainability information should be defined based on ~~technical feasibility of tracking~~, the need to protect trade secrets **subject to justification and in other duly justified cases**. This regulation also enables the Commission to set requirements which prevents chemicals that hinder circularity from being included in the product. Where a substance has already been established as being a substance of concern that hinder circularity for another product group this can give indication that the chemical hinder circularity also for other product groups.

Recital 27a

French authorities support the **addition of this new recital, which encourages the Commission to rely on existing mechanisms for communicating information on substances and mixtures within the supply chain (safety data sheet, SCIP database).** This will avoid an excessive administrative burden for industry and facilitate the appropriation of this information by consumers.

6. Comments on articles

Article 2 – definitions

Définition 1- Produit

French authorities would like digital products that operate on a physical medium but are not physical in nature to be included in the scope of the Regulation. They therefore propose the following amendment:

'product' means any **item physical good** that is placed on the market or put into service;

Definition 6 - ecodesign

French authorities would like to ask for a **clarification of the notion of "environmental sustainability"**. In view of the frequent use of this concept throughout the text, it would probably be appropriate to introduce a **specific definition** of this concept. Furthermore, in the French version, the term "durabilité" can lead to confusion with the notion of life span.

In order to overcome this lack of clarity, the French authorities also propose to include in the ESPR the **definition included in the current ecodesign directive** for energy-related products (2009/125/EU), which seems to us more satisfactory:

23) 'Ecodesign' means the integration of environmental aspects into product design with the aim of improving the environmental performance of the product throughout its whole life cycle;

This will also ensure more continuity between the two texts.

Definition 7 - Ecodesign requirement

With regard to definition 7, French authorities wish to recall that the **functional performance** of the product must not be forgotten. The objective of environmental performance must be achieved while maintaining the functionality of the product. In this context, they propose the following amendment:

(7) 'ecodesign requirement' means a performance requirement or an information requirement aimed at making a product more environmentally sustainable **whilst maintaining its functional performance** ;

Definition 12 – Life cycle

With regard to definition 12 concerning the life cycle, French authorities are of the opinion that it would be **more appropriate to use the definition included in the ISO 14 040 standards on life cycle analysis**. This definition has the advantage of being widely used and internationally recognised.

Definition 16 - Remanufacturing

French authorities propose the following amendment, aimed in particular at introducing, in the definition of remanufacturing, the notion of "substantial modification" and the requirement of compliance with the regulations:

(16) 'remanufacturing' means an **industrial process operation in which leading to** a new product manufactured **from a product having undergone a substantial modification or from is** produced ~~manufactured from objects that are~~ waste, **products used** components **or used products, and to which relevant regulatory requirements related to new products apply. and in which at least one change is made to the product that affects the its safety, performance, purpose or type** of the product typically placed on the market with a commercial guarantee;

Definition 18 – Refurbishing

French authorities propose the following amendment to the definition of refurbishing, aimed in particular at introducing the stage of checking the product's functionality. As regards the performance of the refurbished product, they consider that the words "range of performance" are sufficient. Indeed, refurbishing does not always make it possible to restore the same level of performance as that of the new product.

(18) 'refurbishment' means preparing, cleaning, testing ~~and preparing or modifying~~ and, where necessary repairing an object that is waste or a product to **check and** restore its **performance or** functionality within the intended use_i and range of performance and maintenance originally conceived at the design stage, **applicable at the time of its placing on the market** or to meet applicable technical standards or regulatory requirements with the result of making a fully functional product;

Definition 24 - Product Environmental Footprint method

French authorities underline France's support for the use of PEF methods. However, they consider that the methods already used in certain sectors should still be authorised. Moreover, methodological complements should be authorised for aspects not covered by PEF methods.

Indeed, the latter do not take into account, or insufficiently so, certain very important environmental aspects such as biodiversity or pollution by pesticides.
French authorities therefore propose the following amendment:

(24) 'Product Environmental Footprint method' means the life cycle assessment method to quantify the environmental impacts of products established by Recommendation (EU) 2021/2279; **subject to, where appropriate, methodological supplements for aspects not covered by the PEF methods, and without prejudice to methods used in some sector policies such as construction products or energy-related products;**

Definition 27 - Substance

French authorities support the **addition of this definition, which is that of the REACH regulation.**

Article 3 – free movement, and recital 15

French authorities thank the Presidency for the deletion from Article 3 of point 4 prohibiting Member States from adopting national provisions relating to aspects of performance or information not regulated by measures implementing the ESPR Regulation. They note, however, that this text has been transferred to the recitals (in recital 15). The French authorities are **opposed to the retention of this point, even within the recitals.** Indeed, the French authorities are of the opinion that **Member States should be allowed to adopt or maintain measures in areas or for criteria which are not covered by the ESPR measures.**

In this context and for the same reason, French authorities would also like to see the **following text deleted from Article 5(3), which risks being too restrictive for the Member States' room for manoeuvre, including with regard to product categories not covered by the ESPR regulation:**

~~"When the setting of performance requirements or information requirements would not contribute to the objectives of this Regulation, ecodesign requirements may provide that no information requirements or no performance requirements or neither are necessary for specific product aspects."~~

Sector regulatory acts deriving from ESPR should not specify product aspects for which no other type of measure could be taken.

Article 5 – Ecodesign requirements

See also the comment on recital 23

French authorities wish to underline the **lack of link between Article 5 and Annex I** on environmental parameters of products. The latter are linked to the ecodesign requirements listed in Article 5. In this context, a link to Annex I should be included:

Art. 5 (1). The Commission shall, taking into consideration all the following product aspects, **as well as the product parameters as set out in annex I,** and with due consideration for all stages of their life cycle, establish ecodesign requirements to improve the product aspects relevant to the product group concerned:

In point 3, French authorities are of the opinion that it should be possible to establish, for the same product group, both types of ecodesign requirements, namely performance requirements and information requirements. They therefore propose the following amendment:

Art 5 (3). Ecodesign requirements shall, as appropriate to improve the specific product aspects, include:
(a) performance requirements as set out in Article 6 **and/or;**

(b) information requirements as set out in Article 7, ~~or both~~.

French authorities reiterate their wish that the **competitive impacts of ecodesign requirements that may apply to intermediate products** be taken into account in the preparation of sectoral measures. Indeed, final products would be manufactured within the European Union with intermediate products that comply with ecodesign requirements, whereas they could be manufactured outside the European Union with intermediate products that are not subject to these requirements. French authorities propose the following amendment to Article 16 on priority setting and planning:

1. When prioritising products to be covered by ecodesign requirements, the Commission shall analyse the potential contribution of those products to achieving Union climate, environmental and energy efficiency objectives, and to fostering the Union economic resilience and competitiveness, taking into account at least the following criteria:

(a) [...]
(b) [...]
[...]
[...]
(c)
(d)
(e)
(new) for intermediate products, their potential impact on the Union competitiveness for the products in which the intermediate products are incorporated.

In addition, French authorities regret that the **possibility of establishing advanced voluntary and incentive ecodesign criteria**, in addition to the "basic" regulatory requirements, has not been taken into account (the so-called "top-runner" approach). Indeed, French authorities would like to see the dynamic system included in the existing directive retained in the new regulation, whereby ecodesign criteria are developed at two levels: minimum regulatory requirements and more advanced benchmarks for voluntary use. A third level of requirements can also be considered, linked to the EU's longer-term objectives of carbon neutrality and energy efficiency, taking into account best available technologies, improvement potentials and scenarios, which can give guidance to business and research/innovation. To this end, French authorities propose the following amendment:

Art 5 3. bis (new) Ecodesign requirements shall be supplemented with more advanced benchmarks based on the best available technologies that can be used by manufacturers on a voluntary basis.
They shall also be supplemented with longer term requirements associated with the energy efficiency and carbon neutral objectives of the Community.

With regard to the new paragraph 5 (9), French authorities understand that this new point clarifies the definition in point c of paragraph 28 of Article 2 (definition of substance of concern) and replaces point a of the second subparagraph of paragraph 5 of Article 7. **French authorities welcome this addition. However, they consider that this paragraph would be better placed in point c of paragraph 28 of Article 2.** As the proposal stands, this new paragraph creates confusion as to what is to be considered as substances of concern in the product groups, as it seems to restrict the substances to be considered to those in point c of Article 2(28).

French authorities wish to reiterate a comment already made on the restriction procedure. **They question the mechanism provided for to allow the restriction, for reasons other than chemical or food safety, of substances present in products or used in their manufacturing processes which have an impact on the durability of products.** They point out that the process of developing the restriction procedure is completely different from the process as it is known in the REACH Regulation, the latter involving public consultations and expertise by committees of scientific experts (Risk Assessment Committee (RAC) and Socio-Economic Analysis Committee (SEAC) of the European Chemicals Agency (ECHA)). They wonder to what extent the procedure that will be implemented by the ecodesign regulation will be equally robust.

Article 6 - Performance requirements

French authorities regret that the **link with Annex I**, deleted by the Czech Presidency, has not been reintroduced. Indeed, the performance requirements are linked to the environmental parameters of products listed in Annex I. In this context, a link to Annex I should be included.

Art. 6 (2). Performance requirements referred to in paragraph 1 **shall be based on the product parameters referred to in Annex I** and shall as appropriate, include:

In point 3, the proposed addition strengthens the clarification of the interface between the chemicals regulation and the draft eco-design regulation. French authorities support this addition.

Article 7 – Information requirements

French authorities point out an editorial problem at the beginning of the first sentence, with a redundancy of meaning "Information requirements shall require".

Regarding point 2-b-ii, French authorities **support the introduction of the information on reparability**. However, in the spirit of improving the logical order (it is better to have information on the reparability of the product before information on repair), they propose to **move the information on reparability up**:

(ii) information for customers and other actors consumers and other end-users on ***the reparability of products and*** how to install, use, maintain and repair the product, ***including its reparability***, in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or dispose of the product at end-of-life handle the product at the end of its life, as relevant;

French authorities **support point 2-b-v concerning the possibility of requiring information on the carbon footprint of products**.

