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MEETING DOCUMENT

From: European Commission Services
To: Working Party on Competitiveness and Growth (Internal Market – Ecodesign)

Subject: Presentation by the Commission: How to set up ecodesign requirements in ESPR



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How to set up ecodesign requirements in ESPR

General Disclaimer: examples in this presentation are made purely for illustration purposes

Working Party 14/3/23
Webinar with MS Experts 15/3/23

How will ESPR work?

Requirements will be tailored to the specificities of products

Framework legislation

Product-specific or horizontal measures based on detailed impact assessment

Regularly updated multiannual working plans setting out priorities

The new Ecodesign legal landscape according to COM

Ecodesign Directive of 16 January 2009

Article 15

Implementing measures

1. Where a product meets the criteria listed under paragraph 2 of this Article, it shall be covered by an implementing measure or by a self-regulation measure in accordance with paragraph 3(b) of this Article. Such implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

TFEU entered into force on 1 December 2009

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

NB: According to COM, the Ecodesign Directive Implementing Measures have the same content and function of the downstream act under the ESPR because they amend/supplement non-essential elements

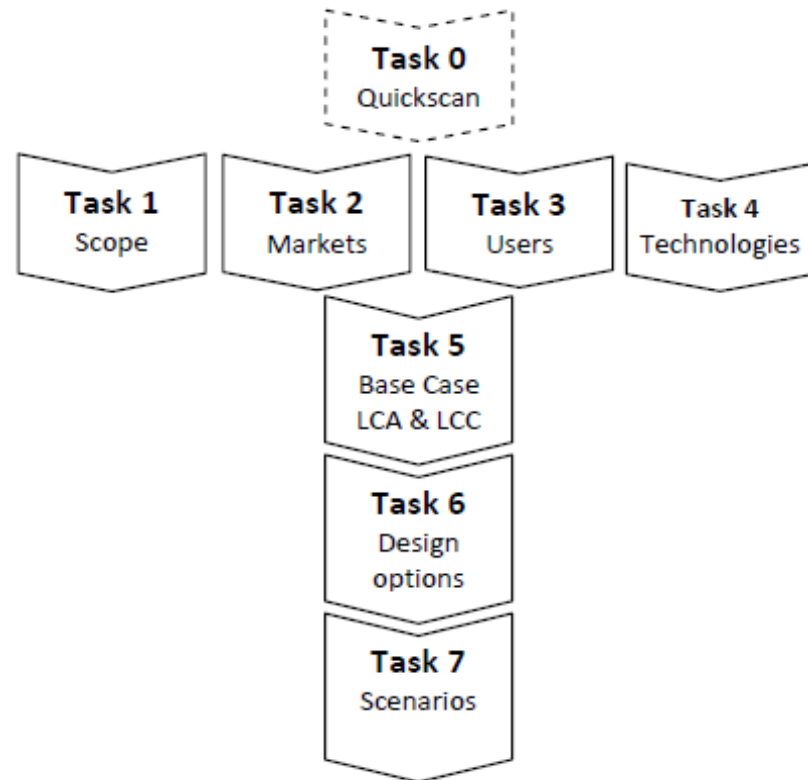


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How the current Ecodesign Directive measures are set