In point b of the first subparagraph of paragraph 5, we **disagree with the addition of "where relevant"**, which weakens the scope of the provision.

Art. 7 (5-b) (b) **where relevant**, the location of the substances of concern within the product;

In point e of the first subparagraph of paragraph 5, French authorities **support the addition of "recycling and end-of-life management"**, which responds to a comment they had already made.

In point c of the second subparagraph of paragraph 5, French authorities **are concerned, as for the addition to recital 25, about the possibilities of derogating from the obligation to provide information, which seem to be rather ill-defined, which could undermine the traceability of information on substances of concern**. They believe that the wording should be revised to specify the procedures for granting derogations and, at the very least, to indicate that the marketer should duly justify his request for a derogation.

(c) where relevant, provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph based on **the technical feasibility or relevance of tracking substances of concern**, the need to protect confidential business information **subject to justification or in other duly justified cases**. Substances of concern falling under Article 2(28), within the meaning of point (a), paragraph 2 of Article 28, shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.

French authorities support the addition of point d to the second paragraph, which echoes the new recital 27a.

In point 6, French authorities support the systematic provision of regulatory information in the digital product passport.

New article 7a on the content of implementing acts

French authorities **support the new wording on the deadlines for implementation of secondary legislation.**

With regard to the digital product passport, French authorities question whether it should not be mentioned in the content of secondary legislation.

In point f, French authorities point out a drafting problem (redundancy in "adequate appropriate").

Article 58 – green public procurement, and recital 87

French authorities **thank the Presidency for its proposal, which is generally a step in the right direction.** The new wording makes the article easier to read and more operational. Moreover, the new first sentence of point 1a, as well as the addition to the first sentence of the following paragraph, clearly underline the sectoral approach of the measures and the need to target the measures on the relevant sectors by product groups concerned.

French authorities agree with the Presidency on the need for measures relating to green public procurement not to be adopted by means of delegated acts. In this perspective, **they are in favour of implementing acts when they are adopted under the committee procedure in a targeted and necessary manner** in order to ensure a closer involvement of Member States and experts in their elaboration.

In more detail, French authorities make the following comments:

- With regard to the article as a whole, French authorities **question the methods of identifying the groups of products "concerned" in the context of public contracts:** at what level of granularity will these groups be defined by the regulation? By way of illustration, point (v) specifies "the class of products, which is the subject of the considered public contract".

- 1a (a): French authorities **support the criterion of requiring compliance of the products used with one of the two highest performance classes** in cases where performance classes are established for a product category.

- 1a (b): French authorities **support the more specific consideration of parameters** relating to life extension, energy consumption, end-of-life management, and the possibilities of reconditioning and remanufacturing in the possibilities of mandatory criteria.

- As regards the requirements that may be imposed on public purchasers, they must relate to technical clauses and objectives: French authorities therefore **call for the removal of selection criteria (point ii) and contract performance clauses (point iii)**, which must remain at the discretion of public purchasers. **Obligations should only relate to technical specifications and targets.**

- French authorities also **oppose the new criterion of early compliance with ecodesign requirements** (point v)

The requirements shall, as appropriate to the product group concerned, take the form of, ~~mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate:~~

(i) technical specifications within the meaning of paragraph 1 of Annex VII of Directive 2014/24/EU and of Article 60 of Directive 2014/25/EU,

~~(ii) selection criteria within the meaning of Article 58 of Directive 2014/24/EU and of Article 80 of Directive 2014/25/EU,~~

~~(iii) contract performance clauses within the meaning of Article 70 of Directive 2014/24/EU and of Article 87 of Directive 2014/25/EU,~~

~~(iv) targets,~~

~~(v) [Where applicable,] compliance by the class of products, which is the subject of the considered public contract, with the ecodesign requirement, whole or parts thereof, at an earlier stage than the application dates foreseen in the implementing act referred to in Article 4 establishing those specific ecodesign requirements.~~

- In point 2-d, French authorities would like to ask the Presidency to clarify what it means in this context by "competitive pressure". In this respect, French authorities stress that it is indeed important that the Commission takes into account the **impact of such requirements on competition** when adopting the implementing acts that will set the requirements applicable to public purchasers. These requirements must not lead to a disproportionate restriction of competition between operators.

- Lastly, French authorities consider that it should be possible to grant **derogations** from the application of these requirements, within a precisely defined framework, in particular in the event of **operational constraints linked to national defence or significant technical constraints** on the performance of the services.

In recital 87, French authorities wish to ask the Presidency for clarification of the meaning of the following addition: "Green public procurement requirements should not be developed if they are likely to disproportionately impact other public policy objectives of the Member States".

Annex I

French authorities express their **reservations about the addition of a parameter relating to the lightweight design of products** (new point r: "lightweight design"). Indeed, this approach may prove contradictory, in certain cases, with the objectives of extending the life of products or reducing the use of plastic materials.

This comment also applies to recital 5.

Furthermore, in this Annex I: "substances" are mentioned in point d) and point f). In these two points, there is no mention of "substances of concern" but of "dangerous substances" or "substances". The French authorities question the fact that in both cases there is no mention of "substances of concern". It would probably be appropriate to harmonise.



BELGIAN NON PAPER

Why do we need to have the broadest possible definition of “substance of concern” in the Ecodesign for Sustainable Product Regulation (ESPR)?

Belgium welcomes the proposal for a new Ecodesign for Sustainable Products Regulation and **its ambition** to establish a framework for setting eco-design requirements for specific product groups, with a view to significantly enhance their circularity, energy performance and other aspects related to sustainability. The extension of the regulation to non-energy related products will indeed allow performance and information requirements to be set for almost all categories of goods placed on the European market, with some exceptions.

As expressed by the Commission during a session of our working group dedicated to chemicals management in particular, the **ESPR should be interpreted as a complement to existing chemicals legislations** (CLP, REACH, RoHS, POPs,...) and **should not overlap with them**. **Belgium strongly supports the principle that the existing chemicals legislation should remain the reference**, in particular the REACH regulation which should continue to be the main instrument for regulating chemical safety (covering both health and environmental aspects).

However, despite the fact that REACH is a cross-cutting regulatory tool for the management of risks related to chemicals, its scope does not allow for targeted action on all the aspects linked to circularity and sustainability of materials and products. A chemical substance in a material or product may not pose a hazard or risk during most of its life cycle, but may hinder recycling, reuse, refurbishment or other operations that ensure the circularity, durability and sustainability of the product in question. In this case (only), it appears that the **ESPR could be a useful and complementary tool as it addresses aspects not covered by the scope of REACH and other chemicals legislation**. In this respect, **Belgium strongly supports the inclusion of a restriction mechanism in the ESPR for substances contained in the product if they have a negative impact on the reuse and recycling of materials contained in the product** (see Article 6(3) ESPR).

Nevertheless, we would also like to seize the opportunity of this proposal to strengthen the management of chemicals in products by identifying the issues that the ESPR could cover, without compromising the overall economy of chemicals policy or existing chemicals-related legislation to ensure chemical safety. One of these aspects concerns the **information on substances of concern contained in a product**.

The need for broad and transparent information

Transparency towards consumers, but also towards the actors of the value chain, including at the end of life stage, must remain **a priority in the framework of the chemicals policy**.

Several tools in terms of information transmission already exist, notably through the [REACH regulation](#). The latter (see Article 33(2)) provides indeed for an obligation to communicate information when requested by a consumer. Moreover, all the recipients of a product should be provided with “sufficient information [...] to allow safe use of the [product] including, as a minimum, the name of that substance” (see Article 33(1) REACH). In the context of implementation, two limitations of these provisions have been flagged up: firstly, this provision has a limited scope in that it only covers substances of very high concern identified in the Candidate List. Furthermore, only certain actors in the value chain (i.e. recipients and consumers) have been identified as recipients of this information.

Considering the limitations of this provision (in particular as regards the recipients of this information), the co-legislators decided to **extend this “right to know” to all economic operators throughout the value chain, up to the waste phase**. Thus, taking the opportunity of the revision of the Waste Framework Directive in 2018, an obligation has been included for any supplier of a product to provide the European Chemicals Agency with the information referred to in Article 33(1) of that Regulation (see Article 9(1)(i) of the [Waste Framework Directive](#)). In order to ensure access to all this information, ECHA has the duty of making these notifications publicly available via a centralised database established and maintained by the Agency: the [SCIP Database](#).

Despite these provisions, value chain actors as well as consumers continue to call for more transparency and effective provision of information on substances of concern in the materials and products they use. The expectations are twofold: to have **information on all substances contained** in a product raising health and environmental concerns (a category therefore broader than the REACH category of substances of very high concern) and to have **easy access to information** (such as for providing for an obligation of active communication).

This is in line with the objectives outlined in the [Chemicals Strategy for Sustainability](#) (see point 2.1.2.), which aim to ensure non-toxic material cycles and, **in particular, to ensure the availability of information on chemical content and safe use, by introducing information requirements as part of the Sustainable Product Policy Initiative and by tracking the presence of substances of concern throughout the life cycle of materials and products.**

This objective was acknowledged by the co-legislators: the European Parliament has insisted on *“the need to provide clear and understandable information about chemical substances to citizens, workers and businesses in all languages of the EU as well as the need to increase transparency and traceability throughout the supply chain”* (see para. 50 of the [European Parliament resolution of 10 July 2020 on the Chemicals Strategy for Sustainability](#)). The Council underlined *“the importance of ensuring the availability of relevant and comprehensible information on the chemical content of products and its traceability through the life cycle of materials and products, notably by the development of product passports, thus ensuring a well-functioning market for safe and high quality secondary raw materials.”* (see para. 40 of the [Council conclusions of 15 March 2021, “Sustainable Chemicals Strategy of the Union: Time to Deliver”](#)).

The ESPR as a suitable and effective solution through a broad definition of “substance of concern”

The ESPR covers a range of requirements, one of which is of particular interest to Belgium: the requirements relating to the information to be provided, and those to be included in a data carrier included on the product, on the product itself or in the digital product passport. This new "digital product passport" will provide information, including on the environmental sustainability of products. It should enable consumers to make informed choices when purchasing a product, facilitate repair and recycling, and improve transparency on the environmental impacts of a product throughout its life cycle.

As the scope of the ESPR is broader than that of REACH, it could usefully complement REACH by providing for an obligation to provide information on the presence of all substances of concern in the product throughout the value chain to the final consumer and to waste operators handling products that have reached their end-of-life. However, the question arises as to **the extent of this transparency and thus the extent of the definition of "substance of concern" in the ESPR.**

Belgium advocates to include the broadest possible definition of “substance of concern” in Article 2(28) of this proposal.

A broad definition will indeed ensure transparency, but above all it will go beyond what is provided for in Article 33 REACH and in Article 9(1)(i) of the Waste Framework Directive. These legal instruments currently only cover substances that meet the conditions to be identified as substances of very high concern and included in the Candidate List. Such a limitation of scope does not allow, for example, to take into account classifications adopted under the CLP Regulation, as there is currently no link between the CLP Regulation and the REACH Candidate List (so substances classified as CMR identified under CLP Regulation are not automatically added to the Candidate List). Furthermore, the provisions currently in force do not allow for the transmission of information on several substances that are severely restricted within the Union, but for which derogations of use are provided and which are not included in the Candidate List. We are thinking here of substances included in Annex XVII of the REACH Regulation, substances covered by Annex I of the POP's Regulation and the RoHS Directive.

In addition, the traceability of these substances of concern will help to avoid undesirable negative effects due to the future (and sometimes unforeseeable) use of substances of concern in materials and products. It will also ensure a better use of any future decontamination methods if materials contaminated with substance of concern can be better traced and specifically targeted.

With a broad definition, **Belgium aims to ensure a good flow of information via the ESPR digital product passport, on as many substances of concern as possible that may hamper a non-toxic circular economy.**

Furthermore, this lever must also be mobilised as an **enabling tool for empowering consumers for the green transition through better information** (here, complementary to the related [proposal for a directive](#)).

Also the fact that it is the Commission's ambition to use this definition as a **cross-cutting concept for product-related legislation needs to be underlined**: other regulations, such as the packaging and waste packaging regulation, will refer to the definition of 'substance of concern' provided for in the ESPR regulation. **It is therefore important to keep the definition as open and broad as possible so that it can be linked to other legislation in a relevant and appropriate manner** (e.g. by referring to specific points in the definition). In addition, the substances of concern group definition is already used in step 1 of the Safe and Sustainable by Design (SSbD) framework - Hazard assessment of the chemical/material.

Moreover, without another legislative proposal to include this definition, we **need to work on this definition in this proposal to adequately fulfil the expectations** *"to develop without undue delay [...] harmonised, clear and precise definitions, and where adequate, criteria or principles for concepts that are crucial for the effective implementation of the Chemicals Strategy, such as [...] 'substances of concern', namely in order to have legal certainty and a common understanding among all parties"* (see para. 17 of the [Council conclusions of 15 March 2021, "Sustainable Chemicals Strategy of the Union: Time to Deliver"](#)).

We therefore call on other EU Member States to support a broad definition of substances of concern under the ESPR to ensure a long-term non-toxic circular economy, while continuing to ensure correct use and synergies between chemical safety and sustainability regulations.

ANNEX TO THE BELGIAN NON PAPER

AMENDMENT PACKAGE IN RELATION TO THE DEFINITION OF "SUBSTANCES OF CONCERN

Recital 25 (second part)	
<u>Disproportionate administrative burden for businesses should however be avoided. Exemptions from this obligation requirement related to the tracking and communication of sustainability information should be defined based on technical feasibility of tracking, the need to protect trade secrets and in other duly justified cases. This regulation also enables the Commission to set requirements which prevents chemicals that hinder circularity from being included in the product. Where a substances have already been established as being a substance of concern that hinder circularity for another product group this can give indication that the chemical hinder circularity also for other product groups.</u>	Disproportionate administrative burden for businesses should however be avoided. Exemptions from this obligation requirement related to the tracking and communication of sustainability information should be defined based on technical feasibility of tracking, the need to protect trade secrets and in other duly justified cases and only for those substances of concern that only negatively affect the re-use and recycling of materials in the product in which it is present. This regulation also enables the Commission to set requirements which prevents chemicals that hinder circularity from being included in the product. Where a substances have already been established as being a substance of concern that hinder circularity for another product group this can give indication that the chemical hinder circularity also for other product groups
The information should not be 'secret', the presence of hazardous substances should not be confidential business information. The Commission said they would do an impact study to evaluate the administrative workload of companies... Transparency has a cost but learning a posteriori the presence of dangerous substances in products can be expensive too...	

Article 2.28	
'substance of concern' means a substance that: (a) meets the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006; or (b) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories: – carcinogenicity categories 1 and 2, – germ cell mutagenicity categories 1 and 2, – reproductive toxicity categories 1 and 2, [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent,	(28) 'substance of concern' means a substance that: (a) meets the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006, <u>or addressed in restrictions in Annex XVII to Regulation (EC) No 1907/2006 or in Annexe I of the POP REGULATION</u> ; or (b) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories: – carcinogenicity categories 1 and 2, – germ cell mutagenicity categories 1 and 2, – reproductive toxicity categories 1 and 2, [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent, Bioaccumulative, Toxic (PBTs), very Persistent

Bioaccumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption], – respiratory sensitisation category 1, – skin sensitisation category 1, – chronic hazard to the aquatic environment categories 1 to 4, – hazardous to the ozone layer, – specific target organ toxicity – repeated exposure categories 1 and 2, – specific target organ toxicity – single exposure categories 1 and 2; or (c) negatively affects the re-use and recycling of materials in the product in which it is present;	very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption], – respiratory sensitisation category 1, – skin sensitisation category 1, – chronic hazard to the aquatic environment categories 1 to 4, – hazardous to the ozone layer, – specific target organ toxicity – repeated exposure categories 1 and 2, – specific target organ toxicity – single exposure categories 1 and 2; or [to be added as separate hazard classes in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes:] - neurotoxic - immunotoxic (c) negatively affects the re-use and recycling of materials in the product in which it is present;
We would prefer to broaden the definition of art. 2(28) – substances of concern and include also substances addressed under title XVII of REACH and POP Annex I as e.g. only certain PFAS have CLP classification or have been identified as SVHC, but recently an annex XV dossier has been introduced to restrict them all due to their persistency. We add the POPs regulation because not all substances are covered in the restriction process or SVHC but under POPs. The definition of "substances of concern" in the ESPR is very important because other legislation will refer to it. This is particularly the case for the "packaging and packaging waste" regulation. Packaging, like other products such as textiles, contains, for example, PFASs that hinder the circularity of materials but are not covered by the current proposed definition. We propose to add "neurotoxic" and "immunotoxic substances" separately in the definition (support FR proposition)	

Article 5.9	
In case the product group concerned contains substances, the Commission shall establish, where relevant which substances is a substance of concern within the meaning of point (c) of paragraph 28 of Article 28 taking into account, whether: (a) based on the state-of-the-art technologies, the substances make the re-use, [remanufacturing, repairing] or recycling	In case the product group concerned contains substances, the Commission and the member states (reference to article 17a) shall establish, where relevant which substances is a substance of concern within the meaning of point (c) of paragraph 28 of Article 28 taking into account, whether: (a) based on the state-of-the-art technologies, the substances make the re-use,

process substantially more complicated or energy-demanding, (b) the substances impair the technical properties or functionalities, the usefulness or the value of the recycled material or products manufactured from this recycled material, (c) the substances negatively impact cosmetic or aesthetic properties of the recycled material, e.g. through its color and smell,	[remanufacturing, repairing] or recycling process substantially more complicated or energy-demanding, (b) the substances impair the technical properties or functionalities, the usefulness or the value of the recycled material or products manufactured from this recycled material, (c) the substances negatively impact cosmetic or aesthetic properties of the recycled material, e.g. through its color and smell,
We would like to see that Member States can also be involved in identifying what is a substance of concern "which may affect reuse and recycling" (this is what the small point c refers to). Maybe this can be solved by adding a reference to article 17 (a) Also, in point 5 (9), in small (a) we ask for the deletion of the word "substantially" in order to ensure a balance between points a, b and c.	

Article 7.5 (first part)	
The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated implementing act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following: (a) the name of the substances of concern present in the product; (b) where relevant, the location of the substances of concern within the product; (c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main relevant components, or spare parts; (d) relevant instructions for the safe use of the product; (e) information relevant for disassembly, recycling and end of life management.	The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated implementing act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following: (a) the name of the substances of concern present in the product; (b) where relevant, the location of the substances of concern within the product; (c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main relevant components, or spare parts; (d) relevant instructions for the safe use of the product; (e) information relevant for disassembly, recycling, reuse and end of life management.
We are not in favor of deleting "all" and we are not in favor of adding "where relevant" to point (b). Also, at point (e), we are pleased to see the addition of "recycling and end of life	

management” but we maintain the addition of “reuse” also because “the reuse” is not the same that recycling. Regarding the definition of the WFD directive, the reuse “*means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived*”

Article 7.5 (second part)

Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall:

- (a) ~~where applicable~~, establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;
- (b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between substances; and

(c) **where relevant**, provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. **based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information or in other duly justified cases.**

Substances of concern falling under Article 2(28), within the meaning of point (a), paragraph 2 of Article 28, shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.