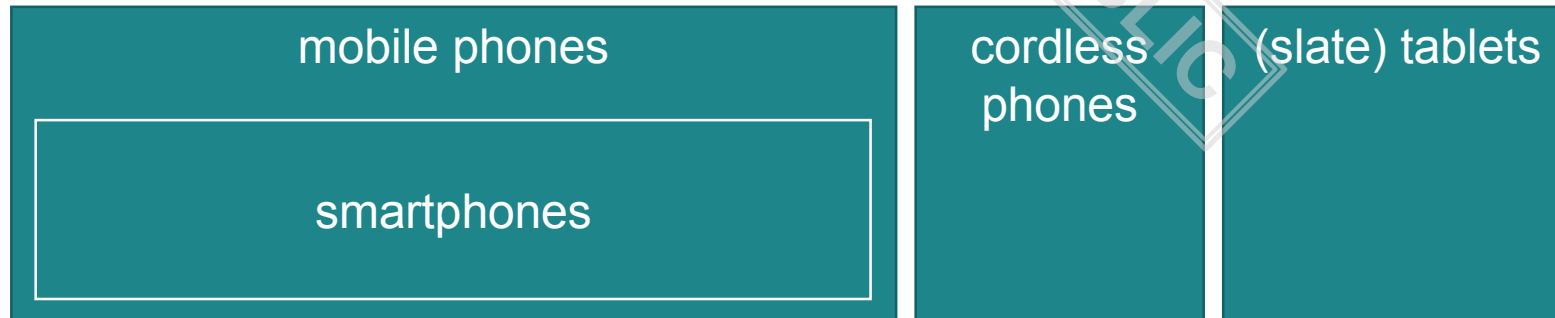
Prep study for a Ecodesign measures

General steps in a typical preparatory study (currently in MEErP)



Example of a prep study for smartphone

Scope (task 1)



*The preparatory work helped to **shape the scope** from generic product group (**mobile phone and tables**):*

- Four product categories, 'cordless phones', 'mobile phones other than smartphones', 'smartphones' and 'tablets' were identified, defined and included;
- 'Smartphone for high security communication' and 'Devices with rollable displays' were excluded from the scope and defined specifically because of their technical characteristics;
- 'Tablet type computers' were not be included and meant to be covered by the upcoming revised computer regulation

NB: according to COM, shaping the scope would be complex –if not impossible- for the ESPR legislative act.

Would it be possible to consider it a condition for uniform application?

Example of a prep study for smartphone

Trade-offs and design options (task 5 & 6)

Complex and crucial trade-off for smartphone: better durability or reparability?

The prep study allowed to narrow down the trade-off between battery durability or replacement. As a result, the Ecodesign measure provides for an alternative:

manufacturers, importers or authorised representatives of smartphones shall

either

make available to end-users [...] the battery, for a minimum period from 6 months [...] until five years after placing the last unit of the model on the market (**reparability = battery replacement**)

or

ensure that the battery endurance in cycles achieves a minimum of 1000 full charge cycles, and after 1000 full charge cycles the battery must, in addition, have in a fully charged state, a remaining capacity of at least 80 percent of the rated capacity and the device is at least dust tight and protected against immersion in water up to 1 meter depth. (**durability = battery endurance**)

NB: according to COM, addressing trade-offs would be complex –if not impossible- for the ESPR legislative act.

Would the resolution of trade-off be considered condition for uniform application?



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How the future measures under ESPR would be set

COM interpretation of the steps in a ESPR prep study (DAs vs IAs)

If the study is to **prepare a DA** (same assessment as under the current Ecodesign regulations)

- Exact scope of the product groups defined in DA
- No difference between DA and IA for this steps
- Assessment of possible measures and trade-offs
- Design options and scenarios covering the whole range of possible measures

Current steps in MEErP

Task 1 – scope

Task 2 – markets

Task 3 – users

Task 4 – technologies

Task 5 – life-cycle assessment of base case, requirements and LCC

Task 6 – design options

Task 7 – scenarios

If the study is to **prepare an IA**

- Exact scope of product groups defined in ESPR
- No difference between DA and IA for this steps
- Measures already defined in ESPR, refined in IA for uniform implementation
- Design options and scenarios limited by ESPR framework



Durability for jeans and smartphones in ESPR



Essential elements in ESPR

Performance requirements shall relate to the products aspects listed in Article 5(1) **[e.g. point (a) durability]**

shall be based on the parameters referred to in Annex I **[e.g. point (a) (...) resistance to stresses or ageing mechanisms;]**

and shall include as appropriate minimum or maximum levels or non quantitative requirements

Elements in downstream act

depending on results of preparatory study/impact assessment

- **Jeans**

- ability to withstand a minimum of 35 home laundries;
- ability to withstand a minimum of 35 home dryings
- **ability to.....**

- **Smartphones**

- resistance when accidentally dropped from 1 meter high
- time resistance in water
- **ability to ...**

Would the setting of the elements in the downstream act be considered laying down conditions for uniform application?