Where the Commission sets out information requirements in a ~~delegated~~ implementing act adopted pursuant to Article 4, it shall:

- (a) **where applicable**, establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;

(c) where relevant, provide **duly justified** exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. ~~**based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information or in other duly justified cases.**~~ Substances of concern falling under Article 2(28), within the meaning of point (a) **and (b)**, paragraph 2 of Article 28, shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight

(a) We are not agree with the deletion, it reduces the ambition of the original text

(c) We welcome the fact that SVHC are exempted from the exemption scheme, but we would like to see also the CLP – art. 2.28b substances also added to this, as those substances have also been classified due to hazardous characteristics.

We ask for the deletion of “technical feasibility or relevance of tracking substances of concern and the need to protect the confidential business information” which is not clear, reduces the scope of application and as mentioned in recital 25 relating to this article, the presence of hazardous substances should not be confidential business information (support FR proposition for this deletion)



RÉPUBLIQUE
FRANÇAISE

*Liberté
Égalité
Fraternité*

Paris, le 1 février 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Proposition des autorités françaises relative à l'article 20 du projet de règlement sur l'écoconception des produits durables (« ESPR ») et de mise en cohérence des définitions associées par suite du groupe de travail du 20 janvier

Suite au groupe de travail du 20 janvier, les autorités françaises ont l'honneur de faire part des commentaires suivants.

Elles souhaitent proposer le renforcement des dispositions proposées en matière de destruction des produits invendus. Il s'agirait ainsi de redéfinir le périmètre de l'interdiction de la destruction des invendus en l'étendant à tous les produits invendus (et non pas seulement aux produits ménagers qui seraient identifiés dans des textes d'application du règlement) et à toutes les entreprises. Il s'agit par ailleurs d'insister sur l'importance d'une remontée des données par les opérateurs, et d'avoir une plus grande transparence sur les quantités de dons et de réemplois d'invendus des entreprises, dans une logique d'information du grand public.

La proposition prévoit donc un renforcement de la rédaction de l'article 20 du projet de règlement ainsi qu'une mise en cohérence des définitions associées de l'article 2, à savoir la modification de la définition 35 de « destruction », et la modification de la définition 37 sur l'introduction d'une définition de « biens invendus ».

Il est proposé de modifier la définition de la « **destruction** » afin que celle-ci reflète plus fidèlement la hiérarchie des déchets définie à l'article 4 de la directive 2008/98/CE relative aux déchets. Alors que la proposition de la Commission européenne met sur un même plan le recyclage et la mise en décharge des produits invendus, il est ici proposé de recentrer la définition de **la destruction sur les opérations ne permettant pas de conserver la matière et contribuant ainsi à un épuisement des ressources.**

Le paragraphe 1 proposé vise ainsi à interdire toute dégradation ayant pour objectif de limiter les possibilités de réemploi ou de préparation en vue de la réutilisation de produits invendus (par exemple découper des invendus textiles).

Le paragraphe 2 vise à interdire la destruction (mise en décharge, incinération ou valorisation énergétique) de produits invendus. Il conduit donc les opérateurs économiques à organiser le réemploi, la préparation en vue de la réutilisation et le recyclage des produits invendus dans le respect de la hiérarchie des déchets définie à l'article 4 de la directive 2008/98/CE.

Il prévoit que les **Etats membres puissent renforcer** cette disposition en imposant que les invendus relevant de certaines catégories de produits soient **exclusivement réemployés** ou préparés en vue de la réutilisation.

Le paragraphe 3 définit les conditions dans lesquelles il est possible de déroger à l'interdiction de destruction :

- Le recyclage est interdit, l'élimination imposée par la réglementation, ou le réemploi / recyclage présente de sérieux risque pour la santé ou la sécurité ;
- Lorsqu'il n'existe pas de marché pour ces produits invendus et que leur recyclage ne peut être effectué dans des conditions durables.

Le paragraphe 4 reprend le principe de transparence prévu par le projet de règlement et précise que les données divulguées doivent être mises à disposition du public en *opendata* afin que la société civile puisse s'en emparer.

Le paragraphe 6 prévoit une obligation de communication de données des Etats membres à la Commission afin de permettre un suivi réel de l'efficacité de cette mesure.

Les paragraphes 5 et 7 prévoient la définition, par acte d'exécution, des formats de divulgation des données par les opérateurs économiques ainsi que des formats de rapports des Etats membres à la Commission.

Article 2

Definitions

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 or remanufacturing operations;~~ **any operation falling under d) or e) of Article 4 of Directive 2008/98/EC;**

37) 'unsold consumer product' means any consumer product, **at any stage of the process of production, distribution and retail**, that has not been sold or that has been returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU;

Article 20

Destruction of unsold products

1. Economic operators shall not intentionally damage unsold products in order to limit the possibility of their re-use or preparation for re-use.

2. As of [xxx years after adoption of this regulation], economic operators shall not discard for destruction unsold products.

Economic operators shall manage unsold products giving priority to reuse and preparation for reuse and afterward to recycling in accordance with the waste hierarchy referred to in Article 4 of Directive 2008/98/EC;

Member States may require that unsold products belonging to certain product categories should only be re-used or prepared for re-use, for instance through donation to charity organizations. Member States shall inform the Commission of these decisions once adopted.

3. Paragraph (2) is not applicable

(a) to products whose recycling is prohibited, whose disposal is prescribed or whose re-use, preparation for re-use and recycling involve serious health or safety risks;

(b) when :

(i) there is no market or demand for products with the same main functions and characteristics as the unsold product or none of these products continue to be placed on the market; and;

(ii) the recycling of the unsold products cannot be achieved in sustainable conditions.

44. An economic operator that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose:

(a) the number of unsold consumer products discarded per year, differentiated per type or category of products;

(b) the reasons for the discarding of products;

(c) the delivery of discarded products to preparing for re-use, remanufacturing, recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC;

(d) the justification that unsold products delivered to destruction fall under the exemption referred to in paragraph 3.

The economic operator shall disclose that information, **for each type or category of unsold products**, on a free accessible website, or otherwise make it publicly available, until a delegated act adopted pursuant to paragraph 3 starts applying to the category of unsold consumer products discarded by the operator in question. **That information shall be made available to the public in an open, easily re-usable format and exploitable by an automated processing system.**

5. The Commission shall adopt, by [xxx years after adoption of this regulation], implementing acts establishing the rules for verification and disclosing of information in accordance with paragraph 4, and the format for the disclosing.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

6. Member States shall report to the Commission for each calendar year the data concerning the implementation of paragraphs 2 and 3.

Member States shall report the data electronically within 18 months of the end of the reporting year for which the data are collected. They shall report the data in the format established by the Commission in accordance with paragraph 7.

7. The Commission shall, by [xxx years after adoption of this regulation], adopt implementing acts establishing the format for reporting the data referred to in paragraph 6.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by prohibiting economic operators to destroy unsold consumer products in the Union, where the destruction of unsold consumer products falling within a certain product group has significant environmental impact.~~

~~In the delegated acts adopted pursuant to the first subparagraph, the Commission shall set out certain exemptions to those prohibitions where it is appropriate in view of:~~

~~(a) health and safety concerns;~~

~~(b) damage to products as a result of their handling or detected after a product has been returned by a consumer;~~

~~(c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;~~

~~(d) refusal of products for donation, preparing for re-use or remanufacturing.~~

~~4. When preparing a delegated act adopted pursuant to paragraph 3, the Commission shall:~~

~~(a) assess the prevalence and environmental impact of the destruction of specific consumer products;~~

~~(b) take into account the information disclosed by economic operators pursuant to paragraph 1;~~

~~(c) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary.~~

~~The Commission shall consult the Ecodesign Forum referred to in Article 17, and take account of its views on possible prohibitions of destruction of unsold consumer products referred to in paragraph 3, prior to the preparation of the delegated acts setting out those prohibitions.~~

~~5. Where unsold consumer products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose on a freely accessible website or otherwise make publicly available:~~

~~(a) the number of unsold consumer products destroyed~~

~~(b) the reasons for their destruction, referring to the applicable exemption;~~

~~(c) the delivery of the products destroyed to recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.~~

~~The details and format for the disclosure of information provided in the implementing act adopted pursuant to paragraph 2 shall apply to the information to be disclosed pursuant to this paragraph, unless the delegated act adopted pursuant to paragraph 3 provides otherwise.~~

~~6. This Article shall not apply to SMEs.~~

~~However, the Commission may, in the delegated acts adopted pursuant to paragraph 3, provide that the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4 shall apply to:~~

~~(a) medium-sized enterprises, where there is sufficient evidence that they account for a substantial proportion of unsold consumer products being destroyed;~~

~~(b) microenterprises, small enterprises or medium-sized enterprises, where there is sufficient evidence that they may be used to circumvent the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4.~~

Les autorités françaises transmettent en annexe une cartographie de la gestion des invendus en France.

Courtesy translation

“This is a courtesy translation and in the event there are any differences between the French and English texts, the French text governs”

Subject: Proposal on Article 20 of the draft Regulation on the Ecodesign of Sustainable Products ("ESPR") and to align the associated definitions as a result of the 20 January working group

The French authorities wish to propose to strengthen the provisions proposed by the European Commission on the destruction of unsold products. The aim is to define the scope of the ban on the destruction of unsold products by extending it to all unsold products (and not only to household products, which would be identified in the regulation's implementing texts) and to all operators. The aim is also to stress the importance of data feedback from operators and to have greater transparency on the quantities of unsold products donated and reused by companies, with a view to informing the general public.

The proposal therefore reinforces the drafting of Article 20 of the draft Regulation as well as an alignment of the associated definitions, namely the amendment of the definition of destruction and the introduction of a definition of unsold goods (37).

It is proposed to amend the definition of destruction to more closely reflect the waste hierarchy set out in Article 4 of Directive 2008/98/EC on waste. Whereas the European Commission's proposal equates recycling with the landfilling of unsold products, it is proposed to refocus the definition of destruction on operations that do not allow the material to be retained and thus contribute to resource depletion.

Paragraph 1 thus aims to prohibit any degradation with the objective of limiting the possibilities of reuse or preparation for reuse of unsold products (e.g. cutting up unsold textiles).

Paragraph 2 aims to prohibit the destruction (landfill, incineration, energy recovery) of unsold products. It therefore leads economic operators to organise the reuse, preparation for reuse and recycling of unsold products in accordance with the waste hierarchy defined in Article 4 of Directive 2008/98/EC.

It provides that Member States may reinforce this provision by requiring that unsold products in certain product categories be exclusively reused or prepared for reuse.

Paragraph 3 sets out the conditions under which derogations from the destruction ban are possible:

- Recycling is prohibited, disposal is required by regulation, or re-use/recycling presents a serious health or safety risk;
- When there is no market for these unsold products and their recycling cannot be carried out under sustainable conditions.

Paragraph 4 takes up the principle of transparency provided for in the draft regulation and specifies that the data disclosed must be made available to the public in opendata so that civil society can make use of them.

Paragraph 6 provides for an obligation to communicate data from the Member States to the Commission in order to allow real monitoring of the effectiveness of this measure.

Paragraphs 5 and 7 provide for the definition, by implementing act, of the formats for the disclosure of data by economic operators as well as the formats for reporting by Member States to the Commission.

Article 2

Definitions

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 or remanufacturing operations; **any operation falling under d) or e) of Article 4 of Directive 2008/98/EC;**

37) 'unsold consumer product' means any consumer product, **at any stage of the process of production, distribution and retail,** that has not been sold or that has been returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU;

Article 20

Destruction of unsold products

1. Economic operators shall not intentionally damage unsold products in order to limit the possibility of their re-use or preparation for re-use.

2. As of [xxx years after adoption of this regulation], economic operators shall not discard for destruction unsold products.

Economic operators shall manage unsold products giving priority to reuse and preparation for reuse and afterward to recycling in accordance with the waste hierarchy referred to in Article 4 of Directive 2008/98/EC;

Member States may require that unsold products belonging to certain product categories should only be re-used or prepared for re-use, for instance through donation to charity organizations. Member States shall inform the Commission of these decisions once adopted.

3. Paragraph (2) is not applicable

(a) to products whose recycling is prohibited, whose disposal is prescribed or whose re-use, preparation for re-use and recycling involve serious health or safety risks;

(b) when :

(i) there is no market or demand for products with the same main functions and characteristics as the unsold product or none of these products continue to be placed on the market; and

(ii) the recycling of the unsold products cannot be achieved in sustainable conditions.

4. An economic operator that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose:

(a) the number of unsold consumer products discarded per year, differentiated per type or category of products;

(b) the reasons for the discarding of products;

(c) the delivery of discarded products to preparing for re-use, remanufacturing, recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC;

(d) the justification that unsold products delivered to destruction fall under the exemption referred to in paragraph 3.

The economic operator shall disclose that information, **for each type or category of unsold products**, on a free accessible website, or otherwise make it publicly available, until a delegated act adopted pursuant to paragraph 3 starts applying to the category of unsold consumer products discarded by the operator in question. **That information shall be made available to the public in an open, easily re-usable format and exploitable by an automated processing system.**

5. The Commission shall adopt, by [xxx years after adoption of this regulation], implementing acts establishing the rules for verification and disclosing of information in accordance with paragraph 4, and the format for the disclosing.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

6. Member States shall report to the Commission for each calendar year the data concerning the implementation of paragraphs 2 and 3.

Member States shall report the data electronically within 18 months of the end of the reporting year for which the data are collected. They shall report the data in the format established by the Commission in accordance with paragraph 7.

7. The Commission shall, by [xxx years after adoption of this regulation], adopt implementing acts establishing the format for reporting the data referred to in paragraph 6.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by prohibiting economic operators to destroy unsold consumer products in the Union, where the destruction of unsold consumer products falling within a certain product group has significant environmental impact.~~

~~In the delegated acts adopted pursuant to the first subparagraph, the Commission shall set out certain exemptions to those prohibitions where it is appropriate in view of:~~

~~(a) health and safety concerns;~~

~~(b) damage to products as a result of their handling or detected after a product has been returned by a consumer;~~

~~(c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;~~

~~(d) refusal of products for donation, preparing for re-use or remanufacturing.~~

~~4. When preparing a delegated act adopted pursuant to paragraph 3, the Commission shall:~~

~~(a) assess the prevalence and environmental impact of the destruction of specific consumer products;~~

~~(b) take into account the information disclosed by economic operators pursuant to paragraph 1;~~

~~(c) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary.~~

~~The Commission shall consult the Ecodesign Forum referred to in Article 17, and take account of its views on possible prohibitions of destruction of unsold consumer products referred to in paragraph 3, prior to the preparation of the delegated acts setting out those prohibitions.~~

~~5. Where unsold consumer products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose on a freely accessible website or otherwise make publicly available:~~

~~(a) the number of unsold consumer products destroyed~~

~~(b) the reasons for their destruction, referring to the applicable exemption;~~

~~(c) the delivery of the products destroyed to recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.~~

~~The details and format for the disclosure of information provided in the implementing act adopted pursuant to paragraph 2 shall apply to the information to be disclosed pursuant to this paragraph, unless the delegated act adopted pursuant to paragraph 3 provides otherwise.~~

~~6. This Article shall not apply to SMEs.~~

~~However, the Commission may, in the delegated acts adopted pursuant to paragraph 3, provide that the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4 shall apply to:~~

~~(a) medium-sized enterprises, where there is sufficient evidence that they account for a substantial proportion of unsold consumer products being destroyed;~~

~~(b) microenterprises, small enterprises or medium-sized enterprises, where there is sufficient evidence that they may be used to circumvent the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4.~~

The French authorities are attaching an explanation of the management of unsold goods in France.

Introductory comments by BE

Belgium strongly supports the principle that the existing chemicals legislation should remain the reference, in particular the REACH regulation which should continue to be the main instrument for regulating chemical safety.

However, its scope does not allow for targeted action on all aspects related to circularity and sustainability of materials and products, so the Ecodesign Regulation could be a useful and complementary tool as it addresses aspects not covered by the scope of REACH and other chemicals legislation.

In this respect, Belgium strongly supports the inclusion of a restriction mechanism in the ESPR for substances contained in the product if they have a negative impact on the reuse and recycling of materials contained in the product.

Therefore, transparency towards consumers, but also towards the actors of the value chain, including at the end of life stage, must remain a priority in the framework of the chemicals policy. Thus, the requirements in terms of information on substances of concern contained in a product included in the ESPR regulation are very important.

That is why we have taken the initiative to circulate this non-paper to explain our concerns, our analysis of the legislation in terms of information requirements for substances of concern and our willingness to support a broad definition of substances of concern in the ESPR to ensure a non-toxic circular economy in the long term, while continuing to ensure proper use and synergies between chemical safety and sustainability regulations.

Comments by IT

Proposal for a Regulation establishing the framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC

Comments for the Competitiveness and Growth Working Party – Ecodesign

Italy is still analysing the second compromise text submitted on the 10th of February by the Swedish Presidency and, therefore, is placing a scrutiny reservation on the text.

On a preliminary basis, however, Italy recognizes the steps forward incorporated in the new text, which we therefore positively welcome.

With specific reference to the parts of the text analysed during the last two meetings on the 17th and 28th of February 2023 we submit the following comments. The amendments to the second compromise text proposed by Italy are highlighted in red.

a. Article 1 - Subject matter and scope

Italy supports the amendments to Article 1.

In relation to the list of products excluded from the scope of the Regulation in the second paragraph, it is considered necessary to also add:

1. Packaging: ecodesign elements for such products should fall within the scope of the Regulation on Packaging and Packaging Waste currently under revision;
2. Custom-made products: these products are typically made by micro and SMEs based on customer requests. These are unique products for which the application of eco-design requirements would result in an exponential increase in costs and bureaucracy.

This Regulation shall apply to **products with the exception of any physical good that is placed on the market or put into service, including components and intermediate products.** However, it shall not apply to:

- (a) food as defined in Article 2 of Regulation (EC) No 178/2002;
- (b) feed as defined in Article 3(4) of Regulation (EC) No 178/2002;
- (c) medicinal products for human use as defined in Article 1(2) of Directive 2001/83/EC;
- (d) veterinary medicinal products as defined in Article 4(1) of Regulation (EU) 2019/6;
- (e) living plants, animals and micro-organisms;
- (f) products of human origin;
- (g) products of plants and animals relating directly to their future reproduction-;
- h) packaging;**
- i) tailor-made products.**

The same modification needs to be reflected in recital 11.

b. Article 2 – Definitions

- Definition No. 35 - Destruction

Intentional damage to one's own property cannot be prohibited, while what should be prohibited is the action of damaging a product so as to render it unfit for its intended use and thus have a justification for considering it a waste.

Therefore, the following amendment to this definition is proposed:

- (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 or remanufacturing operations;	- (35) 'destruction' means the intentional damaging of a product to make it becoming a waste 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 or remanufacturing operations;
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- Definitions Nos. 35a and 35b

Italy agrees with these two new definitions introduced in the compromise text.

- Definition No. 37 - Unsold consumer product.

Italy agrees with the definition as amended in the compromise text.

- Definition No. 38 - Self-regulation measure.

Agrees with the definition as amended in the compromise text.

c. Article 3 - Free movement, and recital 15

We disagree with the deletion of paragraph 4. The possibility for Member States to legislate beyond European legislation will cause market fragmentation and distortion of the internal market. If we want to have harmonized products throughout the EU, this ban must be maintained. In addition, companies need a uniform approach across the EU to stimulate the innovation required by the ESPR.

For the same reasons, we strongly support the amendments to recital 15.

d. Article 4 - Conferment of powers to adopt delegated acts, and recitals 12, 13, 14, 16, 17

Italy welcomes the overall redrafting of Article 4 and, in particular, supports the replacement of delegated acts by implementing acts. Indeed, this amendment accommodates the requests repeatedly raised by the Italian delegation.