An example of Delegated Acts (DAs) and Implementing Acts (IAs): the ESPR Label

DAs

Additional non-essential rules building upon or developing the content of the legislative (framework) act

IAs

Additional rules ensuring uniform implementation of the complete legislative (framework) act, without affecting its substance.

The info that needs to be in the ESPR label adapted to each product



The format and technical elements of an ESPR label valid for all products to ensure recognition by consumers

NB: according to COM, a IA would be able to indicate the information that needs to in the label ONLY IF the ESPR framework act outlines this information for each product



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Food for thoughts

DAs Pros & Cons

Pros

- **Flexibility** (e.g. in selection of parameters and the applicable methodology)
- **Future-proofing** (e.g. new impacts, new products, tech changes)
- **Full use of the preparatory study potential** (e.g. trade-off among environmental aspects)
- **Full engagement of industry and stakeholders** in shaping



Cons

- **MS not voting** COM product-specific/horizontal downstream acts
- **MS being obliged to reject** the whole COM product-specific/horizontal downstream acts **if they do not agree**

IAs Pros & Cons

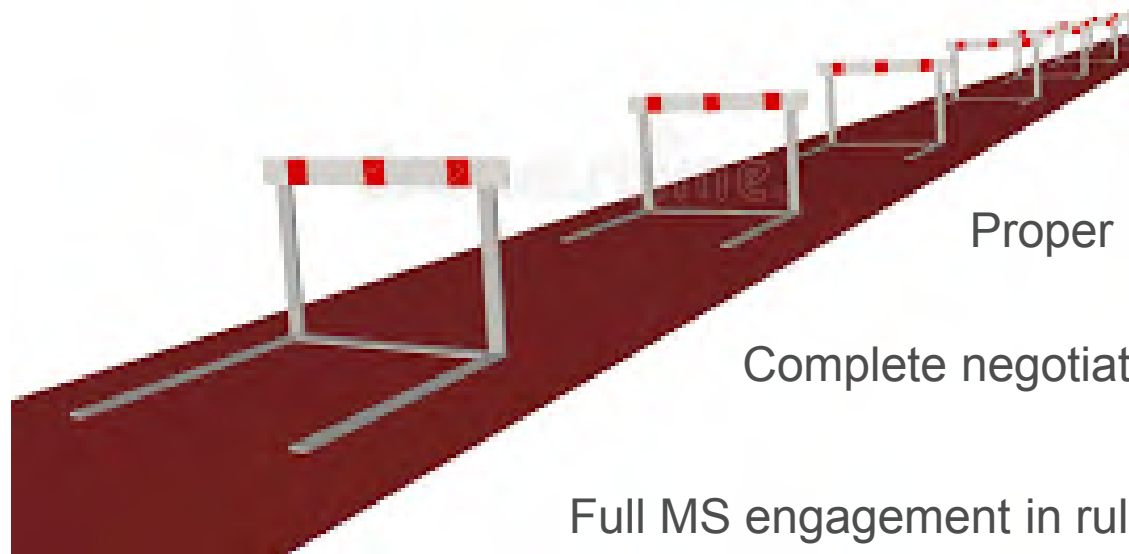
Pros

- **MS voting** on COM
- **Clearer boundaries** of Commission's **empowerment**
- **Predictability on measures** (products and requirements)

Cons

- **Complexity of ESPR**: ESPR should identify relevant parameters for each environmental aspects for each product considered, so multiplying n-time the detailed needed (e.g. multitude of product-specific annexes)
- Substantive elements in the framework legislation with **no preparatory study, impact assessment and limited involvement** of industry and stakeholders
- **Loss of flexibility** to take into account product specificities and the adequate level of granularity
- **No future-proofing**

How to win the race to adoption & delivery?



Deliver what citizens and companies expect

Limit litigation risks

Proper involvement industry and stakeholders

Complete negotiation within the current political cycle

Full MS engagement in rule setting

Thank you

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