The following two changes to paragraph 3 of Article 4 are proposed:

- In paragraph (b) we suggest the deletion of the words "or to develop future eco-design requirements." Anonymous collection and reporting of energy consumed during use is a difficult exercise. Therefore, it should not be applied for the purpose of collecting information to develop future eco-design requirements, as such information can be collected through preparatory studies;

- in (d)(i) it is proposed to add the words "and the specificities of the national markets.

~~3. Delegated acts referred to in the first subparagraph may also supplement this Regulation by~~ **When adopting implementing acts referred to in the first subparagraph the Commission may, as appropriate in view to the specificities of the product group, include any of the following requirements:**

(a) Where this is necessary for effective market surveillance:

~~(-ai) requiring manufacturers, their authorised representatives or importers to keep the technical documentation and the EU declaration of conformity for a period longer or shorter than 10 years after that product has been placed on the market or put into service in order to take taking into account of the nature of the product or requirements concerned;~~

~~(-aa ii) requiring economic operators to provide, upon request, market surveillance authorities with the information set out in Article 30(2) for a period longer or shorter than 10 years after that product has been supplied;~~

~~(-aiii) requiring manufacturers, their authorised representatives or importers to make parts of the technical documentation related to the relevant product digitally available to the Commission or market surveillance authorities without request, in accordance with~~

Article

30(3);

~~(b) requiring manufacturers, their authorised representatives or importers to make available to the Commission information on the quantities of a product covered by those delegated acts placed on the market or put into service, in accordance with Article 31(1);~~

(b) Where this is necessary in order to ensure energy-efficient usage of products or to develop future ecodesign requirements:

~~(-ei) requiring products placed on the market to be able to measure the energy they consume or their performance in relation to other relevant product parameters referred to in Annex I while in use, in accordance with Article 31(2);~~

~~(-dii) requiring manufacturers, their authorised representatives or importers to collect, and anonymise, or report to the Commission the in-use data referred to in point (c) and report to the Commission;~~ in accordance with Article 31(3);

~~(-eii) requiring the use of online digital tools to calculate the performance of a product in relation to a product parameter referred to in Annex I, in accordance with Article 32(2);~~

(c) In order to ensure transparency about conformity with ecodesign requirements: ~~(f) specifying alternative rules on the declaration of conformity or markings, for products not subject to the requirement for affixing the CE marking before being placed on the market or put into service under Union law regulations, rules on indicating conformity with ecodesign requirements by way of derogation from Articles 37 and 39, in accordance with Article 40;~~

(d) In order to boost demand of environmentally sustainable products:

~~(-gi) specifying rules to direct Member States incentives in accordance with Article 57 of this Regulation taking into account the need for coherence with the incentives foreseen under Article 7(2) of Regulation (EU) 2017/1369~~ **and the specificities of the national markets;**

~~(-hii) establishing requirements applicable to public contracts awarded pursuant to Directive 2014/24/EU or Directive 2014/25/EU, Those requirements shall be based on the product parameters referred to in Annex I and established in accordance with Article 58.~~

With regard to recital 13, we would suggest to delete the references to washing machines, washer dryers, electronic appliances or textiles that do not seem to provide added value to the text.

13) In order to improve the environmental sustainability of products, and to ensure the free movement of products in the internal market, **and to ensure uniform conditions for the implementation of this Regulation** the power to adopt **implementing** acts in accordance with Article 290 TFEU should be **conferred** ~~delegated to upon~~ the Commission **for it to be able** to set ~~to supplement this Regulation by setting out the~~ **specific** ecodesign requirements **applicable**. ~~Those ecodesign requirements should in principle apply to specific product groups, such as washing machines or washing machines and washer dryers.~~ In order to maximise the effectiveness of ecodesign requirements and to efficiently improve environmental sustainability of products, it should also be possible to set out one or more horizontal ecodesign requirements for a wider range of products groups, ~~such as electronic appliances or textiles~~. Horizontal ecodesign requirements should be established where the technical similarities of product groups allow their environmental sustainability to be improved based on the same requirements. **Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.**

Italy has a drafting proposal for recital 16, which aims to strengthen the specific needs of strategic products in setting ecodesign requirements.

When ~~establishing~~ **setting** ecodesign requirements the Commission should take into account the nature and purpose of the products concerned, as well as the characteristics of the relevant markets. ~~Any ecodesign requirements should balance sustainability considerations with the need to operate under specific and sometimes harsh conditions, the need to ensure resilience as well as to fulfil the expected performance, the need to not negatively affect health and safety of customers and users. Information requirements should be balanced with the need to avoid disclosure of sensitive or strategic information. For example, Furthermore, sustainability considerations should not hinder defence equipment has to be able to operate under specific and sometimes harsh conditions, which needs to be considered when setting ecodesign requirements. Certain information on defence equipment should not be disclosed and should be protected. Therefore, for military or sensitive equipment ecodesign requirements should take into account the security needs of military or sensitive equipment and the characteristics of the defence market, as defined in Directive 2009/81/EC of the European Parliament and of the Council²⁶. Similarly, for the space industry that is strategic for Europe and for its technological non-dependence. As space technologies operate in extreme conditions, any ecodesign requirements for space products should balance sustainability considerations with resilience and expected performance.~~ Further, for medical devices as defined in Article 2(1) of Regulation (EU) 2017/745 on medical devices²⁷ and in vitro diagnostic medical devices as defined in Article 2(2) of Regulation (EU) 2017/746 on in vitro diagnostic medical devices²⁸, the Commission should take into account of the need to not negatively affect **the expected performance as well as** health and safety of patients and users.

Finally, Italy strongly supports the proposed draft of recital 17 in the second compromise text.

e. Article 5 - Ecodesign requirements, and recitals 5, 14, 19

Italy welcomes the proposed amendments to Article 5. First, although considering all aspects of the product (durability, reusability, reparability, recycled content, etc.) at all stages of the life cycle, it provides for an assessment of ecodesign requirements that focuses on how to improve aspects of the product relevant to the product group being regulated (paragraph 1); on the other hand, an explicit reference to the need to take into account the specificities of SMEs is introduced (paragraphs 5 and 6). It is positive also the introduction of the new paragraph 9, which seems to be in line with concerns expressed about the current definition of substances of concern (Art. 2(28)).

As Italy has already pointed out in previous comments, however, some important critical issues remain with respect to the list of product aspects subject to regulation in the first paragraph. In fact, the product specifications listed in Article 5(1) do not cover all aspects of low-impact product design. Moreover, they could be better described in terms of hierarchy (e.g., improving maintainability leads to extending product life, but they are treated as two different aspects (a) and (c)). The lack of a set of specifications covering all aspects of designing an environmentally friendly product is a fundamental problem. Moreover, in (k) remanufacturing and recycling are kept together, but they describe very different processes and must be kept separate.

In addition, all aspects listed in the first paragraph, with the exception of (m), aim to reduce the environmental impact of a product, while Carbon Footprint and Environmental Footprint are methods/tools for assessing and possibly communicating that environmental impact of a product. In this sense, it would be appropriate to keep them separate.

In general, as Italy has already pointed out, the ESPR proposal lacks a clear methodology for assessing eco-design requirements, but suggests using a mix of life cycle analysis (LCA) and circularity concepts when assessing implementing acts. When it comes to increasing the environmental sustainability of products, several avenues are possible, making the evaluation and quantification of methodologies a complex issue. An integrated approach is needed, as there are different pathways to environmental sustainability. We refer back to the written comments submitted.

Beyond these general comments, we suggest a number of changes to the article 5 shown in red in the table below:

3. Ecodesign requirements shall, as appropriate to improve the specific product aspects, include: (a) performance requirements as set out in Article 6 or; (b) information requirements as set out in Article 7; or both. When the setting of performance requirements or information requirements would not contribute to the objectives of this Regulation, ecodesign requirements may provide that no information requirements or no	The phrase "or both" should be retained because for some products both requirements are needed. The meaning of the last added period is unclear.
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performance requirements or neither are necessary for specific product aspects.	
4. When preparing ecodesign requirements, the Commission shall: (a) take into account the following elements: (i) Union climate, environmental and energy efficiency priorities and other related Union priorities; (ii) relevant Union legislation law, including the extent to which it addresses the relevant product aspects listed in paragraph 1; (iii) self-regulation measures, as provided for in Article 18; (iv) relevant national environmental legislation; (v) relevant European and international standards; (b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European Union funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance for the product concerned and in view of their potential to contribute to the overall improvement of the environmental sustainability of the product concerned. In addition, the Commission shall consider the interdependencies of parameters and avoid conflicting or duplicating requirements also with other EU laws. The impact assessment must include evaluation concerning the impact and feasibility of ecodesign requirements on the non-series productions. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product; (c) take into consideration relevant technical information used as a basis for or derived from Union legislation law or instruments, including Regulation (EC) No 66/2010, Directive 2010/75/EU, technical screening	Conflicts or duplication with other EU laws should also be avoided.

criteria adopted pursuant to Regulation (EU) 2020/852 and green public procurement criteria; (d) take into account the views expressed by the Ecodesign Forum referred to in Article 17.	
5. Ecodesign requirements shall meet the following criteria: (a) there shall be no significant negative impact on the functionality of the product, from the perspective of the user; (b) there shall be no adverse effect on the health and safety of persons; (c) there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account the purchase price —the purchase price, but also potential the access to second-hand products, durability and the cost, including life cycle cost of products; (d) there shall be no disproportionate negative impact on the competitiveness of economic operators and other actors in the value chain, at least and in particular of SMEs; (e) there shall be no proprietary technology imposed on manufacturers or other economic actors in the value chain; (f) there shall be no disproportionate administrative and economic burden on manufacturers or other economic actors in the value chain, in particular SMEs.	The purchase price should be reincluded because ecodesign requirements should not lead to overpriced products so that a portion of EU citizens can only afford second-hand products. Ecodesign requirements shouldn't lead to products only for the more affluent social classes.
7. The Commission shall, where appropriate, identify appropriate means of verification for specific ecodesign requirements, including directly on the product, via laboratory testing, or on the basis of the technical documentation.	Direct verification on the product means, for example, checking for the presence of a mark or switch; laboratory tests are performed on the product but not "directly," so laboratory tests must also be mentioned.
9. In case Where relevant for the product group concerned contains substances, the Commission shall establish, where relevant which substances is a if substance of concern, within the meaning of point (c) of paragraph 28 of Article 28, is present taking into account, whether: (a) based on the state-of-the-art technologies, the substances make the re-	This new paragraph 9 should be reworded considering that any product is composed of substances. This means that in any regulation there must be a chemical analysis and evaluation of all substances, which is practically impossible.

use, [remanufacturing, repairing] or recycling process substantially more complicated or energy-demanding, (b) the substances impair the technical properties or functionalities, the usefulness or the value of the recycled material or products manufactured from this recycled material, (c) the substances negatively impact cosmetic or aesthetic the properties of the recycled material, e.g. through its colour and smell.	

Italy welcomes the new drafting of recital 14. Nevertheless, we would suggest to check the coherence of the phrase “Refurbishment or repair of a product which do not meet the criteria of being waste should generally not be seen as resulting in a new product having been placed on the market” in the last sentence of the recital with the definition of “refurbishment” under art. 2(18) which states “means **preparing, cleaning, testing and, where necessary repairing an object that is waste** or a product to restore its performance or functionality within the intended use, **and** range of performance originally conceived at the design stage, **applicable at the time of its placing on the market.**”

With regard to recital 19, Italy has two drafting suggestions:

1. first, we would suggest to add before the verb “setting” in the first line the words “feasibility of” because it is the feasibility of setting ecodesign requirements that should be assessed not the ecodesign requirements themselves;
2. Second, we would delete the words “when needed” because the dedicated studies are always needed when setting new or revised ecodesign requirements as the experience with Directive 2009/125/EC has shown.

In order to take into account the diversity of products, the Commission should select the methods to assess the feasibility of setting of the ecodesign requirements and, as appropriate, develop them further Such methods are to be based on the nature of the product, its most relevant aspects and its impacts over its life cycle. In doing so, the Commission should take account of its experience in assessing the setting of requirements under Directive 2009/125/EC and the continuing efforts to develop and improve science-based assessment tools, such as the update of the methodology for ecodesign of energy-related products, and the Product Environmental Footprint method set out in Commission Recommendation (EU) 2021/227934, including as regards temporary storage of carbon, as well as the development of standards by international and European standardisation organisations, including on the material efficiency of energy-related products. Building on these tools and using dedicated studies when needed, the Commission should further reinforce circularity aspects (such as durability, reparability including reparability scoring, identification of chemicals hindering re-use and recycling) in the assessment of products and in the preparation of ecodesign requirements, and should develop new methods or tools where appropriate. New approaches may also be needed for the preparation of mandatory public procurement criteria and for bans on the destruction of unsold consumer products.
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f. Article 6 - Performance specifications, and recital 22

Italy welcomes the drafting of recital 22 and article 6.

g. Article 7 - Reporting requirements, and recital 23-25

Italy welcomes the rewording of Article 7, particularly with reference to paragraph 5. With reference to paragraph 6, it is considered that the original wording is more flexible and less burdensome from an economic and administrative point of view, especially for SMEs. Therefore, it is suggested to return to the previous wording.

Finally, some additional amendments are proposed below:

1. Products shall comply with information Information requirements shall require, where appropriate, information to be provided on relate related to the product aspects listed in Article 5(1), as laid down in the delegated acts adopted pursuant to Article 4.	Information on all items listed in 5.1 is not necessarily relevant, available, or feasible for all items listed in 5.1.
2. The information requirements referred to in paragraph 1 shall: (a) include, as a minimum, requirements related to the product passport referred to in Chapter III and requirements related to substances of concern referred to in paragraph 5; and (b) as appropriate, require products to be accompanied by: (b) as appropriate, considering the technical feasibility and when such requirements will improve the environmental sustainability of the product group concerned, also require products to be accompanied by: (i) information on the performance of the product in relation to one or more of the product parameters referred to in Annex I; (ii) information for customers, and other actors consumers and other end-users on how to install, use, maintain and repair the product, including its reparability, in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or dispose of the product at end-of-life handle the product at the end of its life, as relevant; (iii) information for treatment facilities on disassembly, reuse, recycling, or disposal at end-of-life, as relevant;	Information from the manufacturer cannot improve the performance of a product when it is handled by a different party. Instead, such information can help prevent performance deterioration over time (e.g., maintenance and repair information).

(iv) other information that may influence the way the product is handled by parties other than the manufacturer in order to improvemaintain the performance in relation to product parameters referred to in Annex II. (v) the environmental carbon footprint referred to in article 5 (1) point m; Where aan delegated implementing acts contains horizontal ecodesign requirements for two or more product groups as referred to in Article 5(2), second subparagraph, point (a) of this paragraph shall not apply.	
5. The information requirements referred to in paragraph 1 shall enable where appropriate the tracking of all substances of concern, including the threshold, to be defined for a specific product group pursuant to a multi-stakeholder consultation, including at least industry and recyclers, throughout the life cycle of products, unless such tracking is already enabled by another delegated implementing act adopted pursuant to Article 4 covering the products concerned, or by another EU law, and shall include at least the following: (a) the name of the substances of concern present in the product; (b) where relevant, the location of the substances of concern within the product; (c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main relevant components, or spare parts; (d) relevant instructions for the safe use of the product; (e) information relevant for disassembly, recycling and end of life management. Where the Commission sets out information requirements in aan delegated implementing act adopted pursuant to Article 4, it shall: (a) where applicable, establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered; (b) lay down deadlines for the entry into	- The requirement to legally trace all hazardous substances in the framework regulation seems too complex and in fact disproportionate to the scope of the regulation. The requirement should be relaxed by inserting an "where appropriate," and the assessment should be made during the preparatory study; - a threshold approach is recommended, inserted directly into the ESPR Regulation as it is currently applied overall under REACH and CLP. The threshold should be the same or less stringent than those already specified in the substance regulations (e.g., 0.1 percent for SVHCs); - the differentiation of the deadline for providing information should be for individual information and not for individual substances; - the reference to definition 28 in Article 2 is incorrect. It is corrected in the proposed amendment to Section 7.5. Definition 28 of Article 2(a) covers hazard class carcinogenicity, germ cell mutagenicity, and reproductive toxicity.

application of the information requirements referred to in the first subparagraph, with possible differentiation between **information substances**; and (c) **where appropriate**, provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. **based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information or in other duly justified cases. Substances of concern falling under Article 2(28), within the meaning of point (a), paragraph 2 of Article 2(28), shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.** (d) where relevant, refer to existing information requirements under Union law, or if not possible, ensure consistency with those requirements.

~~Exemptions referred to in the second subparagraph, point (c), may be provided based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information and in other duly justified cases. Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1 % weight by weight.~~



Italy support the amendments introduced in recitals 23, 24 and 25. Below we suggest few additional modifications.

Concerning recital 23, Italy has a general comment already raised with regard to Article 5. In particular, it must be stressed that reparability and product carbon footprint are not on the same conceptual level as said before. Therefore, the recital could be rephrased taking into account this methodological observation.

In addition, we would suggest the addition of a new sentence to this recital in order to adopt a product-by-product approach.

To improve environmental sustainability of products, information requirements should relate to a selected product parameter relevant to the product aspect, such as the product's environmental footprint or its durability. They may require manufacturer to make available information on the product's performance in relation to a selected product parameter or other information that may influence the way the product is handled by parties other than the manufacturer in order to improve performance in relation to such a parameter. Such information requirements should be set either in addition to, or in place of, performance requirements on the same product parameter as appropriate. **For relevant product groups horizontal requirements on important aspects such as reparability and product carbon footprint should be considered in order to speed up the transition to a circular economy.** Where a delegated implementing act includes information requirements, it should indicate the method for making the required information available, such as its inclusion on a free-access website, product passport or product label. Information requirements are necessary to lead to the behavioural change needed to ensure that the environmental sustainability objectives of this Regulation are achieved. By providing a solid basis for purchasers and public authorities to compare products on the basis of their environmental sustainability, information requirements are expected to drive consumers and public authorities towards more sustainable choices. **In order to avoid any duplication of information and consequent excessive burdens for producers, the information requirements must be proportionate and commensurate with the product/group of products for which the ecodesign specifications will be defined, establishing the type of tool on a case-by-case basis which should be used to provide product information.**

With regard to recital 24, we reiterate the request for clarification in order to understand the exact meaning of the word "relative sustainability". A drafting suggestion is proposed below:

Where delegated implementing acts include information requirements, they may in addition determine classes of performance in relation to one or more relevant product parameters, in order to facilitate comparison between products on the basis of that parameter. Classes of performance should enable differentiation of products based on their **characteristics related to the expected use** and **relative**-sustainability and could be used by both consumers and public authorities. As such, they are intended to drive the market towards more sustainable products.

h. Article 7a - Content of the implementing act [Former Annex VI iwth adjustments]

We welcome the introduction of this new article.

i. Article 14 - Labels, Article 25.3 - Obligations of dealers, Article 26 - Obligations related to labels, and recitals 39-41

Italy welcomes the current wording of Article 14, as well as of recitals 39-41. With specific reference to paragraph 5 of Article 14, it should be clarified that the implementing acts (plural) to be established by the Commission mean that a relevant

implementing act must be prepared by the Commission for each product-specific ecodesign label, as is currently the case for product-specific delegated acts in the area of energy labelling.

Finally, we propose to add a new sentence to the third paragraph of Article 14 in order to guarantee that useful information initially considered to be provided via the energy labelling are not lost and are included in the ecodesign label along with the specific product parameter considered not suitable for inclusion in an energy label.

3. For energy-related products **that are subject to energy labels established pursuant to Regulation (EU) 2017/1369**, ~~only~~ where information on a relevant product parameter, including on classes of performance referred to in Article 7(4), cannot be incorporated in the energy label ~~established pursuant to Regulation (EU) 2017/1369~~ **and where this information is considered to be more relevant than the information covered by the energy label**, the Commission, after assessing **the risk of confusion for customers, the administrative and economic burden for economic operators** and the best way to communicate about this that particular information, may, if appropriate, require the establishment of a label in accordance with this Regulation. **instead of the energy label. The establishment of a label in accordance with this Regulation shall not be detrimental to the completeness of the information for that product to be provided to the end-user.**

We would also take the opportunity to share a general consideration on this topic. In order to determine and make visible to the potential user which product has a lower environmental impact, it is crucial to define whether the environmental footprint (LCA) is assessed or, for example, only the percentage content of a recycled material: a higher content of a recycled material in one product than in another (with the same performance, e.g., two office chairs) does not automatically determine whether that product is the one with a lower environmental impact. On the other hand, performing an LCA takes time and has a cost. It is not a simple matter, but it must be clarified and a decision made, clarifying the assessment method and its limitations.

j. **Article 18 - Self-Regulatory Measures, and recital 44**

Italy welcomes the option of providing for self-regulatory measures in the Regulation, as well as the current rewording of recital 44 and Article 18 proposed in the second compromise text.

Finally, the following changes to paragraphs 5 and 6 are suggested:

5. Once a self-regulation measure has been listed in an implementing act adopted pursuant to paragraph 3, ~~second~~ **third** subparagraph, the signatories of that measure shall report to the Commission, at regular intervals set out in that implementing act, on the progress towards achieving the objectives of the self-regulation measures and to demonstrate that the criteria set in paragraph 3, points (a) to (e), remain fulfilled. Those reports shall also be made available on a publicly accessible **free of charge** website.

6. Where the Commission considers, ~~based on information received pursuant to paragraphs 4 or 5,~~ that a self-regulation measure **listed in an implementing act adopted pursuant to paragraph 3, third subparagraph**, no longer fulfils the

criteria set out in paragraph 3 **or where the signatories of the self-regulation measure concerned did not met the deadline referred to in paragraph 4**, it shall delete it from the list referred to in that paragraph. ~~In, it shall delete it from the list referred to in that paragraph.~~ In such cases, the Commission may decide to adopt ecodesign requirements applicable to the product covered by that self-regulation measure.

k. Article 20a - Policy of management of unsold products

Italy generally agrees with the general purpose of Article 20a, but considers the provision to be overall inapplicable in its current wording. Several aspects need further clarification and/or specification:

1. how repeated should be the discarding to be considered sufficiently repeated to trigger the two requirements?
2. And how to verify that the prescribed policies are actually implemented?

To make this article operational, the implementing acts referred to in paragraph 20.3 should include the definition of the practical aspects of the two policies mentioned above.

l. Article 20 - Destruction of unsold consumer products, and recitals 46-48a

Italy agrees with the purposes of Article 20 and the goal of introducing a ban on the destruction of unsold consumer products. It welcomes some changes introduced in the second compromise text, which seem to be in line with comments previously sent (ex. paragraph 3.c., second sentence (v)) and, in particular, welcomes and supports the replacement of delegated acts by implementing acts under Article 20(3) of the compromise text.

Overall, however, the Swedish proposal seems to make the whole procedure particularly complex and burdensome both for producers, who have to comply with the very detailed information to be provided, and for the Commission, which has to prepare the "operational" implementing acts.

In addition, the text does not address the issue raised by the Italian delegation with regard to the risk of circumvention of the future ban through the transfer of products (not waste) to third countries.

Furthermore, we continue to argue that the reporting requirements under the first paragraph of article 20 should only apply to products and/or product groups for which ecodesign requirements have been defined under Article 4. The application of this provision, as currently envisaged, to all products falling within the scope of the framework regulation as early as 6 months after the entry into force of the regulation would impose enormous administrative and economic burdens on both economic operators and public administrations, which would not be able to carry out the necessary checks on compliance. Please refer to the amendments proposed by Italy in this regard.

Finally, an adequate transition time between the publication of the implementing act setting out the format for disclosure of unsold consumer products and the application of the requirement should be guaranteed. This time is key for companies to adapt

their systems to account for the appropriate disclosure in line with the Regulation. To provide companies with legal certainty on how to report, the transition period should start when the Commission publishes the implementing act on the reporting format.

m. Article 57 - Member State incentives

Generally, Italy welcomes the compromise text in the part where it provides for the replacement of delegated acts by implementing acts for both incentives and green public procurement. Some changes to the text, previously proposed by Italy, are deemed necessary to protect specificities and national production.

The proposed amendments to the third paragraph address the need to make the granting of incentives by Member States optional on the basis of common criteria specified in the specific acts for products for which no EU-wide performance classes are defined. These requirements must also specify the number of products that can be incentivized relative to the availability of such products on the EU market.

2. Where a ~~delegated~~ **implementing** act adopted pursuant to Article 4 determines classes of performance pursuant to Article 7(4), in relation to more than one product parameter referred to in Annex I or where classes of performance are established both under Regulation (EU) 2017/1369 and under this Regulation, the Commission ~~shall~~ **may** further specify in the ~~delegated~~ **implementing** acts adopted pursuant to Article 4, third subparagraph, point (g), which product parameters the Member States incentives shall concern **and that the highest two classes of performance populated at national level for each parameter can be incentivised.** When doing so, the Commission shall take into account the following criteria: (a) the number of products in each class of performance; (b) the ~~relative~~ **need to ensure** affordability of the products in each class of performance; **to avoid significant negative impact on consumers;** ~~(c) the need to ensure sufficient demand for more environmentally sustainable products.~~

Where a ~~delegated~~ **implementing** act adopted pursuant to Article 4 does not determine classes of performance, the Commission may specify in ~~the delegated acts adopted pursuant to Article 4, third subparagraph, point (g),~~ requirements related to product parameters that **Member State should strive to adopt** when incentivise the products concerned ~~by Member State incentives shall meet.~~ When doing so, the Commission shall take into account ~~the following criteria:~~ (a) the **need to ensure** ~~relative~~ affordability of the products meeting those requirements; ~~(b) the need to ensure sufficient demand for more environmentally sustainable products.~~

n. Article 58 - Green public procurement.

In general, the compromise text insofar is welcomed as it provides for the replacement of delegated acts with implementing acts for both incentives and green public procurement.

Given the above change, the current approach of mandatory green public procurement requirements is supported. However, we believe that the following

changes should be made to the compromise text to ensure that national specificities are protected.

1. Amendments to recital 87

Public procurement amounts to 14% of the Union's GDP. To contribute to the objective of reaching climate neutrality, improving energy and resource efficiency and transitioning to a circular economy that protects public health and biodiversity, the power to adopt acts in accordance with Article 290 TFEU should be ~~delegated~~ **conferred** to the Commission to require, where appropriate, contracting authorities and entities as defined in Directive 2014/24/EU⁵⁸ and 2014/25/EU⁵⁹ of the European Parliament and of the Council, to **strive to** align their procurement with specific green public procurement criteria or targets, to be set out in the **implementing** ~~delegated~~ acts adopted pursuant to this Regulation. The criteria or targets set by delegated acts for specific product groups should be complied with not only when directly procuring those products in public supply contracts but also in public works or public services contracts where those products will be used for activities constituting the subject matter of those contracts. Compared to a voluntary approach, mandatory criteria or targets will ensure that the leverage of public spending to boost demand for better performing products is maximised. The criteria should be transparent, objective and non-discriminatory. **Green public procurement requirements should not be developed if they are likely to disproportionately impact other public policy objectives of the Member States. When developing implementing acts related to Green Public Procurement, the Commission should take due account of the Member States different geographical, social and economic circumstances.**

2. Amendments to Article 58

~~Requirements pursuant to Article 4, third subparagraph, point (h) for The~~ **Commission shall in the implementing act pursuant to Article 4 specify mandatory requirements for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3(1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, in order to incentivise the demand for environmentally sustainable products falling in the scope of that implemented act . The requirements referred to in paragraph 1 shall be set as appropriate in view of the specificities of to the product group concerned:**
(a) Where classes of performance have been defined for the products in accordance with Article 7(4), require products to fulfil one of the highest two classes of performance that are populated at Union national level,
(b) Include requirements shall-on the product parameters referred to in Annex I considering in particular product groups (i) lifetime extension, (ii) energy consumption, (iii) end of life management, (iv) criteria applicable to refurbished/remanufactured.
The requirements shall, as appropriate to the product group concerned, take the form of, mandatory technical specifications, selection criteria, award criteria, contract performance clauses, or targets, as appropriate: (i) technical specifications within the meaning of paragraph 1 of Annex VII of Directive 2014/24/EU and of Article 60 of Directive 2014/25/EU, (ii) selection criteria

within the meaning of Article 58 of Directive 2014/24/EU and of Article 80 of Directive 2014/25/EU, (iii) contract performance clauses within the meaning of Article 70 of Directive 2014/24/EU and of Article 87 of Directive 2014/25/EU, (iv) targets, (v) [Where applicable,] compliance by the class of products, which is the subject of the considered public contract, with the ecodesign requirement, whole or parts thereof, at an earlier stage than the application dates foreseen in the implementing act referred to in Article 4 establishing those specific ecodesign requirements.

2. When establishing **requirements pursuant to paragraph 1** ~~requirements pursuant to Article 4, third subparagraph, point (h), for public contracts,~~ the Commission shall take into account the following criteria:

- (a) the value and volume of public contracts awarded for that given the relevant product group or for the services or works using the given product group;
- ~~(b) the need to ensure sufficient demand for more environmentally sustainable products;~~
- (c) the economic feasibility for contracting authorities or contracting entities **to ensure the purchase of a sufficient number of** ~~buy~~ more environmentally sustainable products, without entailing disproportionate costs.;
- (d) the market situation at Union level, including the competitive pressure, of the relevant product group.**